IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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ROSEMARY DRAKE, Deputy Editor (515)281-7252
Fax: (515)281-4424

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly as follows:

First quarter	July 1, 1998, to June 30, 1999	$244.10 plus $12.21 sales tax
Second quarter	October 1, 1998, to June 30, 1999	$185.00 plus $9.25 sales tax
Third quarter	January 1, 1999, to June 30, 1999	$125.00 plus $6.25 sales tax
Fourth quarter	April 1, 1999, to June 30, 1999	$ 65.00 plus $3.25 sales tax

Single copies may be purchased for $19.00 plus $0.95 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

The Iowa Administrative Code and Supplements are sold in complete sets and subscription basis only. All subscriptions for the Supplement (replacement pages) must be for the complete year and will expire on June 30 of each year.

Prices for the Iowa Administrative Code and its Supplements are as follows:

Iowa Administrative Code - $1,119.00 plus $55.95 sales tax
(Price includes 22 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. **Additional** or replacement **binders** can be purchased for $10.90 plus $0.55 tax.)

Iowa Administrative Code Supplement - $393.50 plus $19.68 sales tax
(Subscription expires June 30, 1999)

All checks should be made payable to the Iowa State Printing Division. Send all inquiries and subscription orders to:

Customer Service Center
Department of General Services
Hoover State Office Building, Level A
Des Moines, IA 50319
Telephone: (515)242-5120

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Schedule for Rule Making
1999

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 25 '98	Jan. 13 '99	Feb. 2 '99	Feb. 17 '99	Feb. 19 '99	Mar. 10 '99	Apr. 14 '99	July 12 '99
Jan. 8	Jan. 27	Feb. 16	Mar. 3	Mar. 5	Mar. 24	Apr. 28	July 26
Jan. 22	Feb. 10	Mar. 2	Mar. 17	Mar. 19	Apr. 7	May 12	Aug. 9
Feb. 5	Feb. 24	Mar. 16	Mar. 31	Apr. 2	Apr. 21	May 26	Aug. 23
Feb. 19	Mar. 10	Mar. 30	Apr. 14	Apr. 16	May 5	June 9	Sept. 6
Mar. 5	Mar. 24	Apr. 13	Apr. 28	Apr. 30	May 19	June 23	Sept. 20
Mar. 19	Apr. 7	Apr. 27	May 12	May 14	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	May 28	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	June 25	July 14	Aug. 18	Nov. 15
May 14	June 2	June 22	July 7	July 9	July 28	Sept. 1	Nov. 29
May 28	June 16	July 6	July 21	July 23	Aug. 11	Sept. 15	Dec. 13
June 11	June 30	July 20	Aug. 4	Aug. 6	Aug. 25	Sept. 29	Dec. 27
June 25	July 14	Aug. 3	Aug. 18	Aug. 20	Sept. 8	Oct. 13	Jan. 10 '00
July 9	July 28	Aug. 17	Sept. 1	Sept. 3	Sept. 22	Oct. 27	Jan. 24 '00
July 23	Aug. 11	Aug. 31	Sept. 15	Sept. 17	Oct. 6	Nov. 10	Feb. 7 '00
Aug. 6	Aug. 25	Sept. 14	Sept. 29	Oct. 1	Oct. 20	Nov. 24	Feb. 21 '00
Aug. 20	Sept. 8	Sept. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 6 '00
Sept. 3	Sept. 22	Oct. 12	Oct. 27	Oct. 29	Nov. 17	Dec. 22	Mar. 20 '00
Sept. 17	Oct. 6	Oct. 26	Nov. 10	Nov. 12	Dec. 1	Jan. 5 '00	Apr. 3 '00
Oct. 1	Oct. 20	Nov. 9	Nov. 24	Nov. 26	Dec. 15	Jan. 19 '00	Apr. 17 '00
Oct. 15	Nov. 3	Nov. 23	Dec. 8	Dec. 10	Dec. 29	Feb. 2 '00	May 1 '00
Oct. 29	Nov. 17	Dec. 7	Dec. 22	Dec. 24	Jan. 12 '00	Feb. 16 '00	May 15 '00
Nov. 12	Dec. 1	Dec. 21	Jan. 5 '00	Jan. 7 '00	Jan. 26 '00	Mar. 1 '00	May 29 '00
Nov. 26	Dec. 15	Jan. 4 '00	Jan. 19 '00	Jan. 21 '00	Feb. 9 '00	Mar. 15 '00	June 12 '00
Dec. 10	Dec. 29	Jan. 18 '00	Feb. 2 '00	Feb. 4 '00	Feb. 23 '00	Mar. 29 '00	June 26 '00
Dec. 24	Jan. 12 '00	Feb. 1 '00	Feb. 16 '00	Feb. 18 '00	Mar. 8 '00	Apr. 12 '00	July 10 '00
Jan. 7 '00	Jan. 26 '00	Feb. 15 '00	Mar. 1 '00	Mar. 3 '00	Mar. 22 '00	Apr. 26 '00	July 24 '00

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
25	**Friday, May 14, 1999**	**June 2, 1999**
26	**Friday, May 28, 1999**	**June 16, 1999**
27	**Friday, June 11, 1999**	**June 30, 1999**

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses Interleaf 6 to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the processing of rule-making documents, we request a 3.5" High Density (not Double Density) IBM PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, 1st Floor, Lucas State Office Building or included with the documents submitted to the Governor's Administrative Rules Coordinator.

2. Alternatively, if you have Internet E-mail access, you may send your document as an attachment to an E-mail message, addressed to both of the following:

bcarr@legis.state.ia.us
kbates@legis.state.ia.us

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies by the Governor's office, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

Guide to Rule Making, *June 1995 Edition,* available upon request to the Iowa Administrative Code Division, Lucas State Office Building, First Floor, Des Moines, Iowa 50319.

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)"b" by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
EDUCATIONAL EXAMINERS BOARD[282]		
Professional practices, 12.2(1)"c" IAB 5/5/99 **ARC 8961A**	Conference Room 3, North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	May 27, 1999 11 a.m.
Associate counselor license, 14.10, 14.27 IAB 5/5/99 **ARC 8963A**	Conference Room 3, North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	May 27, 1999 2 p.m.
Two-year nonrenewable school counseling exchange license, 14.26 to 14.34 IAB 5/5/99 **ARC 8962A**	Conference Room 3, North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	May 27, 1999 1 p.m.
Late renewal fee, 14.31(6), 14.21(6) IAB 5/5/99 **ARC 8960A**	Conference Room 3, North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	May 27, 1999 10 a.m.
EDUCATION DEPARTMENT[281]		
General accreditation standards, 12.1 to 12.9 IAB 4/7/99 **ARC 8896A**	High School Auditorium 1015 Division St. Cedar Falls, Iowa	May 6, 1999 6:30 to 8 p.m.
	High School Auditorium 601 W. Townline Creston, Iowa	May 17, 1999 6:30 to 8 p.m.
	South Elementary Auditorium 310 Cayuga Storm Lake, Iowa	May 24, 1999 6:30 to 8 p.m.
	High School Auditorium 307 E. Monroe Mount Pleasant, Iowa	May 27, 1999 6:30 to 8 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Public and private drinking water, 40.1 to 40.7 IAB 4/7/99 **ARC 8903A**	Hanson Room 8—Siebens Forum Buena Vista College 4th and Grand Ave. Storm Lake, Iowa	May 6, 1999 10 a.m.
	Muse-Norris Conference Room North Iowa Area Community College 500 College Dr. Mason City, Iowa	May 24, 1999 10 a.m.
	Community Room (upstairs/back entrance) 101 E. Main St. Manchester, Iowa	May 25, 1999 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

	Room A Public Library 123 S. Linn St. Iowa City, Iowa	May 26, 1999 10 a.m.
	Conference Room Municipal Utilities 15 W. 3rd St. Atlantic, Iowa	May 27, 1999 10 a.m.
Water supplies, amendments to ch 41, IAB 4/7/99 **ARC 8902A**	Hanson Room 8—Siebens Forum Buena Vista College 4th and Grand Ave. Storm Lake, Iowa	May 6, 1999 10 a.m.
	Muse-Norris Conference Room North Iowa Area Community College 500 College Dr. Mason City, Iowa	May 24, 1999 10 a.m.
	Community Room (upstairs/back entrance) 101 E. Main St. Manchester, Iowa	May 25, 1999 10 a.m.
	Room A Public Library 123 S. Linn St. Iowa City, Iowa	May 26, 1999 10 a.m.
	Conference Room Municipal Utilities 15 W. 3rd St. Atlantic, Iowa	May 27, 1999 10 a.m.
Public notification, public education, consumer confidence reports, reporting, and record maintenance, ch 42 IAB 4/7/99 **ARC 8901A**	Hanson Room 8—Siebens Forum Buena Vista College 4th and Grand Ave. Storm Lake, Iowa	May 6, 1999 10 a.m.
	Muse-Norris Conference Room North Iowa Area Community College 500 College Dr. Mason City, Iowa	May 24, 1999 10 a.m.
	Community Room (upstairs/back entrance) 101 E. Main St. Manchester, Iowa	May 25, 1999 10 a.m.
	Room A Public Library 123 S. Linn St. Iowa City, Iowa	May 26, 1999 10 a.m.
	Conference Room Municipal Utilities 15 W. 3rd St. Atlantic, Iowa	May 27, 1999 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

Water supplies—design and operation, 43.1 to 43.3, 43.5, 43.7, 43.8 IAB 4/7/99 **ARC 8905A**	Hanson Room 8—Siebens Forum Buena Vista College 4th and Grand Ave. Storm Lake, Iowa	May 6, 1999 10 a.m.
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Aquifer storage and recovery, ch 55 IAB 4/7/99 **ARC 8909A**	Hanson Room 8—Siebens Forum Buena Vista College 4th and Grand Ave. Storm Lake, Iowa	May 6, 1999 10 a.m.
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Laboratory certification, 83.1 to 83.7 IAB 4/7/99 **ARC 8910A**	Hanson Room 8—Siebens Forum Buena Vista College 4th and Grand Ave. Storm Lake, Iowa	May 6, 1999 10 a.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

	Community Room (upstairs/back entrance) 101 E. Main St. Manchester, Iowa	May 25, 1999 10 a.m.
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Fire safety for small group homes, 5.620(1) IAB 4/21/99 **ARC 8928A**	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	May 17, 1999 9:30 a.m.
Fire safety for schools and colleges, 5.650 to 5.657, 5.659 to 5.666, 5.675, 5.700 to 5.714, 5.749 to 5.752, 5.754, 5.756, 5.758 to 5.765, 5.775 IAB 4/21/99 **ARC 8929A**	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	May 17, 1999 9 a.m.

RACING AND GAMING COMMISSION[491]

Contested cases and other proceedings, ch 4 IAB 5/5/99 **ARC 8958A**	Suite B 717 E. Court Ave. Des Moines, Iowa	May 25, 1999 9 a.m.
Harness racing, ch 9, 13.27 IAB 5/5/99 **ARC 8959A**	Suite B 717 E. Court Ave. Des Moines, Iowa	May 25, 1999 9 a.m.

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Refunds and back billing, 19.4(13), 20.4(14), 21.4(6), 22.4(3) IAB 4/21/99 **ARC 8921A**	Utilities Board's Hearing Room 350 Maple St. Des Moines, Iowa	June 2, 1999 10 a.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

"Umbrella" agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory "umbrellas."

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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NOTICE---AVAILABILITY OF PUBLIC FUNDS

AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE APPLICANTS	SERVICES	APPLICATION DUE DATE	CONTRACT AND PROJECT PERIOD
Public Health	Dental Health	Local Community	Public and private non-profit organizations including governmental agencies	Dental sealants to low-income children in a school-based setting	July 23, 1999	Contract period 10/1/99 to 9/30/2000 Project period 10/1/99 to 9/30/2002

Faxed requests will be accepted.
Request application packet from:

William C. Maurer, DDS, MPH
Chief, Dental Health Bureau
Division of Family and Community Health
Iowa Department of Public Health
Lucas State Office Building
Des Moines, Iowa 50319-0075
Telephone: (515)281-4916
FAX: (515)242-6384

NOTICE---AVAILABILITY OF PUBLIC FUNDS

Agency	Program	Service Delivery Area	Eligible Applicants	Services	Application Due Date	Project Period and Contract Period
Public Health	Gambling Treatment	Statewide	Nonprofit, for profit, or governmental entities with experience in evaluating services and in working with human service programs	Evaluation Services Providing Outcome Success Measures for Gambling Treatment clients	7-7-99	Project period is from 9-1-99 To 8-31-2001. Contract period is for one year.

Request for application materials should be directed to:

Janet Zwick, Division Director
Iowa Department of Public Health
Division of Substance Abuse and Health Promotion
Lucas State Office Building
Des Moines, Iowa 50319-0075
Phone: (515) 281-4417
Fax: (515) 281-4535

Note: Applicants are encouraged to attend a voluntary training session to be held on May 24, 1999. Location and time of the training will be included in the application packet. Application materials should be requested in time for them to be received and brought to the training.

NOTICE---AVAILABILITY OF PUBLIC FUNDS

Agency	Program	Service Delivery Area	Eligible Applicants	Services	Application Due Date	Contract Period
Public Health	Substance Abuse	Statewide	Nonprofit volunteer community organization	Community substance abuse prevention service	6/22/99	9-1-99 to 6-30-2000

In writing, request application packet from:

Allen Vander Linden
Contracts Administrator
Iowa Department of Public Health
Division of Substance Abuse and Health Promotion
321 East 12th Street
Lucas State Office Building
Des Moines, Iowa 50319-0075
Phone (515) 281-4636
Fax (515) 281-4535

ARC 8961A

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 12, "Criteria of Professional Practices," Iowa Administrative Code.

The proposed amendment clarifies the subrule which defines sexual involvement with a student.

There will be a public hearing on the proposed amendment at 11 a.m. on May 27, 1999, in Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing orally or in writing. Persons who wish to make oral presentation at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515) 281-5849, prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendment through 4:30 p.m., May 28, 1999. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule **12.2(1)**, paragraph **"c,"** as follows:

c. ~~Sexual involvement with a minor student with the intent to commit or the commission of the acts and practices proscribed by the following provisions of the Criminal Code of Iowa: sections: 709.2 to 709.4, 709.8, 725.1 to 725.3, and 728.12(1).~~ *Sexual involvement with a student. Sexual involvement includes the following acts, whether consensual or nonconsensual: fondling or touching the inner thigh, groin, buttocks, anus, or breasts of a student; permitting or causing to fondle or touch the practitioner's inner thigh, groin, buttocks, anus, or breasts; or the commission of any sex act as defined in Iowa Code section 702.17.*

ARC 8963A

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendments create an Associate Counselor License that would allow practitioners from selected, recognized licensing boards to serve as counselors in a school setting. This license would allow a person to be recognized by the Board of Educational Examiners to function within specific duties related to individual or group counseling such as mental and emotional health. This individual could not perform teaching responsibilities in a classroom setting. Significant conditional licenses have been issued in both K-6 and 7-12 counseling during recent years. The need for a school counselor appears to be in demand although there is no state requirement for a school to employ a school counselor. This proposal is an effort to provide schools with competent, appropriately licensed individuals who may perform counseling duties as part of a comprehensive school guidance-counseling program. This proposal does not preclude a school district from hiring a school guidance counselor with a teacher education background. This proposal provides a second option in an attempt to meet today's diverse student and family needs.

There will be a public hearing on the proposed amendments at 2 p.m. on May 27, 1999, in Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing orally or in writing. Persons who wish to make oral presentation at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515) 281-5849, prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendments through 4:30 p.m., May 28, 1999. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

If approved, these amendments are expected to become effective August 4, 1999.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

ITEM 1. Amend 282—14.10(272) as follows:

282—14.10(272) Licenses. These licenses will be issued effective October 1, 1988.

Provisional
Educational
Professional Teacher
Professional Administrator
Conditional
Substitute
Area Education Agency Administrator
Associate Counselor License

ITEM 2. Adopt the following **new** rule and renumber subsequent rules:

282—14.27(272) Requirements for an associate counselor license.

1. Master's degree from a regionally accredited institution.
2. Completion of an approved human relations component.
3. Completion of an approved exceptional learner component.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

4. Holder of a valid regular counseling license or certificate from one of the following boards or agencies:
- Board of psychology examiners.
- Board of social work examiners.
- Board of behavioral science examiners, including a licensed mental health counselor or a licensed marital and family therapist.

5. Individuals must meet the qualifications in Iowa Code section 272.6.

6. An individual who is issued an associate counseling license will not be allowed to add an endorsement to the license.

This rule is intended to implement Iowa Code chapter 272.

ARC 8962A

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed rule creates a two-year nonrenewable school counseling exchange license that may be issued to individuals under specific conditions.

There will be a public hearing on the proposed rule at 1 p.m. on May 27, 1999, in Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing orally or in writing. Persons who wish to make oral presentation at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515) 281-5849, prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed rule until 4:30 p.m., May 28, 1999. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

If approved, this rule is expected to become effective August 4, 1999.

This rule is intended to implement Iowa Code chapter 272.

The following amendment is proposed:

Renumber rules **282—14.26(272)** to **282—14.33(272)** as **282—14.27(272)** to **282—14.34(272)** and adopt the following **new** rule.

282—14.26(272) Two-year nonrenewable school counseling exchange license.

14.26(1) A two-year nonrenewable school counseling exchange license may be issued to an individual, provided that the individual:

a. Has completed a regionally accredited master's degree program in school guidance counseling.

b. Holds a valid school counseling certificate or license issued by an examining board which issues certificates or licenses based on requirements which are substantially equivalent to those of the board of educational examiners.

c. Meets the qualifications in Iowa Code section 272.6.

d. Is not subject to any pending disciplinary proceeding in any state.

14.26(2) Each exchange license shall be limited to the area(s) and level(s) of counseling as determined by an analysis of the application; the transcripts, and the license or certificate held in the state in which the basic preparation for the school counseling license was completed.

14.26(3) Each applicant for the exchange license shall comply with all requirements with regard to application processes and payment of licensure fees.

14.26(4) Each individual receiving the two-year exchange license will have to complete any identified licensure deficiencies in order to be eligible for a regular educational license in Iowa.

14.26(5) Individuals licensed under this provision are subject to the administrative rules of the board.

This rule is intended to implement Iowa Code chapter 272.

ARC 8960A

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendments create a subrule that relates to a late renewal fee for the current Chapter 14, which would become effective September 1, 2000, and for the new Chapter 14, which would become effective August 31, 2001.

There will be a public hearing on the proposed amendments at 10 a.m. on May 27, 1999, in Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing orally or in writing. Persons who wish to make oral presentation at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515) 281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendments until 4:30 p.m., May 28, 1999. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

These amendments are intended to implement Iowa Code chapter 272.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

The following amendments are proposed.

ITEM 1. Amend 282—14.31(272) of the current Chapter 14 by adopting the following **new** subrule:

14.31(6) Late renewal fee. Effective September 1, 2000, an additional fee of $25 per calendar month, not to exceed $100, shall be imposed if a renewal application is submitted after the date of expiration of a practitioner's license. The board may waive a late renewal fee upon application for waiver of the fee by a practitioner. Waiver of the late fee will be granted only upon a showing of extraordinary circumstances rendering imposition of the fee unreasonable.

ITEM 2. Amend 282—14.21(272), as effective August 31, 2001, by adopting the following **new** subrule:

14.21(6) Late renewal fee. An additional fee of $25 per calendar month, not to exceed $100, shall be imposed if a renewal application is submitted after the date of expiration of a practitioner's license. The board may waive a late renewal fee upon application for waiver of the fee by a practitioner. Waiver of the late fee will be granted only upon a showing of extraordinary circumstances rendering imposition of the fee unreasonable.

ARC 8946A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 73, "Commodity Distribution Programs," appearing in the Iowa Administrative Code.

This amendment increases the income eligibility guidelines for the Emergency Food Assistance Program.

Income eligibility guidelines for the Emergency Food Assistance Program in Iowa are based on the income guidelines for the reduced price meals in the National School Lunch Program. These guidelines are set at 185 percent of the federal poverty guidelines and are normally revised effective July 1 of each year. Revised federal poverty guidelines have been received.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before May 26, 1999.

This amendment is intended to implement Iowa Code section 234.12.

The following amendment is proposed.

Amend subrule **73.4(3)**, paragraph **"d,"** subparagraph **(2)**, as follows:

(2) Income eligible status. The gross income according to family size is no more than the following amounts:

Household Size	Yearly Income	Monthly Income	Weekly Income
1	~~$14,893~~ *$15,244*	~~$1,242~~ *$1,271*	~~$ 287~~ *$ 294*
2	~~20,073~~ *20,461*	~~1,673~~ *1,706*	~~387~~ *394*
3	~~25,253~~ *25,678*	~~2,105~~ *2,140*	~~486~~ *494*
4	~~30,433~~ *30,895*	~~2,537~~ *2,575*	~~586~~ *595*
5	~~35,613~~ *36,112*	~~2,968~~ *3,010*	~~685~~ *695*
6	~~40,793~~ *41,329*	~~3,400~~ *3,445*	~~785~~ *795*
7	~~45,973~~ *46,546*	~~3,832~~ *3,879*	~~885~~ *896*
8	~~51,153~~ *51,763*	~~4,263~~ *4,314*	~~984~~ *996*
For each additional household member add:	~~$ 5,180~~ *$ 5,217*	~~$ 432~~ *$ 435*	~~$ 100~~ *$ 101*

ARC 8937A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code.

This amendment lengthens the allowable term of office for Medical Assistance Advisory Council officers from one to two years to stabilize the continuity of leadership and clarifies that officers shall serve no more than two terms of office for each office. These changes are being made at the request of the Medical Assistance Advisory Council.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before May 26, 1999.

This amendment is intended to implement Iowa Code section 249A.4.

The following amendment is proposed.

Amend subrule **79.7(1)**, paragraph **"b,"** as follows:

b. The term of office shall be ~~one year~~ *two years*. Officers shall serve no more than two terms *for each office*.

ARC 8936A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 81, "Nursing Facilities," appearing in the Iowa Administrative Code.

This amendment revises Medicaid policy to require that a nursing facility accept Medicaid payment as payment in full effective with a resident's beginning date of eligibility.

Current Department policy now provides that a nursing facility must accept the Medicaid rate for Medicaid clients beginning with the first day of the month in which the Department issues the initial Facility Card, Form 470-0371. The Department has recently received clarification from the Health Care Financing Administration that nursing facilities must accept Medicaid payment as payment in full when the person's Medicaid eligibility begins. Thus, if Medicaid eligibility is granted retroactively, the facility must refund any payment received from the resident or family member for the period of time for which the resident was determined to be eligible.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before May 26, 1999.

This amendment is intended to implement Iowa Code section 249A.4.

The following amendment is proposed.

Amend subrule 81.22(2) as follows:

81.22(2) Beginning date of payment. When a resident becomes eligible for Medicaid payments for facility care, the facility shall accept Medicaid rates ~~beginning the first day of the month in which the department issued the notice of eligibility~~ *effective with the resident's beginning date of Medicaid eligibility. If Medicaid eligibility is granted retroactively, the facility shall refund any payment received from the resident or family member for the period of time for which the resident was determined to be eligible.*

The beginning date of eligibility is given on the Facility Card, Form ~~MA-2139~~ *470-0371*. When the beginning Medicaid eligibility date is a future month, the facility shall accept the Medicaid rate effective the first of that future month.

ARC 8956A

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials"; Chapter 42, "Minimum Certification Standards for Diagnostic Radiographers, Nuclear Medicine Technologists, and Radiation Therapists"; and Chapter 45, "Radiation Safety Requirements for Industrial/Nonmedical Use of Radioactive Material and Radiation Producing Machines," Iowa Administrative Code.

These amendments incorporate changes to correct references, changes made at the federal level which establish national standards, and changes made in coordination with the Board of Nursing.

Any interested person may make written suggestions or comments on these proposed amendments on or before May 25, 1999. Such written materials should be directed to Donald A. Flater, Chief, Bureau of Radiological Health, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319; fax (515)242-6284 or E-mail dflater@idph.state.ia.us.

A public hearing will be held on May 25, 1999, from 9 to 11 a.m. in the Fifth Floor East Conference Room, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Public Health and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 136C.

The following amendments are proposed.

ITEM 1. Amend subrule **41.1(2)**, definition of "Healing arts screening," as follows:

"Healing arts screening" means the testing of human beings using X-ray machines for the detection or evaluation of health indications when such tests are not specifically and individually ordered by ~~a licensed practitioner of the healing arts~~ *an individual authorized under 41.1(3)"a"(7)* ~~legally authorized to prescribe such X-ray tests for the purpose of diagnosis or treatment~~.

ITEM 2. Amend **41.1(3)"a"**(7) as follows:

(7) Individuals shall not be exposed to the useful beam except for healing arts purposes and unless such exposure has been authorized by a licensed practitioner of the healing arts *or a licensed registered nurse who is registered as an advanced registered nurse practitioner pursuant to Iowa Code chapter 152*. This provision specifically prohibits deliberate exposure for the following purposes:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

1. Exposure of an individual for training, demonstration, or other nonhealing arts purposes; and
2. Exposure of an individual for the purpose of healing arts screening except as authorized by 41.1(3)"a"(11).

ITEM 3. Amend subrule 41.2(12) as follows:

41.2(12) Visiting authorized user *and visiting nuclear pharmacist.*

a. A licensee may permit any visiting authorized user *or visiting nuclear pharmacist* to use licensed material for medical use under the terms of the licensee's license for 60 days each year if:

(1) The visiting authorized user *or visiting nuclear pharmacist* has the prior written permission of the licensee's management and, if the use occurs on behalf of an institution, the institution's radiation safety committee;

(2) The licensee has a copy of an agency, agreement state, licensing state or U.S. Nuclear Regulatory Commission license that identifies the visiting authorized user *or visiting nuclear pharmacist* by name as an authorized user for medical use; and

(3) Only those procedures for which the visiting authorized user *or visiting nuclear pharmacist* is specifically authorized by an agency (agreement state, licensing state or U.S. Nuclear Regulatory Commission) license are performed by that individual.

b. A licensee need not apply for a license amendment in order to permit a visiting authorized user *or visiting nuclear pharmacist* to use licensed material as described in 41.2(12)"a."

c. A licensee shall retain copies of the records specified in 41.2(12)"a" for five years from the date of the last visit.

ITEM 4. Amend subrule **41.3(1)**, paragraph **"b,"** as follows:

b. The use of therapeutic radiation machines shall be by, or under the supervision of, a ~~licensed practitioner of the healing arts~~ *physician* who meets the training/experience criteria established by 41.3(4)"c."

ITEM 5. Amend subrule **41.3(5)**, paragraph **"f,"** as follows:

f. Notwithstanding the requirements of ~~41.3(4)"b,"~~ *41.3(5)"b,"* the registrant for any therapeutic radiation machine subject to ~~41.3(7)~~ *41.3(17) and 41.3(18)* may also submit the training of the prospective authorized user physician for agency review.

ITEM 6. Amend subrule 41.3(9) as follows:

41.3(9) Individuals shall not be exposed to the useful beam except for medical therapy purposes and unless such exposure has been ordered in writing by a ~~licensed practitioner of the healing arts~~ *physician.* This provision specifically prohibits deliberate exposure of an individual for training, demonstration or other non-healing arts purposes.

ITEM 7. Amend subrule 41.3(10), introductory paragraph, as follows:

41.3(10) Records of *visiting* authorized users. Notwithstanding the provisions of ~~41.3(4)"g,"~~ *41.3(5),* a registrant may permit any physician to act as ~~an~~ *a visiting* authorized user under the following conditions:

ITEM 8. Amend subrule **41.3(11)** by adopting **new** paragraph **"e"** as follows:

e. Records of training specified in 41.3(5) and 41.3(6).

ITEM 9. Amend subrule **42.1(2)**, definition of "Diagnostic radiographer," as follows:

"Diagnostic radiographer" means an individual, other than a licensed practitioner or dental radiographer, who applies X-radiation to the human body for diagnostic purposes while under the supervision of a licensed practitioner *or registered nurse registered as an advanced registered nurse practitioner pursuant to Iowa Code chapter 152.* The types are as follows:

ITEM 10. Amend subrule **42.2(3)**, paragraph **"a,"** as follows:

a. Each individual~~, other than a licensed practitioner,~~ who is certified under these rules shall, during a two-year period, obtain continuing education credit as follows:

ITEM 11. Amend subrule **42.3(3)**, paragraph **"a,"** as follows:

a. All individuals~~, except licensed practitioners,~~ seeking to perform diagnostic radiography must, in addition to subrule 42.3(1), take and satisfactorily pass a written examination within one year of the date of the initial certification. Examination must include the following subject matter for each category of radiographer:

ITEM 12. Adopt the following **new** subrule:

45.3(1) Limits on external radiation levels from storage containers and source changers. The maximum exposure rate limits for storage containers and source changes are 200 millirems (2 millisieverts) per hour at any surface, and 10 millirem (0.1 millisieverts) per hour at 1 meter from any exterior surface with the sealed source in the shielded position.

ARC 8958A

RACING AND GAMING COMMISSION[491]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby gives Notice of Intended Action to rescind Chapter 4, "Practice and Procedure Before the Racing and Gaming Commission," and adopt a new Chapter 4, "Contested Cases and Other Proceedings," Iowa Administrative Code.

This amendment rescinds the current rules for practice and procedure before the Racing and Gaming Commission and replaces them to comply with Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

Any person may make written suggestions or comments on the proposed amendment on or before May 25, 1999. Written material should be directed to the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on May 25, 1999, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

RACING AND GAMING COMMISSION[491](cont'd)

These rules are intended to implement Iowa Code chapters 99D and 99F and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

The following amendment is proposed.

Rescind 491—Chapter 4 and adopt in lieu thereof the following new chapter:

CHAPTER 4
CONTESTED CASES AND OTHER PROCEEDINGS

491—4.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the racing and gaming commission. The chapter shall also apply to gaming boards' and board of stewards' proceedings and gaming representatives' actions.

491—4.2(17A) Definitions. Except where otherwise specifically defined by law:

"Board of stewards" means a board established by the administrator to review conduct by occupational and pari-mutuel licensees that may constitute violations of the rules and statutes relating to pari-mutuel racing. The administrator may serve as a board of one.

"Commission" means the racing and gaming commission.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Gaming board" means a board established by the administrator to review conduct by occupational, excursion gambling boat, and gambling game licensees that may constitute violations of the rules and statutes relating to gaming. The administrator may serve as a board of one.

"Gaming representative" means an employee of the commission assigned by the administrator to a licensed pari-mutuel racetrack or excursion gambling boat to perform the supervisory and regulatory duties of the commission.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the administrative law judge presiding over a contested case hearing or the commission in cases heard by the commission.

"Proposed decision" means the administrative law judge's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the commission did not preside.

"Steward" means an employee of the commission assigned by the administrator to a licensed pari-mutuel racetrack to perform the supervisory and regulatory duties of the commission relating to pari-mutuel racing.

491—4.3(17A) Time requirements.

4.3(1) In computing any period of time prescribed or allowed by these rules or by an applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Legal holidays are prescribed in Iowa Code section 4.1(34).

4.3(2) All documents or papers required to be filed with the commission shall be delivered to any commission office within such time limits as prescribed by law or by rules or orders of the commission. No papers shall be considered filed until actually received by the commission.

4.3(3) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

DIVISION I
GAMING REPRESENTATIVE, GAMING BOARD, AND BOARD OF STEWARDS

491—4.4(99D,99F) Gaming representatives—licensing and regulatory duties.

4.4(1) The gaming representative shall make decisions whether to approve applications for occupational licenses, in accordance with the rules and statutes.

a. Each decision denying a license for an occupational license shall be in writing. The decision must contain a brief explanation of the reason for the decision, including a reference to the statute or rule serving as the basis for the decision.

b. Each decision denying a license for an occupational license shall be served on the applicant by personal service or by certified mail with return receipt requested to the last-known address on the application.

c. An applicant for an occupational license may appeal a decision denying the application. An appeal must be made in writing to the office of the gaming representative or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

d. Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

4.4(2) The gaming representative shall monitor, supervise, and regulate the activities of occupational, pari-mutuel racetrack, gambling game, and excursion gambling boat licensees. A gaming representative may investigate any questionable conduct by a licensee for any violation of the rules or statutes. A gaming representative may refer an investigation to the gaming board upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

a. A gaming representative shall make a referral to the gaming board in writing. The referral shall make reference to rules or statutory provisions at issue and provide a factual basis supporting the violation.

b. The gaming representative making the referral to the gaming board, or a designee of the gaming board, shall appear before the gaming board at the hearing to provide any information requested by the board.

4.4(3) A gaming representative shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the person from holding a license if convicted. The gaming representative shall take one the following courses of action

upon the occupational licensee providing proof of resolution of the criminal action:

a. The gaming representative shall reinstate the license if the charges are dismissed or the licensee is acquitted of the charges.

b. The gaming representative shall deny the license.

c. If convicted of a lesser charge, it is at the discretion of the gaming representative whether to reinstate or deny the license.

d. If the occupational licensee receives a deferred judgment, the gaming representative will evaluate the qualifications of the individual, pursuant to 491—Chapter 13, to hold an occupational license.

4.4(4) A gaming representative may summarily suspend an occupational licensee in accordance with rule 491—4.47(17A).

4.4(5) A gaming representative may eject and exclude any person from the premises of a pari-mutuel racetrack or excursion gambling boat for any reason justified by the rules or statutes. The gaming representative may provide notice of ejection or exclusion orally or in writing. The gaming representative may define the scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The gaming representative may exclude the person for a certain or an indefinite period of time.

4.4(6) The gaming representative may forbid any person from continuing to engage in an activity the representative feels is detrimental to racing or gaming until resolved.

4.4(7) The gaming representative shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

491—4.5(99D,99F) Gaming board—duties. The gaming board conducts informal hearings whenever the board has reasonable cause to believe that a licensee, an occupational licensee, or other persons have committed an act or engaged in conduct which is in violation of statute or commission rules. The hearings precede a contested case hearing and are investigative in nature. The following procedures will apply:

4.5(1) The gaming board shall consist of three gaming representatives, as assigned by the administrator. The administrator has the discretion to create more than one gaming board, to set terms for gaming board members, to assign alternates, and to make any decisions necessary for the efficient and effective operation of the gaming board. A gaming representative who has made a referral to the gaming board shall not sit on the board that makes a decision on the referral.

4.5(2) The administrator may designate an employee to act as gaming board coordinator. The gaming board coordinator shall have the power to assist and advise the gaming board through all aspects of the gaming board hearing process. The gaming board coordinator may review any referral from gaming representatives prior to setting the matter for hearing before the gaming board. The gaming board coordinator, in consultation with the administrator or the administrator's designee, may return the referral to the initiating gaming representative if the information provided appears insufficient to establish a violation. The gaming board coordinator shall otherwise assist the gaming board in setting the matter for hearing.

4.5(3) The gaming board, upon receipt of a referral, may review the referral prior to the hearing. The gaming board may return a referral to the initiating gaming representative on its own motion prior to hearing if the information provided appears insufficient to establish a violation.

4.5(4) Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder, at which all board members or their appointed representatives shall be present in person or by teleconference. The license holder may request a continuance for good cause in writing not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

4.5(5) The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing, and shall specify by number the statutes or rules allegedly violated. Delivery of the notice of hearing may be executed by either personal service or certified mail with return receipt requested to the last-known address listed in the license application. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

4.5(6) The gaming board has complete and total authority to decide all issues concerning the process of the hearing. The gaming board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The gaming board has the right to request witnesses or additional documents that have not been submitted by the initiating gaming representative. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the gaming board.

4.5(7) It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

4.5(8) Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a track or on a riverboat is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 4.7(99D,99F).

4.5(9) The gaming board has the power to interpret the rules and to decide all questions not specifically covered by them. The board has the power to determine all questions arising with reference to the conduct of gaming, and the authority to decide any question or dispute relating to racing or gaming in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

4.5(10) The gaming board shall enter a written decision after each hearing. The decision shall find whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual basis for the finding. The decision shall also establish a penalty for any violation. The gaming board has the authority to impose any penalty as set forth in these rules.

4.5(11) A licensee may appeal a gaming board decision. An appeal must be made in writing to the office of the gam-

ing representative or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

4.5(12) Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

4.5(13) Informal settlements. A licensee may enter into a written stipulation representing an informed mutual consent with a gaming representative. This stipulation must specifically outline the violation and the penalty imposed. Stipulations must be approved by the gaming board. Stipulations are considered final agency action and cannot be appealed.

491—4.6(99D,99F) Stewards—licensing and regulatory duties.

4.6(1) The stewards shall make decisions whether to approve applications for occupational licenses, in accordance with the rules and statutes.

a. Each decision denying an application for an occupational license shall be in writing. The decision must contain a brief explanation of the reason for the decision, including a reference to the statute or rule serving as the basis for the decision.

b. Each decision denying an application for an occupational license shall be served on the applicant by personal service or by certified mail with return receipt requested to the last-known address listed in the application.

c. An applicant for an occupational license may appeal a decision denying the application. An appeal must be made in writing to the office of the stewards or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

d. Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

4.6(2) The stewards shall monitor, supervise, and regulate the activities of occupational and pari-mutuel racetrack licensees. A steward may investigate any questionable conduct by a licensee for any violation of the rules or statutes. Any steward may refer an investigation to the board of stewards upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

4.6(3) A steward shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the person from a license if convicted. The steward shall take one the following courses of action upon resolution of the criminal action:

a. The steward shall reinstate the licensee if the charges are dismissed or the licensee is acquitted of the charges.

b. The steward shall deny the license.

c. If convicted of a lesser charge, it is at the discretion of the steward whether to reinstate or deny the license.

4.6(4) A steward may summarily suspend an occupational licensee in accordance with rule 491—4.47(17A).

4.6(5) Hearings before the board of stewards intended to implement Iowa Code section 99D.7(13) shall be conducted under the following parameters:

a. Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder. The license holder may request a continuance in writing for good cause not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

b. The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing, and shall specify by number the statutes or rules allegedly violated. Delivery of the notice of hearing may be executed by either personal service or certified mail with return receipt requested to the last-known address listed in the application. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

c. The board has complete and total authority to decide the process of the hearing. The board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The board may request additional documents or witnesses before making a decision. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the board.

d. It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

e. Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a track is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 491—4.7(99D,99F).

f. The board of stewards has the power to interpret the rules and to decide all questions not specifically covered by them. The board of stewards has the power to determine all questions arising with reference to the conduct of racing, and the authority to decide any question or dispute relating to racing in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

g. The board of stewards shall enter a written decision after each hearing. The decision shall state whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual basis for the finding. The decision shall also establish a penalty for any violation. The board of stewards has the authority to impose any penalty, as set forth in these rules.

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h. A licensee may appeal a board of stewards' decision. An appeal must be made in writing to the office of the stewards or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

i. Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

4.6(6) A steward may eject and exclude any person from the premises of a pari-mutuel racetrack or excursion gambling boat for any reason justified by the rules or statutes. The steward may provide notice of ejection or exclusion orally or in writing. The steward may define the scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The steward may exclude the person for a certain or indefinite period of time.

4.6(7) The stewards shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

491—4.7(99D,99F) Penalties (gaming board and board of stewards). The board may remove the license holder, either from any racetrack or riverboat, under its jurisdiction, suspend the license of the holder for up to 365 days from the date of the original suspension, or impose a fine of up to $1000, or both. The board may set the dates in which the suspension must be served. In addition, the board may order a redistribution of a racing purse or the payment of or the withholding of a gaming payout. The board may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by the state racing and gaming commission. If the punishment so imposed is not sufficient, in the opinion of the board, they shall so report to the commission. All fines and suspensions imposed will be promptly reported to the boat or racetrack licensee and commission in writing.

4.7(1) Fines shall be paid within ten calendar days of receipt of the ruling, by the end of business hours at any commission office. Nonpayment or late payment may result in an immediate license suspension. All fines are to be paid by the individual assessed the fine.

4.7(2) If the fine is appealed to the board, the appeals process will not stay the fine. The fine will be due as defined in subrule 4.7(1).

4.7(3) If the party is successful in the appeal, the amount of the fine will be refunded to the party as soon as possible after the date the decision is rendered.

4.7(4) Refunds due under subrule 4.7(3) will be mailed to the party's current address on record.

4.7(5) When a racing animal or the holder of an occupational license is suspended by the board at one location, the suspension shall immediately become effective at all other facilities under the jurisdiction of the commission.

491—4.8(99D,99F) Effect of another jurisdiction's order. The commission or board may take appropriate action against a license holder or other person who has been excluded from a track or gaming establishment in another jurisdiction to exclude that person from any track or gaming establishment under the commission's jurisdiction. Proceedings shall be conducted in the same manner as prescribed by these rules for determining misconduct on Iowa tracks or in gaming establishments and shall be subject to the same appeal procedures.

491—4.9 to **4.19** Reserved.

DIVISION II
CONTESTED CASES

491—4.20(17A) Requests for contested case proceedings not covered in Division I. Any person or entity claiming an entitlement to a contested case proceeding, which is not otherwise covered by the procedures set forth in Division I, shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the commission action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific commission action which is disputed and, if the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

491—4.21(17A) Notice of hearing.

4.21(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

4.21(2) Contents. The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the commission or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the commission or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section

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15(1), and rule 491—4.22(17A), that the presiding officer be an administrative law judge.

491—4.22(17A) Presiding officer. Contested case hearings may be heard directly by the commission. The commission, or the administrator, shall decide whether it will hear the appeal or whether the appeal will be heard by an administrative law judge who shall serve as the presiding officer. When the appeal is heard by an administrative law judge, the administrative law judge is authorized to issue a proposed decision.

4.22(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the commission chair, members of the commission or commission employees.

4.22(2) The administrator may deny the request only upon a finding that one or more of the following apply:

a. Neither the administrator nor any officer of the commission under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

4.22(3) The administrator shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed.

4.22(4) An administrative law judge assigned to act as presiding officer in a contested case shall have a Juris Doctorate degree unless waived by the agency.

4.22(5) Except as provided otherwise by rules 491—4.41(17A) and 491—4.42(17A), all rulings by an administrative law judge acting as presiding officer are subject to appeal to the commission. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.22(6) Unless otherwise provided by law, the commission, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

491—4.23(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the commission in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

491—4.24(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

491—4.25(17A) Disqualification.

4.25(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that:

(1) Is a party to the case, or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.25(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other commission functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 4.25(3) and 4.39(9).

4.25(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.25(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.25(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

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If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 491—4.41(17A) and seek a stay under rule 491—4.45(17A).

491—4.26(17A) Consolidation—severance.

4.26(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.26(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

491—4.27(17A) Pleadings.

4.27(1) Pleadings, other than the notice of appeal, will not be required in appeals from a licensing decision by a gaming representative, gaming board, or board of stewards. However, pleadings may be required in other contested cases or as ordered by the presiding officer.

4.27(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

4.27(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer that could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

4.27(4) Amendment. Any notice of appeal, notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

491—4.28(17A) Service and filing of pleadings and other papers.

4.28(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the commission, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.28(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.28(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the commission at 717 East Court, Suite B, Des Moines, Iowa 50309. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

4.28(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the commission office at 717 East Court, Suite B, Des Moines, Iowa 50309, delivered to an established cour-ier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.28(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

491—4.29(17A) Discovery.

4.29(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.29(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.29(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.29(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

491—4.30(17A) Subpoenas.

4.30(1) Issuance.

a. A commission subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.30(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

491—4.31(17A) Motions.

4.31(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

4.31(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the commission or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.31(3) The presiding officer may schedule oral argument on any motion.

4.31(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the commission or an order of the presiding officer.

4.31(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 491—4.44(17A) and appeal pursuant to rule 491—4.43(17A).

491—4.32(17A) Prehearing conference.

4.32(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the commission to all parties. For good cause the presiding officer may permit variances from this rule.

4.32(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names.

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

4.32(3) In addition to the requirements of subrule 4.32(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters that the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters that will expedite the hearing.

4.32(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

491—4.33(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.33(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The commission may waive notice of such requests for a particular case or an entire class of cases.

4.33(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

491—4.34(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the

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hearing only in accordance with commission rules. Unless otherwise provided, a withdrawal shall be with prejudice.

491—4.35(17A) Intervention.

4.35(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

4.35(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

4.35(3) Grounds for intervention. The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

4.35(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

491—4.36(17A) Hearing procedures.

4.36(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.36(2) All objections shall be timely made and stated on the record.

4.36(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

4.36(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.36(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.36(6) Witnesses may be sequestered during the hearing.

4.36(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

491—4.37(17A) Evidence.

4.37(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.37(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.37(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.37(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.37(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

4.37(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

491—4.38(17A) Default.

4.38(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

4.38(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

4.38(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final commission action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on

all parties or an appeal of a decision on the merits it timely initiated within the time provided by rule 491—4.43(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

4.38(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

4.38(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

4.38(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

4.38(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 491—4.41(17A).

4.38(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

4.38(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

4.38(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 491—4.45(17A).

491—4.39(17A) Ex parte communication.

4.39(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the commission or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.25(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

4.39(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

4.39(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

4.39(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communication shall be provided in compliance with rule 491—4.28(17A) and may be supplemented by telephone, facsimile, E-mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

4.39(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

4.39(6) The administrator or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under subrule 4.25(1) or other law and they comply with subrule 4.39(1).

4.39(7) Communications with the presiding officer involving scheduling or procedural matters uncontested do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 491—4.33(17A).

4.39(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

4.39(9) Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

4.39(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offend-

ing party, censure, or suspension, or revocation of the privilege to practice before the commission. Violation of ex parte communication prohibitions by commission personnel shall be reported to the administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

491—4.40(17A) Recording costs. Upon request, the commission shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

491—4.41(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the commission at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

491—4.42(17A) Final decision.

4.42(1) When the commission presides over the reception of evidence at the hearing, its decision is a final decision.

4.42(2) When the commission does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the commission within the time provided in rule 491—4.43(17A).

491—4.43(17A) Appeals and review.

4.43(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the commission within 10 days after issuance of the proposed decision.

4.43(2) Review. The commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

4.43(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the commission. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

4.43(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.43(5) Scheduling. The commission shall issue a schedule for consideration of the appeal.

4.43(6) Briefs and arguments. Unless otherwise ordered, briefs, if any, must be filed within five days of meeting.

491—4.44(17A) Applications for rehearing.

4.44(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

4.44(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.43(4), the applicant requests an opportunity to submit additional evidence.

4.44(3) Time of filing. The application shall be filed with the commission within 20 days after issuance of the final decision.

4.44(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the commission shall serve copies on all parties.

4.44(5) Disposition. Any application for a rehearing shall be deemed denied unless the commission grants the application within 20 days after its filing.

491—4.45(17A) Stays of commission actions.

4.45(1) When available.

a. Any party to a contested case proceeding may petition the commission for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the commission. The petition for a stay shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The administrator may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the commission for a stay or other temporary remedies pending judicial review, of all or part of that proceeding. The petition for a stay shall state the reasons justifying a stay or other temporary remedy.

4.45(2) When granted. In determining whether to grant a stay, the presiding officer or administrator shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

4.45(3) Vacation. A stay may be vacated by the issuing authority upon application by the commission or any other party.

491—4.46(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

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491—4.47(17A) Emergency adjudicative proceedings.

4.47(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the commission, gaming representatives, or stewards may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the commission by emergency adjudicative order. Before the issuing of an emergency adjudicative order the commission shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the commission is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the commission is necessary to avoid the immediate danger.

4.47(2) Issuance.

a. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the commission;

(3) Certified mail to the last address on file with the commission;

(4) First-class mail to the last address on file with the commission; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that commission orders be sent by fax and has provided a fax number for that purpose.

b. To the degree practicable, the commission shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

4.47(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the commission shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.47(4) Completion of proceedings. Issuance of a written emergency adjudicative order shall include notification of the date on which commission proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further commission proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapters 99D and 99F and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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RACING AND GAMING COMMISSION[491]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby gives Notice of Intended Action to rescind Chapter 9, "Harness Racing," and adopt a new Chapter 9 with the same title and amend Chapter 13, "Occupational and Vendor Licensing," Iowa Administrative Code.

Item 1 rescinds the current harness racing chapter and adopts a new chapter in lieu thereof.

Item 2 establishes criteria for harness racing drivers.

Any person may make written suggestions or comments on the proposed amendments on or before May 25, 1999. Written material should be directed to the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on May 25, 1999, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are proposed.

ITEM 1. Rescind 491—Chapter 9 and adopt in lieu thereof the following new chapter:

CHAPTER 9
HARNESS RACING

491—9.1(99D) Terms defined. As used in these rules, unless the context otherwise requires, the following definitions apply:

"Also eligible" means a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; or the next preferred nonqualifier for the finals or consolation from a set of elimination trials which will become eligible in the event a finalist is scratched by the stewards/judges for a rule violation or is otherwise eligible if written race conditions permit.

"Arrears" means all moneys owed by a licensee, including subscriptions, forfeitures, and any other payment and default incident to these rules.

"Association" means a nonprofit corporation defined in Iowa Code section 99D.8, holding a license from the commission to conduct harness racing and pari-mutuel wagering, and an annual license authorizing the specific dates of the annual racing meet.

"Association grounds" means all real property utilized by the association in the conduct of its race meeting, including the racetrack, grandstand, concession stands, offices, barns,

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stables area, employee housing facilities, parking lots and any other areas under the jurisdiction of the commission.

"Authorized agent" means a person licensed by the commission as an agent for a horse owner or principal by virtue of a notarized appointment. The agent shall be designated on a form approved by the commission, filed by the owner or principal with the commission, authorizing the agent to handle matters pertaining to racing and stabling, including authorization to claim and to withdraw money from the horsemen's bookkeeper.

"Bleeder" means a horse that hemorrhages from within the respiratory tract during a race or within one and one-half hours post race, or during exercise or within one and one-half hours of exercise.

"Bleeder list" means a tabulation of all bleeders to be maintained by the commission.

"Chemist" means any official racing chemist designated by the commission.

"Claiming race" means one which includes a condition that any horse starting the race may be claimed and purchased by any licensed owner, or person(s) approved by the commission for an owner's license, for designated amount specified in the conditions for that race by the racing secretary.

"Commission" means the racing and gaming commission.

"Conditioned race" means any overnight event to which eligibility is determined according to specified qualifications. Qualifications may be based among other things upon any one or more of the following:

1. Horses' money winnings in a specified number of previous races or during a specified previous interval of time.
2. A horse's finishing position in a specific number of previous races or during a specified period of time.
3. Age.
4. Sex.
5. Number of starts during a specified period of time.
6. Special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada.
7. Use of records or time bars as a condition is prohibited.

"Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

"Contest" means a competitive racing event on which pari-mutuel wagering is contested.

"Contestant" means an individual participant in a contest.

"Contractual concessionaire" means any business or individual dealing in the furnishing, sale or distribution of materials, supplies or services to an association.

"Coupled entry" means two or more horses starting in a race when owned or trained by the same person, or trained in the same stable or by the same management.

"Dash" means a race decided in a single trial. Dashes may be given in a series of two or three governed by one entry fee for the series, in which event a horse must start in all dashes. Positions may be drawn for each dash. The number of premiums awarded shall not exceed the number of starters in the dash.

"Day" means a 24-hour period beginning at 12:01 a.m. and ending at midnight, also referred to as a race day.

"Declaration" means the naming of a particular horse into a particular race.

"Detention barn" means the barn designated for the collection from horses of test samples under the supervision of the commission veterinarian; also it is the barn assigned by the commission to a horse on the bleeder list for occupancy as a prerequisite for receiving bleeder medication.

"Driver" means a person licensed to drive in races as a driver.

"Early closing race" means a race for a definite amount to which entries close at least six weeks preceding the race. The entrance fee may be on the installment plan or otherwise and no payment shall be refunded.

"Elimination heats" means the individual heats of a race in which the contestants must qualify for a final heat.

"Entry" means a horse made eligible to run in a race; or two or more horses, entered in the same race, which have common ties of ownership, lease, or training (see coupled entry).

"Foreign substances" means all substances except those that exist naturally in the untreated horse at normal physiological concentration.

"Futurity" means a stake in which the dam of the competing animal is nominated either when in foal or during the year of foaling.

"Guaranteed stake" means same as a stake, with a guarantee by the party opening it that the sum shall not be less than the amount named.

"Heat" means a single trial in a race, two in three, or three heat plan.

"Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgling or gelding) registered for racing under the jurisdiction of the commission.

"Late closing race" means a race for a fixed amount to which entries close less than six weeks and more than three days before the race is to be contested.

"Licensee" means any person or entity holding a license from the commission to engage in racing or related regulated activity.

"Matinee race" means a race where an entrance fee may be charged and where the premiums, if any, are other than money.

"Meeting" means the specified period and dates each year during which an association is authorized to conduct racing by approval of the commission.

"Month" means a calendar month.

"Nomination" means the naming of a horse or in the event of a futurity, the naming of a foal in utero to a certain race or series of races, eligibility that is conditioned on the payment of a fee at the time of naming and the payment of subsequent sustaining fees or starting fees.

"Nominator" means the person or entity in whose name a horse is nominated for a race or series of races.

"Objection" means a verbal claim of foul in a race lodged by the horse's driver, trainer, owner, or the owner's authorized agent before the race is declared official.

"Optional claiming race" means a contest restricted to horses entered to be claimed for a stated claiming price and to those which have started previously for that claiming price or less, in the case of horses to be claimed in such a race. The race shall be considered, for the purpose of these rules, a claiming race; in the case of horses not entered to be claimed in such a race, the race shall be considered a condition race.

"Overnight race" means a race for which declarations close not more than three days (omitting Sundays) or less than one day before such race is to be contested. In the absence of conditions or notice to contrary, all entries in overnight events must close not later than 12 noon the day preceding the race.

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"Owner" means a person who holds any title, right or interest, whole or partial, in a horse including the lessee and lessor of a horse.

"Paddock" means an enclosure in which horses scheduled to compete in a contest are confined prior to racing.

"Post position" means the position assigned to, drawn by, or earned by a horse behind the starting gate.

"Post time" means the scheduled starting time for a contest.

"Prima facie evidence" means evidence that, until its effect is overcome by other evidence, will suffice as proof of fact in issue.

"Program" means the published listings of all contests and contestants for a specific performance.

"Protest" means an objection, properly sworn to, charging that a horse is ineligible to race, or alleging improper entry or declaration or citing any act of an owner, driver or official prohibited by the rules, and that, if true, should under these rules exclude the horse or driver from the race.

"Race" means a contest between horses for a purse, prize, or other reward contested at a licensed association in the presence of the stewards of the meeting. Every heat or dash shall be deemed a race for pari-mutuel betting purposes.

"Restricted area" means an enclosed portion of the association grounds to which access is limited to licensees whose occupation or participation requires access.

"Rules" means the rules promulgated by the commission or United States Trotting Association (U.S.T.A.) to regulate the conduct of harness racing. Where a conflict exists between the commission and the U.S.T.A. rules, the commission's rule shall govern.

"Sample" means any bodily substance including but not limited to blood or urine taken from a horse under the supervision of the commission veterinarian and in the manner prescribed by the commission for the purpose of analysis.

"Scratch" means the act of withdrawing an entered horse from a contest after the closing of entries.

"Scratch time" means the deadline set by the commission for withdrawal of entries from a scheduled performance.

"Stable name" means a name used other than the actual legal name of an owner or lessee and registered with the U.S.T.A. and the commission.

"Stake" means a race that will be contested in a year subsequent to its closing in that the money given to the track conducting the same is added to the money contributed by the nominators, all of which except deductions for the cost of promotion, breeders of nominators awards belong to the winner or winners.

"Starter" means a horse that becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter.

"Stewards" means the duly appointed racing officials or their deputies serving at a licensed harness racing meeting, with the powers and duties specified by rules.

"Subscription" means moneys paid for nomination, entry, eligibility or starting of a horse in a stakes race.

"Sulky" means a dual wheel racing vehicle with dual shafts not exceeding the height of the horse's withers. Shafts must be hooded separately on each side.

"Two-year-olds" means no two-year-old shall be permitted to start in a dash or heat exceeding one mile in distance, and no two-year-old shall be permitted to race in more than two heats or dashes in any single day.

"U.S.T.A." means the United States Trotting Association.

"Veterinarian" means a veterinarian licensed by the appropriate state regulatory authority and the commission.

"Year" means a calendar year.

491—9.2(99D) Racing officials.

9.2(1) General description. Every association conducting a race meeting shall appoint at least the following officials, who shall all have U.S.T.A. certification:

a. One associate steward, one of the members of a three-member board of stewards;
b. The racing secretary;
c. The paddock judge;
d. The horse identifier;
e. The clerk of the course;
f. Official starter;
g. Official timer;
h. Three placing judges;
i. Official charter;
j. Program director;
k. Photo finish technician;
l. Patrol judge.

9.2(2) Eligibility for officials. To qualify as a racing official, the appointee must be licensed by the commission after a determination that the appointee:

a. Is of good moral character and reputation;
b. Is experienced in and knowledgeable of harness racing;
c. Is familiar with the duties to which appointed and for which responsible and with the commission's rules of harness racing;
d. Possesses the mental and physical capacity to perform the required duties;
e. Possesses natural or correctable eyesight sufficient to perform the duties; and
f. Is not under suspension or ejection by the U.S.T.A. or any other racing jurisdiction.

9.2(3) Official's prohibited activities. No racing official or the racing official's assistant(s) listed in 9.2(1) while serving during any meeting may engage in any of the following:

a. A business or employment which would be a conflict of interest or interfere or conflict with the proper discharge of duties including:
(1) A business which does business with an association.
(2) A business issued a concession operator's license.
b. Participate in the sale or purchase or ownership of any horse racing at the meeting;
c. Sell or solicit horse insurance on any horse racing at the meeting; or engage in any other business sales or solicitation not a part of the official's duties; or
d. Wager on the outcome of any live or simulcast race; or
e. Accept or receive money or anything of value for assistance in connection with the official's duties;
f. Refuse to take a breath analyzer test or submit to a blood or urine sample when directed by the commission or its designee.

9.2(4) Report of violations. Every racing official and assistant(s) is responsible to report immediately to the stewards of the meeting every observed violation of these rules and of the laws of this state which occur within the official's jurisdiction.

9.2(5) Single official appointment. No official appointed to any meeting may hold more than one official position listed in 9.2(1) unless, in the determination of the stewards or commission, the holding of more than one appointment would not subject the official to a conflict of interests and duties in the two appointments.

9.2(6) Stewards (for practice and procedure before the stewards and the racing commission, see 491—Chapter 4).

a. General authority.

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(1) General. The board of stewards for each racing meet shall be responsible to the commission for the conduct of the race meetings in accordance with the laws of this state and the rules adopted by the commission. The stewards shall only have authority to resolve conflicts or disputes between all other racing officials or licensees where the disputes are reasonably related to the conduct of a race, or races, and to punish violators of these rules in accordance with the provisions of these rules.

(2) Appointment of substitute. Should any steward be absent at race time, the other two stewards shall agree on the appointment of a deputy for the absent steward or if they are unable to agree on a deputy, then the racing secretary shall appoint a deputy for that race. If any deputy steward is appointed, the commission shall be notified immediately by the stewards.

(3) Attendance. All three stewards shall be present in the stand while the race is contested.

(4) Period of authority. The period of authority shall commence 30 days prior to the beginning of each racing meet and shall terminate 30 days after the end of each racing meet.

(5) Initiate action. Stewards may, from their own observations, take notice of misconduct or rule violations and institute investigations and compliance of possible rule violations.

(6) General enforcement provisions. Stewards shall enforce the laws of Iowa and the rules of racing during racing. They shall have the authority to charge any licensee for a violation of these rules, to conduct hearings and to impose fines or suspensions within the limits and procedures of the commission. The decision of the stewards as to the extent of a disqualification of any horse in any race shall be final for purposes of distribution of the pari-mutuel pool.

b. Duties of stewards.

(1) The laws of Iowa and the rules of racing supersede the conditions of a race and the regulations of a race meeting, and, in matters pertaining to racing, the orders of the stewards supersede the orders of the officers of the association.

(2) The stewards shall have the power to interpret the rules and to decide all questions not specifically covered by them.

(3) All questions pertaining to which their authority extends shall be determined by a majority of the stewards.

(4) The stewards shall have the power to regulate and control owners, trainers, grooms and other persons attendant on horses and also over all officials and licensed personnel of the meeting.

(5) The stewards shall have control over and access to all areas of the racetrack grounds.

(6) The stewards shall have the power to determine all questions arising with reference to entries and racing.

(7) Persons entering horses to run on licensed Iowa tracks agree in so doing to accept the decision of the stewards on any questions relating to a race or racing.

(8) The stewards shall have the power to punish for violation of the rules any person subject to their control and in their discretion to impose fines or suspensions or both for infractions.

(9) The stewards shall have the power to order the exclusion or ejection from all premises and enclosures of the association any person who is disqualified for corrupt practices on any race course in any country.

(10) The stewards shall have the power to call for proof that a horse is neither itself disqualified in any respect, nor nominated by, nor the property, wholly or in part, of a disqualified person, and in default of proof being given to their satisfaction, they may declare the horse disqualified.

(11) The stewards shall have the power at any time to order an examination, by person or persons they think fit, of any horse entered for a race or which has run in a race.

(12) The stewards shall take notice of any questionable conduct with or without complaint and shall investigate promptly and render a decision on every objection and on every complaint made to them.

(13) The stewards, in order to maintain necessary safety and health conditions and to protect the public confidence in horse racing as a sport, shall have the right to authorize a person or persons in their behalf to enter into or upon the buildings, barns, motor vehicles, trailers or other places within the grounds of a licensed racetrack, to examine same, and to inspect and examine the person, personal property, and effects of any person within such place, and to seize any illegal articles or any items as evidence found.

(14) Upon the finding of a violation of these rules, or an attempted violation, on the grounds of a licensed facility, the stewards may suspend the license of any person for one calendar year or racing season, whichever is greater, or they may impose a fine not to exceed $1,000 or both. All fines imposed by the stewards/judges shall be paid to the commission within ten days after the ruling is issued, unless otherwise ordered. They may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by the state racing commission or a board of stewards of any recognized meeting. They may also order the redistribution of purse payments where appropriate. All suspensions and fines must be reported to the commission. If the punishment so imposed is not sufficient, in the opinion of the stewards, they shall so report to the commission. All fines and suspensions imposed by the stewards shall be promptly reported to the racing secretary and commission.

c. Emergency authority.

(1) Substitute officials. When in an emergency any official is unable to discharge duties, the stewards may approve the appointment of a substitute. The stewards shall report the appointment immediately to the commission.

(2) Substitutes. The stewards have the authority in an emergency to designate a substitute trainer or driver for any horse.

(3) Excuse horse. In case of accident or injury to a horse or any other emergency deemed by the stewards before the start of any race, the stewards may excuse the horse from starting.

d. Investigations and decisions.

(1) Investigations. The stewards may, upon direction of the commission, conduct inquiries and shall recommend to the commission the issuance of subpoenas to compel the attendance of witnesses and the production of reports, books, papers and documents for any inquiry. The commission stewards have the power to administer oaths and examine witnesses and shall submit a written report of every inquiry made by them to the commission.

(2) Cancel trifecta. The stewards have the authority to cancel trifecta wagering at any time they determine an irregular pattern of wagering or determine that the conduct of the race would not be in the interest of the regulation of the pari-mutuel wagering industry or in the public confidence in racing. The stewards shall cancel trifecta wagering anytime there are fewer than seven betting interests at the time the horses leave the paddock for the post. The administrator

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may approve smaller fields for trifecta wagering if extraneous circumstances are shown by the licensee.

(3) Protest to patrol judge. A driver who intends to enter a protest must report to the patrol judge in the starting gate following the running of any race and, before the race is declared official, shall notify the patrol judge of the driver's intention immediately after the finish of the race. The driver then will proceed to the paddock judge's office to be available to talk to the stewards.

(4) Form reversal. The stewards shall take notice of any marked reversal of form by any horse and shall conduct an inquiry of the horse's owner, trainer or other persons connected with the horse including any person found to have contributed to the deliberate restraint or impediment of a horse in order to cause it not to win or finish as near as possible to first.

(5) Fouls.

1. Extent of disqualification. Upon any claim of foul submitted to them, the stewards shall determine the extent of any disqualification and shall place any horse found to be disqualified behind others in the race with which it interfered or the stewards may place the offending horse last in the race.

2. Coupled entry. When a horse is disqualified under this rule and that horse was part of a coupled entry and, in the opinion of the stewards, the act which led to the disqualification served to unduly benefit the other part of the coupled entry, the stewards may, at their discretion, disqualify the other part of the entry.

(6) Protests and complaints. The stewards shall investigate promptly and render a decision in every protest and complaint made to them. They shall keep a record of all protests and complaints and any rulings made by the stewards and file reports daily with the administrator.

1. Involving fraud. Protests involving fraud may be made by any person at any time to the stewards.

2. Not involving fraud. Protests arising out of the contesting of a race may be filed only by the owner of a horse, authorized agent, the trainer, or the driver of the horse in the race over which the protest is made. The protest must be made to the stewards before the race is declared official.

3. Prize money of protested horse. During the time of determination of a protest, any money or prize won by a horse protested or otherwise affected by the outcome of the race shall be paid to and held by the horsemen's accountant until the protest is decided.

4. Protest in writing. A protest, other than one arising out of the actual contesting of a race, must be in writing, signed by the complainant, and filed with the stewards one hour before post time of the race out of which the protest arises.

5. Frivolous protests. No person or licensee shall make a frivolous protest nor may any person withdraw a protest without the permission of the stewards.

9.2(7) Racing secretary.

a. General authority. The racing secretary is responsible for setting the conditions for each race of the meeting, regulating the nomination of entries, determining the amounts of purses and to whom they are due and the recording of racing results. The racing secretary shall permit no person other than licensed racing officials to enter the racing secretary's office or work areas until such time as all entries are closed, drawn, or smoked. Exceptions to this rule must be approved by the stewards.

(1) Minimum purse. Thirty days prior to the opening of a race meeting, the association shall present to the commission for approval the proposed purse structure for the race meeting, including the minimum purse to be offered. Any contract with an organization representing the horsemen shall also be presented for commission approval at this time.

(2) Purse supplements for registered Iowa-bred horses. The commission shall also approve the proposed plan for purse supplements for the owners of registered Iowa-bred horses to be funded by the breakage as provided in Iowa Code section 99D.12.

b. Conditions. The secretary shall establish the conditions and eligibility for entering the races of the meeting and cause them to be published to owners, trainers and the commission and be posted in the racing secretary's office. Corrections to the conditions must be made within 24 hours of publication.

c. Posting of entries. Upon the completion of the draw each day, the race secretary shall post a list of entries in a conspicuous location in the race office and make the list available to the media.

d. Stakes and entrance money records. The race secretary shall be caretaker of the permanent records of all stakes, entrance moneys and arrears paid or due in a race meeting and shall keep permanent records of the results of each race of the meeting.

e. Winnings—all inclusive. For the purpose of the setting of conditions by the race secretary, winnings shall be considered to include all moneys and prizes won up to the time when entries close, but winnings on the closing date of eligibility shall not be considered.

f. Cancellation of a race. The secretary has the authority to withdraw, cancel or change any race which has not been closed. In the event the canceled race is a stakes race, all subscriptions and fees paid in connection with the race shall be refunded.

g. Coggins test or equine infectious anemia. The racing secretary shall ensure that all horses have a current negative Coggins test or negative equine infectious anemia test. The racing secretary shall report all expired certificates to the board of stewards.

h. Rejection of declaration.

(1) The race secretary may reject the declaration on any horse whose eligibility certificate was not in the possession of the race secretary on the date the condition book is published.

(2) The race secretary may reject the declaration on any horse whose past performance indicates that the horse would be below the competitive level of other horses declared, provided the rejection does not result in a race being canceled.

i. Eligibility certificates. The race secretary will receive and keep the eligibility certificate of horses competing at the racetrack or stabled on the grounds of member tracks, and to return same to the owner of a horse or the owner's representative upon request.

j. Declaration blanks. The race secretary will examine all declaration blanks to verify all information set forth therein.

k. Verify eligibility. The race secretary will check the eligibility of all horses drawn in to race and verify the horses' eligibility with the stewards/judges.

9.2(8) Paddock judge.

a. General authority. The paddock judge shall:

(1) Be in charge of the paddock and shall have general responsibility for the inspection of horses and for the equipment used.

(2) Attempt to maintain consistency in the use of equipment on individual horses.

(3) Supervise paddock gate men.

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b. Duties.

(1) Require that a farrier be in the paddock prior to each race to ensure that all horses are properly shod.

(2) Exclude from the paddock all those persons who have no immediate business with the horses entered in a race and report rule violations in the paddock area to the stewards.

(3) Get the fields on the racetrack for post parades.

(4) Properly check in and check out horses and drivers.

(5) Immediately notify the stewards of anything that could in any way change, delay, or otherwise affect the racing program.

(6) Report to stewards any observed cruelty to a horse.

9.2(9) Horse identifier.

a. General authority. The horse identifier shall be present for each race and shall inspect each horse prior to its departure from the paddock to the post for identification to include tattoo number, color, and any markings.

b. Report violations. Any discrepancy detected in the tattoo number, color or markings of a horse shall be reported immediately to the paddock judge, who shall in turn report same forthwith to the stewards.

9.2(10) Clerk of the course. The clerk of the course shall be responsible for:

a. Keeping and verifying the stewards/judges' book and eligibility certificates provided by the U.S.T.A./C.T.A. and record therein all required information:

(1) Names and addresses of owners;

(2) The standard symbols for medications, where applicable;

(3) Notations of placing, disqualifications and claimed horses;

(4) Notations of scratched or ruled out horses;

(5) Returning the eligibility certificate to the horse's owner or the owner's representative after the race, when requested;

(6) Notifying owners and drivers of penalties assessed by the officials;

(7) Assisting in drawing post positions, if requested; and

(8) Maintaining the stewards/judges list.

b. Reserved.

9.2(11) Starter.

a. General authority. The starter is responsible to provide a fair start for each race.

b. Violations. The starter shall report to the stewards any violations of these rules occurring in the starting of a race.

c. Disciplinary action. The official starter may recommend fines or suspension of the licenses of drivers for any violations of these rules from the formation of the parade until the word "go" is given to the stewards/judges.

9.2(12) Timer.

a. General authority. Each association shall provide for each race an official timer who shall occupy the timer's stand or other appropriate place to observe the contesting of each race. The official timer shall accurately record the time elapsed between the start and finish of each race. The chief timer shall sign the stewards' book for each race verifying the correctness of the record.

b. Timing procedure. The time shall be recorded from the instant that the first horse leaves the point from which the distance is measured until the first horse reaches the finish line. The time of the leading horse at the quarter, half, three-quarters and the finish shall be taken.

c. Timing races.

(1) In every race, the time of each heat shall be accurately recorded by two timers or an approved electrical timing device, in which case, there shall be one timer.

(2) Times of heats shall be recorded in minutes, seconds and fifths of a second.

(3) Immediately following each heat, the elapsed time of the heat shall be publicly announced or posted, or both, on the totalizator board.

(4) No unofficial timing shall be announced, posted or entered in the official record.

9.2(13) Patrol judges.

a. General authority. An association may employ patrol judges who shall observe the contesting of the race and report the following to the stewards:

(1) Violation of the racing rules.

(2) Violation of the rules of decorum.

(3) Lameness or unfitness of any horse.

(4) Lack of proper racing equipment.

(5) Any action on the track which could improperly affect the result of a race.

b. Duty stations. Each patrol judge shall have a duty station assigned by the stewards.

9.2(14) Placing judges.

a. General authority. It is the duty of the placing judges to determine the winner of each race and the order of finish for each of the remaining horses in the race. In case of a difference of opinion among the judges, the majority opinion shall govern. In determining places at the finish of a race, the placing judges shall consider only the noses of the placing horses.

b. Corrections. The placing judges, with approval of the stewards, may correct errors in their determination of the placing of horses at the finish before the display of the official sign, or if the official's sign has been displayed in error, after that display. If the display is in error, no person shall be entitled to any proceeds of the pari-mutuel pool on account of the error.

c. The stewards' decision on the race shall be final.

9.2(15) Commission veterinarians.

a. The commission shall employ graduate veterinarians licensed to practice in the state of Iowa at each race meeting as provided in Iowa Code section 99D.23. The veterinarians shall advise the commission and the stewards on all veterinary matters.

b. The commission veterinarians shall have supervision and control of the detention barn for the collection of test samples for the testing of horses for prohibited medication as provided in Iowa Code sections 99D.23 and 99D.25. The commission may employ persons to assist the commission veterinarians in maintaining the detention barn area and collecting test samples.

c. The commission veterinarians shall not buy or sell any horse under their supervision; shall not wager on a race under their supervision; and shall not be licensed to participate in racing in any other capacity.

d. Prerace examination. The stewards or commission veterinarians may request that any horse entered in a race undergo an examination on the day of the race to determine the general fitness of the horse for racing. During the examination, all bandages shall be removed by the groom upon request and the horse may be exercised outside the stall to permit the examiner to determine the condition of the horse's legs and feet. The examining veterinarian shall report any unsoundness in a horse to the stewards.

e. Inspection prior to and following a race. All of the horses in a race shall be inspected during warm-ups and in

the paddock by a commission veterinarian. After the finish of a race, the veterinarian shall observe the horses upon their leaving the track.

f. The commission veterinarian shall place any horse determined to be sick or too unsafe, unsound or unfit to race on a veterinarian's list which shall be posted in a conspicuous place available to all owners, trainers, and officials.

g. A horse placed on the veterinarian's list may be allowed to enter only after it has been removed from the list by the commission veterinarian. Requests for the removal of any horse from the veterinarian's list will be accepted only after three calendar days from the placing of the horse on the veterinarian's list have elapsed. Removal from the list will be at the discretion of the commission veterinarian and the commission veterinarian may require satisfactory workouts or examinations to adequately demonstrate that the problem that caused the horse to be placed on the list has been rectified.

h. The commission veterinarians shall perform the duties and responsibilities regarding:

(1) The administration of lasix and phenylbutazone;

(2) Postmortem examination on all horses which have expired or been euthanized on racetrack grounds; and

(3) Receipt of veterinary reports as required by Iowa Code section 99D.25.

9.2(16) Driver room custodian. The driver room custodian shall have the following duties:

a. Maintain order, decorum and cleanliness in the driver room.

b. Ensure that no person other than representatives of the commission, association, and drivers are admitted to the driver's room on a racing day except by permission of the stewards and ensure that no unauthorized personnel are permitted in the driver's room after the final race on racing days.

c. Ensure that drivers are neat in appearance and properly attired when they leave the driver's room to drive in a race.

d. Report any rule violations within the driver's room to stewards.

e. Assign to drivers a locker capable of being locked for the use of the driver in storing clothing, equipment and personal effects.

9.2(17) Licensed charter. The charting of races is mandatory and the track shall employ a licensed charter from the U.S.T.A.

491—9.3(99D) Trainer and driver responsibilities.

9.3(1) Trainer.

a. Responsibility.

(1) Absolute insurer. Trainers are responsible for and are the absolute insurers of the condition of the horses in their care and custody and for the conditions and contents of stalls, tack rooms, feed rooms, and other areas which have been assigned them by the association. Trainers are the absolute insurer of the condition of the horses in their care and custody during the race and are liable for the presence of any drug, medication, or any other prohibited substance in the horse during the race. A trainer whose horse has been claimed remains responsible for the horse under this rule until after the collection of required urine or blood specimens. The licensed trainer of a horse found to have been administered a medication, drug, or foreign substance in violation of these rules or Iowa Code chapter 99D shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding the horse from tampering; and, failing to prove freedom from negligence, shall be subject to disciplinary action.

(2) The assistant trainer, groom or any other person having immediate care and custody of a horse found to have been administered a medication, drug, or foreign substance in violation of these rules of Iowa Code chapter 99D, found negligent in guarding or protecting the horse from tampering shall be subject to disciplinary action.

(3) Licensed trainers shall maintain the barn area assigned to them in a clean, neat and sanitary condition at all times and ensure that fire prevention rules are strictly observed in those areas.

(4) Report of illness or sex alteration. Trainers shall report immediately to the stewards and the commission veterinarian any illness in a horse entrusted to their care presenting unusual or unknown symptoms. Any alteration in the sex of a horse must be reported and noted by the trainer to the racing secretary or horse identification office immediately, and that office must note the same on the eligibility certificate.

(5) On a form provided by track security, trainers shall register with track security the names of all employees. This form must be presented to track security not later than 24 hours after the arrival of any personnel. All changes must be made not later than 24 hours after taking place.

(6) Trainers shall register with the racing secretary, on a form provided by the racing secretary, all horses which are intended to race at the meeting stating their names, age, sex, color, breeding, and the names of any and all persons having any interest in said horse(s). This registration must be presented to the racing secretary immediately upon arrival of the trainer and all changes must be reported within 24 hours after taking place.

(7) Trainer at paddock. A trainer or assistant must be present with the horse in the paddock and shall supervise the preparation of the horse to race unless the stewards permit a substitute trainer to perform those duties. Every trainer who brings a horse to the paddock warrants that the horse is qualified for the race, is ready to race and is in physical condition to exert its best efforts, and is entered with the intention to win.

(8) Paddock time. A trainer shall present the horse in the paddock at the time so designated by the steward prior to post time before the race in which the horse is entered. Except for warm-up trips, no horse shall leave the paddock until called to the post.

(9) Coggins test certificate or equine infectious anemia. Each trainer shall maintain for each horse under the trainer's care a valid certificate indicating that the horse has a negative Coggins test or a negative test for equine infectious anemia and attach it to the horse's eligibility certificate. The test must have been conducted within the previous 12 months and must be repeated upon expiration.

(10) The transfer of ownership of a horse or the change of trainers must be presented to the stewards in writing and approved by the stewards before any entry is made reflecting the change. The transfer or attempt to transfer a horse to circumvent a commission rule or order is prohibited.

(11) Three-day absence. Trainers shall not be absent from their stable or from the association premises where their horses are racing for more than three full days unless they have delegated responsibility for the horses in their care to another licensed trainer. In the event of a delegation, the temporary trainer shall accept, in writing and in the presence of the stewards, the responsibility for the horses.

b. Prohibited acts.

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(1) Entry ineligible. No trainer shall enter or start a horse in any race if the horse is ineligible under these rules or the laws of this state related to racing.

(2) Employees.

1. Unlicensed veterinarian. No trainer shall employ a veterinarian who is not licensed by both this state's veterinary regulatory authority and the commission.

2. Minor. No trainer shall employ any person under the age of 16. Persons under the age of 16 may be allowed to work for their parents if one of their parents is present during working hours.

(3) Training for suspended persons. No trainer shall train or be responsible for any horse that is wholly or partly owned by a person under suspension by the stewards or the commission.

9.3(2) Driver.

a. Driving duty. Every driver shall participate when programmed unless excused by the stewards.

b. Driver suspension.

(1) Offenses involving fraud. Suspension of a license for an offense involving fraud or deception of the public or another participant in racing shall begin immediately after the ruling unless otherwise ordered by the stewards or commission.

(2) Offenses not involving fraud. Suspension for an offense not involving fraud or deception of the public or another participant in racing shall begin on the third day after the ruling or at the stewards' discretion subject to the following. Where the penalty is for a driving violation and does not exceed five days, the driver may complete the engagement of all horses declared in before the penalty becomes effective. The driver may drive in stake, futurity, early closing and feature races, during a suspension of five days or less, but the suspension will be extended one day for each date the driver drives.

(3) Withdrawal of appeal. Withdrawal by the appellant of a notice of appeal filed with the commission whenever imposition of the disciplinary action has been stayed or enjoined pending a final decision by the commission shall be deemed a frivolous appeal and referred to the commission for further disciplinary action in the event the appellant fails to show good cause to the commission why the withdrawal should not be deemed frivolous.

c. Driving colors. Drivers must wear distinguishing colors and clean white pants and shall not be allowed to start in a race or other public performance unless, in the opinion of the stewards, they are properly dressed. No person shall drive a horse during the time when colors are required on the racetrack unless wearing a protective helmet, painted as registered or of compatible colors, and having a chin strap in place. The helmet shall be approved by the stewards.

d. Driver betting. No driver, trainer, or owner of a horse shall bet or cause any other person to bet on their behalf on any other horse in any race in which they shall start a horse driven, trained, or owned by them, or which they in any way represent or handle or in which they have an interest. No such person shall participate in exacta, quinella or other multiple pool wagering on a race in which such horse starts other than the daily double.

491—9.4(99D) Conduct of races.

9.4(1) Horses ineligible. Any horse ineligible to be entered for a race, or ineligible to start in any race, that competes in that race may be disqualified and the stewards may discipline the persons responsible for that horse competing in that race. A horse is ineligible to start a race when:

a. The horse is not stabled on the grounds of the licensed association by the time so designated by the stewards, or

b. The U.S.T.A. or C.T.A. eligibility certificate has not been examined by the racing secretary, or horse identifier, and determined to be proper and in order, or

c. The horse is not fully identified by an official tattoo on the inside of the upper lip, or

d. With respect to a horse that is entered for the first time, the nominator has failed to identify the horse by name, color, sex and age, names of sire and dam as registered, and present owner and trainer, or

e. A horse is brought to the paddock and is not in the care of and harnessed by a trainer or assistant trainer, or

f. A horse has been knowingly entered or raced in any jurisdiction under a different name, with an altered eligibility certificate, or altered lip tattoo by a person having lawful custody or control of the horse for the purpose of deceiving any association or regulatory agency, or

g. A horse has been allowed to enter or start by a person having lawful custody or control of the horse who participated in, or assisted in the entry of racing of some other horse under the name of the horse in question, or

h. A horse is wholly or partially owned by a disqualified person or a horse is under the direct or indirect management of a disqualified person, or

i. A horse is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person, in such cases, is being presumed that the disqualified person and spouse constitute a single financial entry with respect to the horse, which presumption may be rebutted, or

j. A horse has no current negative Coggins test certificate or negative equine infectious anemia test attached to the eligibility certificate, or

k. The stakes or entrance money for the horse has not been paid, or

l. A horse appears on the starter's list, steward's list, paddock list, or veterinarian's list, or

m. A horse is a first-time starter not meeting qualifications standards for the race meeting, or

n. A horse is owned in whole or in part by an undisclosed person of interest, or

o. The owner or trainer is not licensed by the commission before the start of a race, or

p. A horse is subject to a lien that has not been approved by the stewards and filed with the horseman's bookkeeper, or

q. A horse is subject to a lease not filed with the stewards, or

r. A horse is not in sound racing condition, or

s. A horse has been nerved by surgical neurectomy, or

t. A horse has been trachea-tubed to artificially assist breathing, or

u. A horse has been blocked with alcohol or injected with any other foreign substance or drug to desensitize the nerves of the leg, or

v. A horse has impaired eyesight in both eyes, or

w. A horse appears on the starters' list, stewards' list, or veterinarians' list and is barred from racing in any racing jurisdiction, or

x. A horse has started in any race on the previous calendar day.

9.4(2) Registration. All matters relating to registration of standardbred horses shall be governed by the rules of the U.S.T.A.

9.4(3) Eligibility certificate. A track may refuse to accept any declaration without the eligibility certificate for the

proper gait first being presented. Fax or telephone declarations may be sent and accepted without penalty, provided the declarer furnished adequate program information, but the eligibility certificate must be presented when the horse arrives at the track before it races. The racing secretary shall check each certificate and certify to the stewards as to the eligibility of all the horses.

9.4(4) Canadian track information. Prior to the declaration, owners of horses having Canadian eligibility certificates shall furnish the racing secretary with a Canadian eligibility certificate completely filled out for the current year, which has a U.S.T.A. validation certificate attached.

9.4(5) Foreign entries. No eligibility certificate will be issued on a horse coming from a country other than Canada unless the following information certified by the trotting association or governing body of that country from which the horse comes is furnished:

a. The number of starts during the preceding year, together with the number of firsts, seconds and thirds for each horse, and the total amount of money won during this period.

b. The number of races in which the horse has started during the current year, together with the number of firsts, seconds and thirds for each horse and the money won during this period.

c. A detailed list of the last six starts giving the date, place, track condition, post position or handicap, if it was a handicap race, distance of the race, position at the finish, the time of the race, the driver's name and the first three horses in the race.

9.4(6) Time bars. No time records or bars shall be used as an element of eligibility.

9.4(7) Date when eligibility is determined.

a. Horses must be eligible when entries close but winnings on the closing date of eligibility shall not be considered.

b. In mixed races, trotting and pacing, a horse must be eligible to the class at the gait at which it is stated in the entry the horse will perform.

9.4(8) Conflicting conditions. In the event there are conflicting published conditions and neither is withdrawn by the track, the more favorable to the nominator shall govern.

9.4(9) Standards for overnight events. Where time standards are established at a meeting for both trotters and pacers, trotters shall be given a minimum of two seconds' allowance in relation to pacers.

Posting of overnight conditions. At extended parimutuel meetings, condition books will be prepared and races may be divided or substituted races may be used only where regularly scheduled races fail to fill except where they race less than five days a week. Books containing at least three days' racing programs will be available to horsemen at least 24 hours prior to closing declarations on any race program contained. When published, the conditions must be clearly stated and not printed as TBA—To Be Announced. The racing secretary shall forward copies of each condition book and overnight sheet to the commission and U.S.T.A. office as soon as it is available to the horsemen.

9.4(10) Supplemental purse payments. Supplemental purse payments made by a track after the termination of a meeting will be charged and credited to the winnings of any horse at the end of the racing year in which they are distributed and will appear on the eligibility certificate for the subsequent year. Distribution shall not affect the current eligibility until placed on the next eligibility certificate.

9.4(11) Rejection of declaration.

a. The racing secretary may reject the declaration on any horse whose eligibility certificate was not in their possession on the date the condition book is published.

b. The racing secretary may reject the declaration on any horse whose past performance indicates that it would be below the competitive level of other horses declared, provided the rejection does not result in a race being canceled.

9.4(12) Substitute and divided races.

a. Substitute races may be provided for each day's program and shall be so designated. Entries in races not filling shall be posted. A substitute race or a race divided into two divisions shall be used only if regularly scheduled races fail to fill.

b. If a regular race fills, it shall be raced on the day it was offered.

c. Overnight events and substitutes shall not be carried to the next racing day.

9.4(13) Qualifying races. A horse qualifying in a qualifying race for which no purse is offered shall not be deprived by reason of that performance of the right to start in any conditioned race.

9.4(14) Definition of "start." The definition of the word "start" in any type of condition unless specifically so stated will include only those performances in a purse race. Qualifying and matinee races are excluded.

9.4(15) Claiming races.

a. Eligibility.

(1) Registered to race or open claiming certificate. No person may file a claim for any horse unless the person:

1. Is a licensed owner at the meeting or the licensed authorized agent for an owner authorized to claim. The owner must be registered in good faith for racing or have started a horse at the meeting; or

2. Has a valid open claim certificate. Any person not licensed as an owner or a licensed agent for the account of such person may request an open claim certificate from the commission. The person must submit a completed application for a prospective owner's license to the commission. The applicant must have the name of the trainer licensed or eligible to be licensed by the commission who will be responsible for the claimed horse. A nonrefundable fee must accompany the application along with any financial information requested by the commission. The names of the prospective owners shall be prominently displayed in the offices of the commission and the racing secretary. The application will be processed by the commission and, when the open claim certificate is exercised, an owner's license will be issued.

3. Is a current active member of the U.S.T.A.

(2) One stable claim. No stable which consists of horses owned by more than one person and which has a single trainer may submit more than one claim in any race and an authorized agent may submit only one claim in any race regardless of the number of owners represented.

b. Prohibitions.

(1) No person shall claim the person's own horse nor shall the person claim a horse trained or driven by the person.

(2) No person shall claim more than one horse in a race.

(3) No qualified owner or owner's agent shall claim a horse for another person or file a false claim.

(4) No owner shall cause the owner's horse to be claimed directly or indirectly for the owner's own account.

(5) No person shall offer, or enter into an agreement, to claim or not to claim or attempt to prevent another person from claiming any horse in a claiming race.

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(6) No person shall enter a horse against which there is a mortgage, bill of sale, or lien of any kind, unless the written consent of the holder shall be filed with the clerk of the course of the track conducting the claiming race.

(7) Where a horse drawn to start in a claiming race has been declared to start in a subsequent claiming race, a successful claimant, if any, of the horse in the first race shall have the option of scratching the horse from the subsequent race.

(8) Any mare which has been bred shall not be declared into a claiming race for at least 45 days following the last breeding of the mare, and thereafter the mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare pronounced in foal shall not be declared into a claiming race.

c. Claiming procedure.

(1) Claimant's credit. The claimant must have a credit with the track in an amount equivalent to the specified claiming prize applicable taxes, plus the required fees for transfer of registration.

(2) Owner's consent. No declaration may be accepted unless written permission in the form of a claiming authorization of the owner is filed with the stewards at the time of declaration.

(3) Program. The claiming price shall be printed on the program and all claims shall be for the amount so designated and any horse entered in a claiming race may be claimed for the designated amount.

d. Claim box.

(1) The claim box shall be approved by the commission and kept locked until ten minutes prior to the start of the race, when it shall be presented to the stewards or their designee for opening and publication of the claims.

(2) The claim box shall also include a time clock which automatically stamps the time on the claim envelope prior to its being dropped in the box.

(3) No official of an association shall give any information as to the filing of claims therein until after the race has been run.

e. Claim irrevocable. After a claim has been filed in the locked box, it shall not be withdrawn.

f. Multiple claims on single horse. If more than one claim is filed on a horse, the successful claim shall be determined by lot conducted by the stewards or their representatives.

g. Successful claims; later races.

(1) Sale or transfer. No successful claimant may sell or transfer a horse, except in a claiming race, for a period of 30 days from the date of claim.

(2) Eligibility price. A claimed horse may not start in a race in which the claiming price is less than 25 percent more than the amount for which it was claimed for a period of 30 days and no right, title or interest therein shall be sold or transferred except in a claiming race for a period of 30 days following the date of claiming. The day claimed shall not count but the following calendar day shall be the first day. The horse shall be entitled to enter whenever necessary so the horse may start on the thirty-first calendar day following the claim for any claiming price. The horse shall be required to continue to race at the track where claimed for the balance of the current race meeting.

(3) Racing elsewhere. A horse which was claimed under these rules may not participate at a race meeting other than that at which it was claimed until the end of the meeting, except with written permission of the stewards. This limitation shall not apply to stakes races.

(4) Same management. A claimed horse shall not remain in the same stable or under the control or management of its former owner.

(5) When a horse is claimed out of a claiming race, the horse's engagements are included.

h. Transfer after claim.

(1) Forms. Upon a successful claim, the stewards shall issue in triplicate, upon forms approved by the administrator, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the commission, the stewards, and the race secretary. No claimed horse shall be delivered by the original to the successful claimant until authorized by the stewards. Every horse claimed shall race in all heats or dashes of the event in the interest and for the account of the owner who declared it in the event, but title to the claimed horse shall be vested in the successful claimant from the time the word "go" is given in the first heat or dash, and said successful claimant shall become the owner of the horse, whether it be alive or dead or sound or unsound, or injured during the race or after it.

(2) Other jurisdiction rules. The commission will recognize and be governed by the rules of any jurisdiction regulating title and claiming races when ownership of a horse is transferred or affected by a claiming race conducted in that other jurisdiction.

(3) Determination of sex and age. The claimant shall be responsible for determining the sex and age of the horse claimed not withstanding any designation of sex and age appearing in the program or in any racing publication. In the event of a spayed mare, the (S) for spayed should appear next to the mare's name on the program. If it does not and the claimant finds that the mare is in fact spayed, claimant may then return the mare for full refund of the claiming price.

(4) Affidavit by claimant. The stewards may, if they determine it necessary, require any claimant to execute a sworn statement that the claimant is claiming the horse for the claimant's own account or as an authorized agent for a principal and not for any other person.

(5) Delivery required. A horse claimed shall be delivered immediately by the original owner or the owner's trainer to the successful claimant upon authorization of the stewards. Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended together with the horse until delivery is made.

(6) Obstructing rules of claiming. No person or licensee shall obstruct or interfere with another person or licensee in claiming any horse nor enter an agreement with another to subvert or defeat the object and procedures of a claiming race or attempt to prevent any horse entered from being claimed.

i. Elimination of stable. An owner whose stable has been eliminated by claiming may claim for the remainder of the meeting at which eliminated or for 30 racing days, whichever is longer, with the permission of the stewards. Stables eliminated by fire or other casualty may claim under this rule.

j. Deceptive claim. The stewards may cancel and disallow any claim within 24 hours after a race if they determine that a claim was made upon the basis of a lease, sale, or entry of a horse made for the purpose of fraudulently obtaining the privilege of making a claim. In the event of a disallowance, the stewards may further order the return of a horse to its original owner and the return of the claims money.

k. Protest of claim. A protest to any claim must be filed with the stewards before noon of the day following the date

the horse was claimed. Nonracing days are excluded from this rule.

l. Scratched horse. A horse scratched from a claiming race is not eligible to be claimed. The owner or trainer of a horse entered in a subsequent claiming race may request the steward to scratch the horse from that race.

m. Claiming price paid. The track shall pay the claiming price to the owner at the time the registration certificate is delivered for presentation to the successful claimant.

n. Claiming conditions. Whenever possible, claiming races shall be written to separate horses five years old and up from young horses and to separate males from females. If sexes are mixed, mares shall be given a 20 percent minimum price allowance; provided, however, that there shall be no price allowance given to a spayed mare racing in a claiming race. An allowance for age shall be given. Two-year-olds shall be given a 100 percent allowance, three-year-olds, 50 percent allowance, and four-year-olds, 25 percent allowance. Claiming races for two-year-olds may be conditioned. Claiming races for three-year-olds may be conditioned. The lowest claiming class written at a specific meeting may be conditioned. Horses eligible for multiple allowances shall be granted only the highest allowance.

o. Minimum price. No claiming race shall be offered permitting claims for less than the minimum purse offered at the time during the same racing week.

p. Determination of claiming price. Except as provided, no horse owner shall be prohibited from determining the price for which the owner's horse shall be entered.

q. Eligibility certificate. The current eligibility certificate of all horses entered in claiming races must be on file with the racing secretary. Registration papers and a separate claiming authorization form signed by the registered owner or owners and indicating the minimum amount for which the horse may be entered to be claimed will be on file with the stewards. To facilitate transfer of claimed horses, the presiding steward may sign the transfer provided that the clerk of course then sends the registration certificate and claiming authorization to the U.S.T.A. registrar for transfer.

r. Fraudulent claim.

(1) If the stewards determine that the declaration of any horse to a claiming race is fraudulent on the part of the declarer, they may void the claim and, at the option of the claimant, order the horse returned to the person declaring it in the race.

(2) If the stewards determine that any claim of a horse is fraudulent on the part of the person making the claim, they may void the claim and may, at the option of the person declaring it in the race, return the horse to the person declaring it in the race.

9.4(16) Entries. All entries must:

a. Be made in writing.

b. Be signed by the owner or authorized agent, except as provided in this chapter.

c. Give name and address of both the bona fide owner and agent or registered stable name or lessee.

d. Give name, color, sex, sire and dam of horse.

e. Name the event or events in which the horse is to be entered.

9.4(17) Entries and starters; split races.

a. Entries required. Tracks must specify how many entries are required for overnight events and after the condition is fulfilled, the event must be contested.

b. Elimination heats or two divisions. In any race where the number of horses declared in to start exceeds 11 on a half-mile track, or 14 on a larger track, unless lesser numbers are specified in the conditions of the race, the race, at the option of the track management conducting same, stated before positions are drawn, may be raced in elimination heats.

In the absence of conditions providing for a lesser number of starters, no more than two tiers of horses, allowing eight feet per horse, will be allowed to start in any race.

c. Elimination plans.

(1) Whenever elimination heats are required, or specified in the published conditions, the race shall be raced in the following manner unless otherwise stated in the condition or conducted under another segment of these rules. The field shall be divided by lot and the first division shall race a qualifying dash for 30 percent of the purse, the second division shall race a qualifying dash for 30 percent of the purse and the horses so qualified shall race in the main event for 40 percent of the purse. The winner of the main event shall be the race winner.

(2) In the event there are more horses declared to start than can be accommodated by the two elimination dashes, then there will be added enough elimination dashes to take care of the excess. The percent of the purse raced for each elimination dash will be determined by dividing the number of elimination dashes into 60. The main event will race for 40 percent of the purse.

(3) Unless the conditions provide otherwise, if there are two elimination dashes, the first four finishers in each dash qualify for the final; if there are three or more elimination dashes, not more than three horses will qualify for the final from each qualifying dash.

(4) The stewards shall draw the positions in which the horses are to start in the main event by one of the following methods, as prescribed by the sponsor in the conditions for the event:

1. They shall draw positions to determine which of the dash winners has the pole and which the second position; which of the two horses that have been second shall start in third position; and which in fourth, and subsequent positions, or

2. They shall have an open draw to determine the positions in which the horses are to start in the main event; that is, all positions shall be drawn by lot from among all horses qualified for the main event. In the event the sponsor fails to prescribe in the conditions for the event the method to be used for the drawing of post positions, the provisions of paragraph "1" above shall apply.

d. Overnight events. In overnight events at extended pari-mutuel meetings, not more than eight horses shall be allowed to start on a half-mile track and not more than ten horses on larger tracks.

e. Qualifying race for stake. Where qualifying races are provided in the conditions of any early closing event, stakes or futurity, the qualifying race must be held not more than seven days prior to contesting the main event and omitting the day of the race.

9.4(18) Declaration to start; drawing horses.

a. Declaration.

(1) Declaration time shall be determined by the board of stewards.

(2) No horse shall be declared to start in more than one race on any one racing day.

(3) Declaration box. The association shall provide a locked box with an aperture through which declarations shall be deposited.

(4) Responsibility for declaration box. The stewards shall be in charge of the declaration box.

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(5) Search for declarations by the steward before opening box. Just prior to opening of the box at extended pari-mutuel meetings where futurities, stakes, early closing or late closing events are on the program, the steward shall check with the racing secretary to ascertain if any declarations by mail, fax, or otherwise, are in the office and not deposited in the entry box and shall see that they are declared and drawn in the proper event.

(6) Opening of declaration box. Entry box and drawing of horses at extended pari-mutuel meetings. The entry box shall be opened by the steward at the advertised time and the steward will be responsible to see that at least one horseman or the horseman's official representative is present. No owner or agent for a horse with a declaration in the entry box shall be denied the privilege of being present. Under the supervision of the steward, all entries shall be listed, the eligibility verified, the preference ascertained, starters selected and post positions drawn. If it is necessary to reopen any race, public announcement shall be made at least twice and the box reopened to a definite time.

(7) Drawing of post positions for second heat in races of more than one dash or heat. In races of a duration of more than one dash or heat, the stewards may draw post positions from the stand for succeeding dashes or heats.

(8) Declarations by mail, fax or telephone. Declarations by mail, fax, or telephone actually received and evidence of which is deposited in the box before the time specified to declare shall be drawn in the same manner as the others. Drawings shall be final. Mail, telephone and fax declarations must state the name and address of the owner or lessee; the name, color, sex, sire and dam of the horse; the name of the driver and colors; the date and place of last start; a current summary, including the number of starts, firsts, seconds, thirds, earnings and best winning time for the current year; and the event or events in which the horse is to be entered.

(9) Effect of failure to declare on time. When a track requires a horse to be declared at a stated time, failure to declare as required shall be considered a withdrawal from the event.

(10) Drawings of horses after declaration. After declaration to start has been made, no horse shall be drawn except by permission of the stewards.

(11) Horses omitted through error. Drawings shall be final unless there is conclusive evidence that a horse properly declared was omitted from the race through the error of a track or its agent or employee in which event the horse shall be added to the race but given the last post position, provided the error is discovered prior to scratch time or the printing of the program, whichever is sooner. However, in the case of early closers of more than $10,000 and stake and futurity races, the race shall be redrawn. This shall not apply at extended pari-mutuel meetings in overnight events.

b. Qualifying races. At all extended pari-mutuel meetings, eligibility to declare for overnight events shall be governed by the following:

(1) Within 30 days of being declared in, a horse that has not raced previously at the gait chosen must go through a qualifying race under the supervision of a steward and acquire at least one charted line by a licensed charter. In order to provide complete and accurate chart information on time and beaten lengths, a standard photo finish shall be in use.

(2) A horse that does not show a charted line for the previous season, or a charted line within its last six starts, must go through a qualifying race as set forth above. Uncharted races contested in heats of more than one dash and consolidated according to subparagraph (4) below will be considered one start.

(3) A horse that has not started at a charted meeting by April 1 of a season must go through a qualifying race and meet the qualifying standards of the meet.

(4) When a horse has raced at a charted meeting during the current season, then gone to meetings where the races are not charted, the information from the uncharted races may be summarized, including each start, and consolidated in favor of charted lines. The requirements of subparagraph (2) above would not then apply.

(5) The consolidated line shall carry date, place, time, driver, finish, track condition and distance if race is not at one mile.

(6) The stewards may require any horse that has been on the steward's list to go through a qualifying race. If a horse has raced an individual time not meeting the qualifying standards for that class of horse, the horse may be required to go through a qualifying race.

(7) The stewards may permit a fast horse to qualify by means of a timed workout consistent with the time of the races in which it will compete in the event adequate competition is not available for a qualifying race. A horse that is on the steward's list for breaks or refusing to come to the gate must qualify in a qualifying race.

(8) To enable a horse to qualify, qualifying races should be held at least one full week prior to the opening of any meeting and shall be scheduled once a week during the meeting and through the last week of the meeting.

(9) Where a race is conducted for the purpose of qualifying drivers and not horses, the race need not be charted, timed or recorded. This subparagraph is not applicable to races qualifying both drivers and horses.

(10) If a horse takes a win race record in a qualifying race, the record must be prefaced with the letter "Q" wherever it appears, except in a case where, immediately prior to or following the race, the horse taking the record has had a specimen taken and tested. It will be the responsibility of the steward to report the results of the test on the stewards' sheet.

(11) Any horse that fails to race at a charted meeting within 30 days after having started in a current year shall start in a charted race or a qualifying race and meet the standards of the meeting before being allowed to start.

c. Coupled entries.

(1) When the starters in a race include two or more horses owned or trained by the same person, or trained in the same stable or by the same management, they shall be coupled as an "entry" and a wager on one horse in the "entry" shall be a wager on all horses in the "entry." Provided, however, that when a trainer enters two or more horses in a stake, early closing, futurity, free-for-all or other special event under bona fide separate ownerships, the horses may, at the request of the association and with the approval of the commission, be permitted to race as separate betting entries. The fact that the horses are trained by the same person shall be indicated prominently in the program. If the race is split in two or more divisions, horses in an "entry" shall be seeded insofar as possible, first by owners, then by trainers, then by stables; but the divisions in which they compete and their post positions shall be drawn by lot. The above provision shall also apply to elimination heats.

(2) The steward shall be responsible for coupling horses. In addition to the foregoing, horses separately owned or trained may be coupled as an entry where it is necessary to protect the public interest for the purpose of pari-mutuel wagering only.

(3) Whenever horses have equal preference in a race, the actual preference of said horses in relation to one another shall be determined from the most recent previous starts which do not result in equal preference.

(4) When an overnight race has been reopened because it did not fill, all eligible horses declared into the race prior to the reopening shall receive preference over other horses subsequently declared, irrespective of the actual preference dates.

d. Also eligibles. No more than two horses may be drawn as also eligibles for a race and their positions shall be drawn along with the starters in the race. In the event one or more horses are excused by the stewards, the also eligible horse or horses shall race and take the post position drawn by the horse that it replaces, except in handicap races. In handicap races the also eligible horse shall take the place of the horse that it replaces in the event that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap. No horse may be added to a race as an also eligible unless the horse was drawn as such at the time declarations closed. No horse may be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse put into the race from the also eligible list cannot be drawn except by permission of the stewards, but the owner or trainer of the horse shall be notified that the horse is to race and it shall be posted at the racing secretary's office. All horses on the also eligible list and not moved into the race by scratch time for the race shall be released.

e. Preference.

(1) Preference shall be given in all overnight events according to a horse's last previous purse race during the current year. The preference date on a horse that has drawn to race and been scratched is the date of the race from which it was scratched.

(2) When a horse is racing for the first time in the current year, the date of the first declaration shall be considered its last race date and preference applied accordingly.

(3) If an error has been made in determining or posting a preference date and the error deprives an eligible horse of an opportunity to race, the trainer involved shall report the error to the racing secretary within one hour of the announcement of the draw. If in fact a preference date error has occurred, the race will be redrawn.

f. Steward's list.

(1) A horse that is unfit to race because it is dangerous, unmanageable, sick, lame, or unable to show a performance to qualify for races at the meeting, or is otherwise unfit to race at the meeting, may be placed on a "steward's list" by the steward, and declarations on the horse shall be refused, but the owner or trainer shall be notified in writing of such action and the reason as set forth above shall be clearly stated on the notice. When any horse is placed on the steward's list, the clerk of the course shall make a note on the eligibility certificate of such horse, showing the date the horse was put on the steward's list, the reason and the date of removal if the horse has been removed.

(2) No steward or other official at a nonextended meeting shall have the power to remove from the steward's list and accept as an entry any horse which has been placed on a steward's list and not subsequently removed for the reason that it is a dangerous or unmanageable horse. Meetings may refuse declarations on any horse that has been placed on the steward's list and has not been removed.

(3) A horse scratched from a race because of lameness or sickness may not race or enter another race for at least three days from the date scheduled to race.

g. Driver. Declarations shall state who shall drive the horse and give the driver's colors. Drivers may be changed until scratch time of the race, after which no driver may be changed without permission of the steward and for good cause. When a nominator starts two or more horses, the stewards shall approve or disapprove the second and third drivers.

9.4(19) Starting.

a. With starting gate.

(1) Starter's control. The starter shall have control of the horses from the formation of the parade until it gives the word "go."

(2) Scoring. After one or two preliminary warming up scores, the starter shall notify the drivers to fasten their helmet chin straps and come to the starting gate. During or before the parade, the drivers must be informed as to the number of scores permitted.

(3) Starting gate. The horses shall be brought to the starting gate as near one-quarter of a mile before the start as the track will permit.

(4) Speed of gate. Allowing sufficient time so that the speed of the gate can be increased gradually, the following minimum speeds will be maintained.

1. For the first one-eighth mile, not less than 11 miles per hour.
2. For the next one-sixteenth of a mile not less than 18 miles per hour.
3. From the above point to the starting point, the speed will be gradually increased to maximum speed.

(5) On mile tracks, horses will be brought to the starting gate at the head of the stretch and the relative speeds mentioned in subparagraph (4) of this subrule will be maintained.

(6) The starting point will be a point on the inside rail a distance of not less than 200 feet from the first turn. The starter shall give the word "go" at the starting point.

(7) When a speed has been reached in the course of a start, there shall be no decrease except in the case of a recall.

(8) Recall notice. In case of a recall, a light plainly visible to the driver shall be flashed and a recall sounded and wherever possible the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. In an emergency, however, the starter shall use discretion to close the wings of the gate.

(9) There shall be no recall after the word "go" has been given and any horse, regardless of position or an accident, shall be deemed a starter from the time entered into the starter's control unless dismissed by the starter.

(10) Breaking horse. The starter shall endeavor to get all horses away in position and on gait but there shall be no recall for a breaking horse.

(11) Reason for recall. The starter may sound a recall only for the following reasons:

1. A horse scores ahead of the gate.
2. There is interference.
3. A horse has broken equipment.
4. A horse falls before the word "go" is given.
5. A starting gate malfunctions.

(12) Riding in gate. No persons shall be allowed to ride in the starting gate except the starter and driver or operator, and a patrol judge, unless permission has been granted by the board of stewards.

(13) Loudspeaker. Use of a mechanical loudspeaker for any purpose other than to give instructions to drivers is pro-

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hibited. The volume shall be no higher than necessary to carry the voice of the starter to the drivers.

b. Holding horses before start. Horses may be held on the backstretch not to exceed two minutes awaiting post time, except when delayed by an emergency.

c. Two tiers. In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier. Whenever a horse is drawn from any tier, horses on the outside move in to fill up the vacancy.

d. Starters. The horses shall be deemed to have started when the word "go" is given by the starter and all the horses must go the course except in case of an accident, broken equipment or any other reason in which the stewards determine that it is impossible to go the course.

e. Unmanageable horse.

(1) If, in the opinion of the stewards or the starter, a horse is unmanageable or liable to cause accidents or injury to any other horse or to any driver, it may be sent to the barn. When this action is taken, the starter will notify the stewards who will in turn notify the public.

(2) A horse shall be considered unmanageable if it causes more than one recall in the same dash or heat and the horse shall be excused by the starter.

f. Post positions; heat racing. The horse winning the first heat shall take the pole (or inside position) in the succeeding heat, unless otherwise specified in the published conditions, and all others shall take their positions in the order they were placed in the last heat. When two or more horses shall have made a dead heat, their positions shall be settled by lot.

g. Shield. The arms of all starting gates shall be provided with a screen or shield in front of the position for each horse, and the arms shall be perpendicular to the rail.

h. Malfunction of the gate. Every licensed starter is required to check the starting gate for malfunctions before commencing any meeting and to practice the procedure to be followed in the event of a malfunction. Both the starter and the driver of the gate must know and practice emergency procedures, and the starter is responsible for the training of drivers in those procedures.

9.4(20) Racing and track rules.

a. Although a leading horse is entitled to any part of the track, except after selecting its position in the home stretch, neither the driver of the first horse nor any other driver in the race shall do any of the following things, which shall be considered violations of driving rules:

(1) Changing either to the right or left during any part of the race when another horse is so near that in altering its position compels the horse behind to shorten its stride, or causes the driver of the other horse to pull out of its stride.

(2) Jostling, striking, hooking wheels, or interfering with another horse or driver.

(3) Crossing sharply in front of a horse or crossing over in front of a field of horses in a reckless manner, endangering other drivers.

(4) Swerving in and out or pulling up quickly.

(5) Crowding a horse or driver by "putting a wheel under them."

(6) "Carry a horse out" or "sit down in front" of a horse or taking up abruptly in front of other horses so as to cause confusion or interference among the trailing horses.

(7) Letting a horse pass inside needlessly or otherwise helping another horse to improve its position in the race.

(8) Laying off a normal pace and leaving a hole when it is well within the horse's capacity to keep the hole closed.

(9) Committing any act which shall impede the progress of another horse or cause it to "break."

(10) Changing course after selecting a position in the home stretch and swerving in or out, or bearing in or out, to interfere with another horse or cause it to change course or take back.

(11) Driving in a careless or reckless manner.

(12) Whipping under the arch of the sulky or hitting wheel disc.

(13) Kicking the horse.

(14) Drivers must set or maintain a pace comparable to the class in which they are racing. Failure to do so by going an excessively slow quarter or any other distance that changes the normal pattern, overall timing, or general outcome of the race will be considered a violation of this subrule.

(15) Crossing the inside limits of the course.

b. Complaints—reports of interference.

(1) Complaints. All complaints by drivers of any foul driving or other misconduct during the heat must be made to the starter at the termination of the heat, unless the driver is prevented from doing so by an accident or injury. Any driver desiring to enter a claim of foul or other complaint of violation of the rules must before dismounting indicate to the starter the desire to enter the claim or complaint and upon dismounting shall proceed to the telephone or stewards' stand where and when the claim, objection, or complaint shall be immediately entered. The stewards shall not cause the official sign to be displayed until the claim, objection, or complaint shall have been entered and considered.

(2) Report of interference. It is the duty of every driver to report to the official designated for that purpose, as promptly as possible after the conclusion of a race in which the driver has participated, any material interference to the driver or the horse by another horse or driver during a race.

c. If any of the above violations are committed by a person driving a horse coupled as an entry in the betting, the stewards shall set the offending horses back. The horse coupled in the entry with the offending horse shall also be set back if the stewards find that it improved its finishing position as a direct result of the offense committed by the offending horse.

d. In the case of interference, collision, or violation of any of the above restrictions, whether occurring before or after the start, the offending horse may be placed back one or more positions in that heat or dash and, in the event the collision or interference prevents any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings; and the driver may be fined or suspended. In the event a horse is set back, it must be placed behind the horse with whom it interfered.

e. Unsatisfactory drive—fraud. Every heat in a race must be contested by every horse in the race and every horse must be driven to the finish. If the stewards believe that a horse is being driven or has been driven heretofore, with design to prevent winning a heat or dash which it was evidently able to win, or is being raced in an inconsistent manner, or to perpetrate or to aid a fraud, they shall consider it a violation and the driver and anyone in concert with the driver to so affect the outcome of the race or races may be fined or have their license suspended or revoked. The stewards may substitute a competent and reliable driver at any time. The substitute driver shall be paid at the discretion of the stewards

and the fee retained from the purse money due the horse, if any.

In the event a drive is unsatisfactory due to lack of effort or carelessness, and the judges believe that there is no fraud, gross carelessness, or a deliberate inconsistent drive, they shall impose a penalty under this rule including, but not limited to, a fine, suspension or revocation.

f. If, in the opinion of the stewards, a driver is for any reason unfit or incompetent to drive or refuses to comply with the directions of the stewards, or is reckless in conduct and endangers the safety of horses or other drivers in the race, the driver may be removed and another driver substituted at any time after the positions have been assigned in a race, and the offending driver shall be fined or have license suspended or revoked. The substitute driver shall be properly compensated.

g. If, for any cause other than being interfered with or broken equipment, a horse fails to finish after starting in a heat, that horse shall be ruled out.

h. Loud shouting or other improper conduct is forbidden in a race. After the starting gate is in motion, both feet must be kept in the stirrups until after the finish of the race, except that a driver shall be allowed to remove a foot from the stirrups temporarily for the purpose of pulling earplugs.

i. Drivers will be allowed whips not to exceed three feet nine inches, plus a snapper not longer than six inches. Provided further that the following actions may be considered as excessive or indiscriminate use of the whip:

(1) Causing visible injury to a horse.

(2) Whipping a horse after a race.

j. The use of any goading device, chain or mechanical devices or appliances, other than the ordinary whip or crop, upon any horse in any race shall constitute a violation of this rule.

k. The brutal use of a whip or crop or excessive or indiscriminate use of the whip or crop shall be considered a violation. A driver may use a whip only in the conventional manner. Welts, cuts or whip marks on a horse resulting from whipping shall constitute a prima facie violation of this subrule. Drivers are prohibited from whipping under the arch of the sulky, kicking, punching or jabbing a horse, or using the whip so as to interfere with or cause disturbance to any other horse or driver in a race.

l. No horse shall wear hopples in a race unless it starts in the same in the first heat and, having so started, it shall continue to wear them to the finish of the race, and any person found guilty of removing or altering a horse's hopples during a race, or between races, for the purpose of fraud, shall be suspended or expelled. Any horse habitually wearing hopples shall not be permitted to start in a race without them except by permission of the stewards. Any horse habitually racing free legged shall not be permitted to wear hopples in a race except with the permission of the stewards. No horse shall be permitted to wear a head pole protruding beyond its nose.

m. Breaking.

(1) When any horse or horses break from their gait in trotting or pacing, their drivers shall at once, where clearance exists, take such horse to the outside and pull it to its gait.

(2) The following shall be considered violations of subparagraph (1) above:

1. Failure to properly attempt to pull the horse to its gait.
2. Failure to take to the outside where clearance exists.
3. Failure to lose ground by the break.

(3) Any breaking horse shall be set back when a contending horse on its gait is lapped on the hind quarter of the breaking horse at the finish.

(4) Any horse making a break which causes interference to other contending horses may be placed behind all offended horses; if there has been no failure on the part of the driver of the breaking horse in complying with subparagraph (2) above, no fine or suspension shall be imposed on the driver as a consequence of the interference.

(5) The stewards may set any horse back one or more places if in their judgment any of the above violations have been committed.

n. If, in the opinion of the stewards, a driver allows the horse to break for the purpose of fraudulently losing a heat, then it shall be liable to the penalties elsewhere provided for fraud and fouls.

o. To assist in determining the matters contained in paragraphs "m" and "n," it shall be the duty of one of the stewards to call out every break made, and the clerk shall at once note the break and character of it in writing.

p. The time between separate heats of a single race shall be no less than 40 minutes. The time between the heats shall not exceed one hour and 30 minutes. No heat shall be called after sunset where the track is not lighted for night racing.

q. Horses called for a race shall have the exclusive right of the course, and all other horses shall vacate the track at once, unless permitted to remain by the stewards.

r. In the case of accidents, only so much time shall be allowed as the stewards may deem necessary and proper.

s. A driver must be mounted in the sulky at the finish of the race or the horse must be placed as not finishing.

t. It shall be the responsibility of the owner and trainer to provide every sulky used in a race with unicolored or colorless wheel discs on the inside and outside of the wheel of a type approved by the commission. In their discretion, the steward may order the use of mudguards at pari-mutuel tracks.

u. Sulky. Only sulkies of the conventional dual shaft and dual-hitch type described below shall be permitted to be used in any races. A conventional type sulky is one having two shafts that must be parallel to and securely hitched on each side of the horse. No point of hitch or any part of a shaft shall be above a horizontal level equal to the lowest point of the horse's back.

v. Excessive or unnecessary conversation, or both, between and among drivers while on the racetrack during the time when colors are required is prohibited. Any violation of this rule may be punished by a fine, suspension, or combination thereof.

w. If at any racetrack which does not have a continuous solid inside hub rail, a horse or part of the horse sulky leaves the course by going inside the hub rail or other demarcation which constitutes the inside limits of the course, the offending horse shall be placed one or more positions where, in the opinion of the stewards, the action gave the horse an unfair advantage over other horses in the race, or the action helped the horse improve its position in the race. In addition, when an act of interference causes a horse or part of the horse's sulky to cross the inside limits of the course, and the horse is placed by the judges, the offending horse shall be placed behind the horse with which it interfered.

9.4(21) Protests.

a. Protests may be made only by an owner, manager, trainer or driver of one of the contending horses, at any time before the winnings are paid over, and shall be reduced to writing, and sworn to, and shall contain at least one specific

charge, which, if true, would prevent the horse from winning or competing in the race.

b. The stewards shall in every case of protest demand that the driver, and the owner or owners, if present, shall immediately testify under oath; and in case of their refusal to do so, the horse shall not be allowed to start or continue in the race, but shall be ruled out, with a forfeit of entrance money.

c. Unless the stewards find satisfactory evidence to warrant excluding the horse, they shall allow the horse to start or continue in the race under protest, and the premium, if any won by that horse, shall be forthwith transmitted to the commission to allow the parties interested an opportunity to sustain the allegation of the protest, or furnish information which will warrant an investigation of the matter. Where no action is taken to sustain the protest within 30 days, payment may be made as if such protest had not been filed.

d. Any person found guilty of protesting a horse falsely and without cause, or merely with intent to embarrass a race, shall be punished by a fine or by a suspension.

e. Nothing here contained shall affect the distribution of the pari-mutuel pools, when the distribution is made upon the official placing at the conclusion of the heat or dash.

f. In case of an appeal or protest, the purse money affected will be deposited with the commission in trust funds pending the decision of the appeal.

9.4(22) Timing and records.

a. Timing races. In every race, the time of each heat shall be accurately taken by three timers or an approved electric timing device, in which case there shall be one timer, and placed in the record in minutes, seconds, and fifths of seconds and, upon the decision of each heat, the time shall be publicly announced or posted. No unofficial timing shall be announced or admitted to the record and, when the timers fail to act, no time shall be announced or recorded for that heat.

b. Error in reported time. In any case of alleged error in the record, announcement or publication of the time made by a horse, the time so questioned shall not be changed to favor the horse or owner, except upon the sworn statement of the stewards and timers who officiated in the race.

c. Time, where lapped on. The leading horse shall be timed and time only shall be announced. No horse shall obtain a win race record by reason of the disqualification of another horse unless the horse's actual race time can be determined by photo finish or electronic timing.

d. Time for dead heat. In case of a dead heat, the time shall constitute a record for the horses making a dead heat and both shall be considered winners.

e. Timing procedure. The time shall be taken from the first horse leaving the point from which the distance of the race is measured until the winner reaches the wire.

f. Fraudulent misrepresentation. Any person who shall be guilty of fraudulent misrepresentation of time or the alteration of the record in any public race shall be fined, suspended or expelled, and the time declared not a record.

9.4(23) Matters not covered by rules. Any situation not covered by the rules of this commission shall be decided by the board of stewards in their discretion.

9.4(24) Post time; entry number.

a. Post time. A delay in the first post of not more than ten minutes from the established post time may be taken without prior approval of the commission or board of stewards.

b. Heat number and saddle pads. Each competing horse shall be equipped with numbers of style, type and design approved by the commission or its representatives. Numbers shall be so arranged that coupled entries may be distinguished and also horses coupled in the field.

9.4(25) Paddock rules.

a. Every track shall:

(1) Provide a paddock or receiving barn which must be completely enclosed with a secure fence and each opening through the fence shall be policed by a person or persons licensed by this commission so as to exclude unauthorized personnel. A daily record of all persons entering or leaving the paddock from one hour prior to post time until all races of that program have been completed shall be maintained on forms approved by the commission.

(2) Horses must be in the paddock at the time prescribed by the steward, but in any event at least one hour prior to post time of the race in which the horse is to compete. Except for warm-up trips, no horse shall leave the paddock until called to the post.

(3) Persons entitled to admission to the paddock must be at least 16 years old and include:

1. Owners of horses competing on the date of the race.
2. Trainers of horses competing on the date of the race.
3. Drivers of horses competing on the date of the race.
4. Grooms and caretakers of horses competing on the date of the race.
5. Officials whose duties require their presence in the paddock or receiving barn.
6. Officials of the commission.
7. The designated representative of the horsemen.
8. Any person(s), not more than two, approved by the stewards who is a guest of an owner of a horse competing that day.

(4) No driver, trainer, groom or caretaker, once admitted to the paddock or receiving barn, shall leave it other than to warm up the horse until the race(s) for which it was admitted is contested.

(5) No person except an owner, who has another horse racing in a later race, or an official shall return to the paddock until all races of the program have been completed.

(6) All persons, except drivers in the driver's stand, must leave the paddock as soon as their duties are completed for the race or races for which they were admitted.

(7) All members of a registered stable, other than the driver, shall be entitled to admission to the paddock on any one racing day.

(8) During racing hours, each track shall provide the services of a blacksmith within the paddock.

(9) During racing hours, each track shall provide suitable extra equipment as may be necessary for the conduct of racing without unnecessary delay.

b. Head numbers and saddle pads. At all tracks, head numbers and saddle pads must be used on horses when warming up and racing. The saddle pads in use at the tracks conducting extended pari-mutuel meetings shall be standardized consistent with a format to be established by U.S.T.A.

c. Supervision of meeting. Although track licensees have the obligation of general supervision of their meeting, interference with the proper performance of duties of any official is prohibited.

9.4(26) Other track conditions.

a. Default in payment of purses. Any track that defaults in the payment of a premium that has been raced for shall stand suspended, together with its officers.

b. If, at a meeting of a licensed track, a race is contested which has been promoted by another party or parties, and the promoters default in the payment of the amount raced for, the

same liability shall attach to the licensed track as if the race had been offered by it.

c. Removal of horses from the grounds. No horse shall be ordered off the grounds without at least 72 hours' notice (excluding Sunday) to the person in charge of the horse. Failure to remove the horses shall subject the owner or the trainer to suspension, revocation or a fine.

491—9.5(99D) Medication and administration, sample collection, chemists, and practicing veterinarian.

9.5(1) Medication and administration.

a. No horse, while participating in a race, shall carry in its body any medication, or drug, or foreign substance, or metabolic derivative, that is a narcotic, or that could serve as a local anesthetic, or tranquilizer, or that could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, affecting its speed. (See Iowa Code section 99D.25A.)

b. Also prohibited are any drugs or foreign substances that might mask or screen the presence of the prohibited drugs, or prevent or delay testing procedures.

c. Proof of detection by the commission chemist of the presence of a medication, or drug, or foreign substance, or metabolic derivative, prohibited by paragraph "a" or "b" in a saliva, urine or blood sample duly taken under the supervision of the commission veterinarian from a horse immediately prior to or promptly after running in a race, shall be prima facie evidence that the horse was administered with the intent that it would carry or that it did carry prohibited medication, drug, or foreign substance in its body while running in a race in violation of this rule.

d. Administration or possession of drugs.

(1) Prior to the race, no person shall administer, cause to be administered, participate, or attempt to participate, in any way in the administration of any medication, drug, foreign substance, or treatment by any route, to a horse registered for racing on the day of the race for which the horse is entered.

(2) No person except a veterinarian shall have in possession any prescription drug. However, a person may possess a noninjectable prescription drug for animal use if:

1. The person actually possesses, within the racetrack enclosure, documentary evidence that a prescription has been issued to the person for such a prescription drug.

2. The prescription contains a specific dosage for the particular horse or horses to be treated by the prescription drug.

3. The horse or horses named in the prescription are then in said person's care within the racetrack enclosure.

(3) No veterinarian or any other person shall have in possession or administer to any horse within any racetrack enclosure any chemical substance which:

1. Has not been approved for use on equines by the Food and Drug Administration pursuant to the Federal Food, Drug and Cosmetic Act, 21 U.S.C. Section 301 et seq., and implementing regulations, without prior written approval from a commission veterinarian, after consultation with the board of stewards.

2. Is on any of the schedules of controlled substances as prepared by the Attorney General of the United States pursuant to 21 U.S.C. Sections 811 and 812, without the prior written approval from a commission veterinarian, after consultation with the board of stewards.

The commission veterinarian shall not give such approval unless the person seeking such approval can produce evidence in recognized veterinary journals or by recognized equine experts that such chemical substance has a beneficial, therapeutic use in horses.

(4) No veterinarian or any other person shall dispense, sell or furnish any feed supplement, tonic, veterinary preparation, medication, or any substance that can be administered or applied to a horse by any route to any person within the grounds of the association unless there is a label specifying the name of the substance dispensed, the name of the dispensing person, the name of the horse or horses for which the substance is dispensed, the purpose for which said substance is dispensed, the dispensing veterinarian's recommendations for withdrawal before racing (if applicable), and the name o the person to whom dispensed, or is otherwise labeled as required by law.

(5) No person shall have in possession or in areas under their responsibility on association grounds, any feed supplement, tonic, veterinary preparation, medication, or any substance that can be administered or applied to a horse by any route unless it complies with the labeling requirements in subparagraph (4) above.

e. Any person found to have administered a medication, drug, or foreign substance that caused or could have caused a violation of this rule, or caused or participated or attempted to participate in any way in the administration, shall be subject to disciplinary action.

f. The owner, trainer, groom or any other person having charge, custody or care of the horse is obligated to protect the horse properly and guard it against the administration or attempted administration and, if the stewards shall find that any person has failed to show proper protection and guarding of the horse or, if the stewards find that any owner, lessee or trainer is guilty of negligence, they shall impose punishment and take other action they deem proper under any of the rules including reference to the commission.

g. In order for a horse that is on a bleeder's list in another state to be granted reciprocity in Iowa and be placed on a bleeder's list in Iowa, the rules governing placement on the bleeder's list in that other state must equal or exceed those of Iowa.

9.5(2) Sample collection.

a. Urine, blood and other specimens shall be taken and tested from any horse that the stewards of the meeting, commission veterinarian, or the commission's representatives may designate. Tests are to be under the supervision of the commission. The samples shall be collected by the commission veterinarian or other person or persons the commission may designate.

b. A track shall have a detention barn under the supervision of the commission veterinarian for the purpose of collecting body fluid samples for any tests required by the commission. The building, location, arrangement, furnishings and facilities, including refrigeration and hot and cold running water, must be approved by the commission.

c. No unauthorized person shall be admitted at any time to the building or the area utilized for the purpose of collecting the required body fluid samples or the area designated for the retention of horses pending the obtaining of body fluid samples.

d. During the taking of samples from a horse, the owner or responsible trainer, or a representative designated by the owner or trainer, may be present and witness the taking of the sample and so signify in writing. Failure to be present and witness the collection of the samples constitutes a waiver by the trainer or representative of any objections to the source and documentation of the sample.

RACING AND GAMING COMMISSION[491](cont'd)

e. A security guard, approved by the commission, must be in attendance during the hours designated by the commission.

f. The commission veterinarian, the board of stewards, agents of the division of criminal investigation, or the authorized representative of the commission may take samples of any medicine or other materials suspected of containing improper medication, drugs, or other substance which could affect the racing condition of a horse in a race which may be found in barns or elsewhere on racetracks or in the possession of any person connected with racing, and shall be delivered to the official chemist for analysis.

g. Nothing in these rules shall be construed to prevent:

(1) Any horse in any race from being subjected by the order of a steward or the commission veterinarian to tests of body fluid samples for the purpose of determining the presence of any foreign substance.

(2) The state steward or the commission veterinarian from authorizing the splitting of any sample.

(3) The commission veterinarian from requiring body fluid samples to be stored in a frozen state for future analysis.

Administration of lasix and phenylbutazone shall be allowed only as permitted under Iowa Code section 99D.25A.

h. Before leaving the racing surface, the trainer shall ascertain the testing status of the horse under such trainer's care from the commission veterinarian or designated test barn representative.

9.5(3) Chemists.

a. The commission shall employ one or more chemists or contract with one or more qualified chemical laboratories to determine by chemical testing and analysis of body fluid samples whether a substance or drug is present which may affect the outcome of a race or which may interfere with the testing procedure as provided in Iowa Code section 99D.23(1).

b. All body fluid samples taken by or under direction of the commission veterinarian or authorized representative of the commission shall be delivered to the laboratory of the official chemist for analysis. Each sample shall be marked or numbered and bear information essential to its proper analysis; but the identity of the horse from which the sample was taken or the identity of its owner(s) or trainer shall not be revealed to the official chemist or the staff of the chemist. The container of each sample shall be sealed as soon as the sample is placed thereon.

c. The commission chemist shall be responsible for safeguarding and testing each sample delivered to the laboratory by the commission veterinarian.

d. The commission chemist shall conduct individual tests on each sample, screening same for prohibited substances, and conducting other tests to detect and identify any suspected prohibited substance or metabolic derivative with specificity. Pooling of samples shall be permitted only with the knowledge and approval of the commission.

e. Upon the finding of a test negative for prohibited substances, the remaining portions of the sample may be discarded. Upon the finding of tests suspicious or positive for prohibited substances, the tests shall be reconfirmed, and the remaining portion of the specimen, if available, shall be preserved and protected until the stewards rule it may be discarded.

f. The commission chemist shall submit to the state steward a written report as to each specimen tested, indicating by sample tag identification number, whether the sample was tested negative or positive for prohibited substances. The commission chemist shall report test findings to no person other than the state steward or a designated representative of the state steward.

(1) In the event the commission chemist should find a specimen suspicious for a prohibited medication, additional time for test analysis and confirmation may be requested.

(2) The racing association shall not make distribution of any purses until given clearance of chemical tests by the state steward.

g. In reporting to the state steward a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of the professional opinion as to the positive finding.

h. No action shall be taken by the state steward on the report of the official chemist unless and until the medication, drug or other substance has been properly identified, as well as the horse from which the sample was taken, nor until an official report signed by the chemist has been received by the state steward.

i. The cost of the testing and analysis shall then be reimbursed by each licensed association on a per sample basis so that each association shall bear only its proportion of the total cost of testing and analysis.

9.5(4) Practicing veterinarian.

a. Prohibited acts.

(1) Ownership. A licensed veterinarian practicing at any meeting is prohibited from any ownership, directly or indirectly, of any horse racing during the meeting.

(2) Wagering. Veterinarians licensed by the commission as veterinarians are prohibited from placing any wager of money or other thing of value directly or indirectly on the outcome of any race conducted at the meeting at which the veterinarian is furnishing professional service.

(3) Prohibition of furnishing injectable materials. No veterinarian shall within the association grounds furnish, sell or loan any hypodermic syringe, needle, or other injection device, or any drug, narcotic or prohibited substance to any other person within the grounds of an association where race horses are stabled unless with written permission of the stewards.

b. Single-use syringes. The use of other than single-use disposable syringes and infusion tubes on association premises is prohibited. Whenever a veterinarian has used a hypodermic needle or syringe, the veterinarian shall destroy the needle and syringe and remove it from the association premises.

c. Veterinarians must submit daily to the commission veterinarian on a prescribed form a report of all medications and other substances which the veterinarian prescribed, administered or dispensed for horses registered at the current race meeting as provided in Iowa Code section 99D.25. Reports shall be submitted in a manner and at a time determined by the commission veterinarians not later than the day following the treatments being reported. Reports shall include the horse, trainer, medication or other substance, dosage or quantity, route of administration and time administered, dispensed or prescribed.

d. Report of illness. Each veterinarian shall report immediately to the stewards and the commission veterinarian any illness in a horse entrusted to the veterinarian's care presenting unusual or unknown symptoms.

e. Employees. Practicing veterinarians may have employees working under their direct supervision licensed as "veterinary assistants" or "veterinary technicians." Activities of these employees shall not include direct treatment or

diagnosis of any racing animal. A practicing veterinarian must be present if an employee is to have access to injection devices or injectables.

f. Equine dentistry. Equine dentistry is considered a function of veterinary practice by the Iowa veterinary practice Act. Any dental procedures performed at the racetrack must be performed by a licensed veterinarian or a licensed veterinary assistant.

ITEM 2. Amend 491—Chapter 13 by adding the following new rule:

491—13.27(99D) Driver.

13.27(1) Eligibility. In considering eligibility for a driver's license, the board of stewards shall consider:

a. Whether the applicant has obtained the required U.S.T.A. license, that type of the driver. All drivers hold a U.S.T.A. license.

b. Evidence of ability to drive in a race and driving experience.

c. Age of applicant (must be at least 18 years of age).

d. Evidence of physical and mental ability.

e. Results of a written examination to determine qualifications to drive and knowledge of racing and gaming commission rules.

f. Record of rule violations.

13.27(2) Reserved.

ARC 8930A

REVENUE AND FINANCE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 450.3, the Department of Revenue and Finance (Department) hereby gives Notice of Intended Action to amend Chapter 86, "Inheritance Tax," Chapter 87, "Iowa Estate Tax," Chapter 88, "Generation Skipping Transfer Tax," and Chapter 89, "Fiduciary Income Tax," Iowa Administrative Code.

The Department and the Iowa State Bar Association have worked together towards the final draft of these proposed amendments. The Department provided the Iowa State Bar Association with copies of the proposed changes set forth in this Notice of Intended Action, and the tax committee for the Iowa State Bar Association has approved the proposed amendments as found herein.

The purpose of these amendments is to update the chapters by amending rules to comply with current law and adding examples, striking obsolete language and examples, and providing additional information and examples to clarify the rules included in 701—Chapters 86 to 89 of the Iowa Administrative Code. Several rules have been rearranged to assist in setting forth the rules in a more efficient and understandable manner. As a result, there are several rules in which large amounts of current and valid text are to be stricken. However, this stricken text becomes new language in a new rule or part of a new subrule or paragraph in order that the information be contained in a more logical sequence.

These amendments do not contain any controversial changes. Most of the new language contained in these amendments can be summarized as follows: Item 1 amends 701—86.1(450) to add new definitions which include "child," "devise," "estate," "executor," "fiduciary," "heir," "intestate estate," "issue," "personal representative," "responsible party," "simultaneous deaths," "surviving spouse," "trustee," "trusts," and "will."

Items 1, 16, 20, and 23 have been amended to implement the repeal of the safe deposit box inventory requirement.

Item 5 amends subrule 86.5(10) to provide nonexclusive examples regarding what constitutes the exercise of a power of appointment. This item also amends subrule 86.5(12) to clarify the analysis between Iowa Code sections 422.7(4) and 450.4 regarding what property in an estate would be subject to income or inheritance tax.

Item 6 amends subrule 86.6(1) to provide clarification as to what constitutes a deductible liability and what is considered to be acceptable proof of such a liability. This item also amends subrule 86.6(2) to provide information on how to prorate cash bequests.

Item 10 amends 701—86.9(450) to provide for relevant information regarding the Uniform Transfer on Death Security Registration Act set forth in Iowa Code section 633.800 and also to update the requirements for the mailing of the notice of appraisal as required in Iowa Code section 450.28 as amended by 1997 Iowa Acts, chapter 157, section 1.

Item 13 amends 86.12(5) to explain the basis for imposition of the 10- and 20-year statute of limitations for liens on property of estates with deaths occurring prior to July 1, 1995.

Item 14 proposes a new rule, 701—86.14(450), which sets forth definitions of commonly referenced and utilized means and terms for computing shares of an estate, such as the right to take against the will, family settlements, order of abatement, contrary order of abatement, stepped-up basis, antilapse and exceptions to the antilapse statute, disclaimers, and right of retainer.

Item 20 amends 701—88.3(450A) by setting forth additional language to clarify extensions, the due date of a return, and payment of the tax under generation skipping tax.

Item 21 amends 701—89.1(422) to insert definitions of "gross income" and "taxable income" for the purpose of fiduciary tax.

Item 24 amends 701—89.4(422) to clarify that receipt of a return and 90 percent of the tax will result in an automatic six-month extension of time to pay the remaining tax. This rule is also amended to clarify that estimated payment of withholding must occur if distribution is made to a taxable beneficiary of an estate or trust.

Item 27 amends subrule 89.8(1) to set forth the Department's policy regarding the treatment of preneed funeral trusts in light of the Taxpayer Relief Act of 1997.

Item 28 amends subrule 89.8(7) to set forth what governs the basis for valuing property for the purpose of fiduciary tax.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or

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by mailing postmarked no later than May 25, 1999, to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on these proposed amendments on or before June 4, 1999. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact the Policy Section, Compliance Division, Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by May 28, 1999.

These amendments are intended to update and clarify the law as set forth in Iowa Code chapters 422, 450, 450A, 450B, 451, and 633.

The following amendments are proposed.

ITEM 1. Amend rule 701—86.1(450) as follows:

701—86.1(450) Administration.

86.1(1) Definitions. The following definitions cover Chapter 86.

~~a. "Department" means the department of revenue and finance.~~

~~b. "Director" means the director of revenue and finance.~~

~~c.~~ "Administrator" means the administrator of the ~~audit and~~ compliance division of the department of revenue and finance.

"Child" means a biological or adopted issue entitled to inherit pursuant to Iowa Code chapter 633.

~~d. "Audit and compliance~~ *"Compliance* division" is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

"Department" means the department of revenue and finance.

"Devise," when used as a verb, means to dispose of property, both real and personal, by a will.

"Director" means the director of revenue and finance.

"Estate" means the real and personal property, tangible and intangible, of the decedent or a trust, that over time may change in form due to sale, reinvestment, or otherwise, and augmented by accretions or additions thereto and substitutions therefor, or diminished by any decreases and distributions therefrom. For the definitions of "gross estate" and "net estate" under this chapter, see those terms as referenced in this subrule.

"Executor" means any person appointed by the court to administer the estate of a testate decedent.

"Fiduciary" includes personal representative, executor, administrator, and trustee. This term includes both temporary and permanent fiduciaries appointed by the court to settle the decedent's probate estate and also the trustee of an inter vivos trust where the trust assets are part of the gross estate for inheritance tax purposes.

~~e. "Taxpayer" means a person liable for the payment of the inheritance tax under Iowa Code section 450.5 and includes the executor or administrator of an estate, the trustee or other fiduciary of property subject to inheritance tax and also each heir, beneficiary, surviving joint tenant, transferee or other person becoming beneficially entitled to any property or interest therein by any method of transfer specified in Iowa Code section 450.3, as subject to inheritance tax with respect to any inheritance tax due on their share of the property.~~

~~f. "Tax" means the inheritance tax imposed by Iowa Code chapter 450.~~

~~g.~~ "Gross estate" as used for inheritance tax purposes *as defined in Iowa Code section 450.2* includes all those items, or interests in property, passing by any method of transfer specified in Iowa Code section 450.3 without reduction for liabilities specified in Iowa Code section 450.12. The gross estate for tax purposes may not be the same as the estate for probate purposes. For example, ~~jointly owned property~~ *property owned as joint tenants with right of survivorship,* property transferred with a retained life use, gifts ~~in contemplation~~ *within three years* of death, transfers to take effect in possession or enjoyment at death, *trust property, "pay on death" accounts,* annuities, and certain retirement plans, are not part of the decedent's probate estate, but are includable in the decedent's gross estate for inheritance tax purposes. In re Louden's Estate, 249 Iowa 1393, 92 N.W.2d 409 (1958); In re Sayres' Estate, 245 Iowa 132, 60 N.W.2d 120 (1953); In re Toy's Estate, 220 Iowa 825, 263 N.W. 501 (1935); In re Mann's Estate, 219 Iowa 597, 258 N.W. 904 (1935); Matter of Bliven's Estate, 236 N.W.2d 366 (Iowa 1975); In re English's Estate, 206 N.W.2d 305 (Iowa 1973).

~~h. "Net estate" means the gross estate less those items specified in Iowa Code section 450.12 as deductions in determining the net shares of property of each heir, beneficiary, surviving joint tenant or transferee. In re Estate of Waddington, 201 N.W.2d 77 (Iowa 1972). Attorney fees and expenses incurred in marshaling assets can be deductible even though not specified in Iowa Code section 450.12. See Bair v. Randall, 258 N.W.2d 333 (Iowa 1977).~~

~~i.~~ "Gross share" means the total amount of property of an heir, beneficiary, surviving joint tenant, or transferee, without reduction of those items properly deductible in computing the net shares. The total of all gross shares is equal to the gross estate.

"Heir" includes any person, except the surviving spouse, who is entitled to property of the decedent under the statutes of intestate succession.

~~j. "Net share" means the gross share less the liabilities, if any, which are properly deductible from the gross share of an heir, beneficiary, surviving joint tenant or transferee. The law of abatement of shares is applicable for purposes of determining the net share subject to tax. In re Estate of Noe, 195 N.W.2d 361 (Iowa 1972); Colthurst v. Colthurst, 265 N.W.2d 590 (Iowa 1978); In re Estate of Duhme, 267 N.W.2d 688 (Iowa 1978). However, see Iowa Code section 633.278 for property subject to a mortgage.~~

~~k. "Personal representative" shall have the same meaning as the term is defined in Iowa Code subsection 633.3(29).~~

~~l.~~ "Internal Revenue Code" means the Internal Revenue *Code of 1954* as defined in Iowa Code section 422.3*(4), and is to include the revisions to the Internal Revenue Code made in 1986 and all subsequent revisions.*

"Intestate estate" means an estate in which the decedent did not have a will. Administration of such estates is governed by Iowa Code sections 633.227 through 633.230.

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Rules of inheritance for such estates are found in Iowa Code sections 633.211 through 633.226.

"Issue," for the purpose of intestate succession, means all lawful lineal descendants of a person, whether biological or adopted. For details regarding intestate succession, see Iowa Code sections 633.210 through 633.226. For details regarding partial intestate succession, see Iowa Code section 633.272.

"Net estate" means the gross estate less those items specified in Iowa Code section 450.12 as deductions in determining the net shares of property of each heir, beneficiary, surviving joint tenant, or transferee. In re Estate of Waddington, 201 N.W.2d 77 (Iowa 1972). The total of all net shares of an estate must equal the total of the net estate.

"Net share" means the gross share less the liabilities, if any, which are properly deductible from the gross share of an heir, beneficiary, surviving joint tenant, or transferee. The law of abatement of shares may be applicable for purposes of determining the net share subject to tax. See Iowa Code section 633.436; In re Estate of Noe, 195 N.W.2d 361 (Iowa 1972); Colthurst v. Colthurst, 265 N.W.2d 590 (Iowa 1978); In re Estate of Duhme, 267 N.W.2d 688 (Iowa 1978). However, see Iowa Code section 633.278 for property subject to a mortgage.

"Personal representative" shall have the same meaning as the term is defined in Iowa Code section 633.3(29) and shall also include trustees. For information regarding claims of a personal representative, see Iowa Code section 633.431.

"Probate" means the administration of an estate in which the decedent either had or did not have a will. Jurisdiction over the administration of such estates, among other matters, is by the district court sitting in probate. For further details on the subject matter and personal jurisdiction of the district court sitting in probate, see Iowa Code sections 633.10 through 633.21. For matters regarding the procedure in probate, see Iowa Code sections 633.33 through 633.53.

"Responsible party" is the person liable for the payment of tax under this chapter. See 701—86.2(450).

"Simultaneous deaths" occur when the death of two or more persons occurs at the same time or there is not sufficient evidence that the persons have died otherwise than simultaneously. For distribution of property in this situation, see Iowa Code sections 633.523 through 633.528.

"Surviving spouse" means the legally recognized surviving wife or husband of the decedent.

"Tax" means the inheritance tax imposed by Iowa Code chapter 450.

"Taxpayer" means a person liable for the payment of the inheritance tax under Iowa Code section 450.5 and includes the executor or personal representative of an estate, the trustee or other fiduciary of property subject to inheritance tax, and includes each heir, beneficiary, surviving joint tenant, transferee, or other person becoming beneficially entitled to any property or interest therein by any method of transfer specified in Iowa Code section 450.3, as subject to inheritance tax with respect to any inheritance tax due on the respective shares of the property.

"Trustee" means the person or persons appointed as trustee by the instrument creating the trust or the person or persons appointed by the court to administer the trust.

"Trusts" means real or personal property that is legally held by a person or entity for the benefit of another. This includes, but may not be limited to, express trusts, trusts imposed by court order, trusts administered by the court, and testamentary trusts. Such trusts are subject to Iowa Code chapter 450, even in situations when the estate consists solely of trust property.

"Will" includes codicil; it also includes a testamentary instrument that merely appoints an executor, and a testamentary instrument that merely revokes or revives another will. For information regarding mutual and contractual wills, see Iowa Code section 633.270.

86.1(2) Delegation of authority. The director delegates to the administrator ~~of the audit and compliance division~~, subject always to the supervision and review by the director, the authority to administer the Iowa inheritance tax. This delegated authority specifically includes, but is not limited to, the determination of the correct inheritance tax liability; making assessments against the taxpayer for additional inheritance tax due; authorizing refunds of excessive inheritance tax paid; issuing receipts for inheritance tax paid; executing releases of the inheritance tax lien; granting extension of time to file the inheritance tax return and pay the tax due; granting deferments to pay the inheritance tax on a property interest to take effect in possession or enjoyment at a future date; requesting or waiving the appraisal of property subject to the inheritance tax and the imposition of penalties for failure to timely file or pay the inheritance tax. The administrator ~~of the audit and compliance division~~ may delegate the examination and audit of inheritance tax returns to the supervisors, examiners, agents, and ~~clerks~~ *any other employees or representatives* of the ~~division~~ *department*.

86.1(3) Information deemed confidential. Federal tax returns, federal return information, inheritance tax returns, and the books, records, documents, and accounts of any person, firm, or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the inheritance tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. Section 6103 pertaining to confidentiality and disclosure of federal tax returns and federal return information.

86.1(4) Information not confidential. Copies of wills, *the filing of an inheritance tax lien, release of a real estate lien,* probate inventories, trust instruments, deeds and other documents which ~~are~~ *have been* filed for public record are not deemed confidential by the department.

86.1(5) Forms. The final inheritance tax return, inheritance tax receipts, and forms for the audit, assessment, and refund of the inheritance tax shall be in such form as may be prescribed *or approved* by the director—*see 701—8.3(17A)*.

86.1(6) *Safe deposit boxes. Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner, or beneficiary.*

This rule is intended to implement Iowa Code chapters 22 and 450 and Iowa Code sections 421.2, 450.67, 450.68, 450.94, ~~and~~ 450B.7, *and 1997 Iowa Acts, chapter 60, sections 1 and 2.*

ITEM 2. Amend rule 701—86.2(450) as follows:

701—86.2(450) Inheritance tax returns and payment of tax.

86.2(1) ~~Liability for the tax. The personal representative of an estate is personally liable for the total tax due from any person receiving property subject to the tax, to the extent of the person's share of the property subject to the jurisdiction of the probate court and the personal representative. The trustee of trust property subject to tax is personally liable for~~

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~~the total tax due from a beneficiary, to the extent of the person's share of the trust property. Each heir, beneficiary, transferee, joint tenant and any other person being beneficially entitled to any property subject to tax, is personally liable for the tax due on all property received subject to the tax. The person is not liable for the tax due on another person's share of property subject to tax, unless the person is also a personal representative, trustee or other fiduciary liable for the tax by reason of having jurisdiction over the property, the succession to which is taxable. Eddy v. Short, 190 Iowa 1376, 179 N.W. 818 (1920); Waterman v. Burbank, 196 Iowa 793, 195 N.W. 191 (1923).~~ *Filing of an inheritance tax return. Estates meeting certain requirements must file an inheritance tax return, and it is the duty of certain persons associated with the estate to file the inheritance tax return as follows:*

a. Mandatory filing. The inheritance tax return provided for in subrule 86.2(2) must be filed if the gross share of any heir, beneficiary, transferee, or surviving joint tenant exceeds the exemptions allowable in Iowa Code sections 450.4 and 450.9. In addition, if Iowa real estate is includable in the gross estate, the return must be filed, even if no tax is due, prior to the issuance of a no tax due certificate.

b. Who must file. If the decedent's estate is probated as provided in Iowa Code chapter 633 or administered as provided in Iowa Code section 450.22, the personal representative of the estate is charged with the duty of filing the return with the department. If the personal representative of the estate fails to file the return or if the estate is not probated, it shall be the duty of those heirs, beneficiaries, transferees, surviving joint tenants, and trustees who receive shares in excess of the allowable exemptions or shares which are taxable in whole or in part, without the deduction of liabilities, and those individuals in receipt of the decedent's property are either jointly or severally to file the return with the department.

86.2(2) Form and content—inheritance tax return.

a. No change.

b. Estates of decedents dying on or after July 1, 1983. For estates of decedents dying on or after July 1, 1983, the preliminary inheritance tax return is abolished and a single inheritance tax return is substituted in lieu thereof. The return shall provide for schedules listing the assets includable in the gross estate, a listing of the liabilities deductible in computing the net estate, and a computation of the tax due, if any, on each share of the net estate. The return shall conform as nearly as possible to the federal estate tax return, Form 706. *For information regarding Iowa returns, see subrule 86.1(5).* If the estate has filed a federal estate tax return, a copy must be submitted with the Iowa return. If the federal estate return includes the schedules of assets and liabilities, the taxpayer may omit the Iowa schedules of assets ~~and liabilities~~ from the return. *However, any Iowa schedules indicating liabilities must be filed with the Iowa return due to proration of liabilities.* When Iowa schedules are filed with the return, only those schedules which apply to the particular assets and liabilities of the estate are required. A return merely listing the assets and their values when the gross estate is in excess of $10,000 is not sufficient in nontaxable estates. In this case, the return must be amended to list the schedule of liabilities and the computation of the shares of the net estate before an inheritance tax clearance will be issued.

c. Special rule when the surviving spouse succeeds to property in the estate. Effective for estates of decedents dying on or after January 1, 1988, the following rules apply when the surviving spouse succeeds to property in the estate:

(1) No change.

(2) If any of the property includable in the gross estate passes to the surviving spouse by means other than by joint tenancy with right of survivorship or if any property passes by joint tenancy with right of survivorship when the surviving spouse is not the only surviving joint tenant, an inheritance tax return is required to be filed ~~when real estate is part of the gross estate, even though no tax is due, and a certificate from the department is required stating either no tax is due or all tax has been paid in order to satisfy the lien requirement of Iowa Code section 450.7(2).~~

d. No change.

86.2(3) ~~Amendments—preliminary return and probate inventory. Rescinded IAB 10/13/93, effective 11/17/93.~~ *Liability for the tax. The personal representative of an estate is personally liable for the total tax due from any person receiving property subject to the tax, to the extent the person's share of the property is subject to the jurisdiction of the probate court and the personal representative. The trustee of trust property subject to tax is personally liable for the total tax due from a beneficiary to the extent of the person's share of the trust property. Each heir, beneficiary, transferee, joint tenant, and any other person being beneficially entitled to any property subject to tax is personally liable for the tax due on all property received subject to the tax. The person is not liable for the tax due on another person's share of property subject to tax, unless the person is also a personal representative, trustee, or other fiduciary liable for the tax by reason of having jurisdiction over the property, the succession to which is taxable. Eddy v. Short, 190 Iowa 1376, 179 N.W. 818 (1920); Waterman v. Burbank, 196 Iowa 793, 195 N.W. 191 (1923).*

~~86.2(4) Who must file—preliminary return and probate inventory. Rescinded IAB 10/13/93, effective 11/17/93.~~

~~86.2(5) Time for filing—preliminary return and probate inventory. Rescinded IAB 10/13/93, effective 11/17/93.~~

~~86.2(6) Mandatory filing—inheritance tax return. The inheritance tax return provided for in subrule 86.2(2) must be filed if the gross share of any heir, beneficiary, transferee or surviving joint tenant exceeds the exemptions allowable in Iowa Code sections 450.4 and 450.9. In addition, if Iowa real estate is includable in the gross estate, the return must be filed, even if no tax is due, prior to the issuance of a no tax due certificate.~~

~~86.2(7) Who must file—inheritance tax return. If the decedent's estate is probated, the personal representative of the estate shall have the duty of filing the return with the department. If the personal representative of the estate fails to file the return or if the estate is not probated, it shall be the duty of those heirs, beneficiaries, transferees, surviving joint tenants and trustees who receive shares in excess of the allowable exemptions or which are taxable in whole or in part, without the deduction of liabilities, either jointly or severally to file the return with the department.~~

~~86.2(8)~~ ***86.2(4)*** Supplemental return—deferred interest. When the tax has been deferred on a property interest to take effect in possession or enjoyment after the termination of a prior property interest, it shall be the duty of the owner of the future interest to file a supplemental inheritance tax return with the department, reporting the future interest for taxation.

~~86.2(9)~~ ***86.2(5)*** Amended return. If additional assets or *errors in valuation of assets or deductible* liabilities ~~deductible~~ are discovered ~~or incurred, as the case may be,~~ after the

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filing of the inheritance tax return increasing the amount of tax due, an amended inheritance tax return must be filed with the department, reporting the additional assets ~~or liabilities~~. *The appropriate penalty and interest will be charged on the additional tax due pursuant to Iowa Code section 421.27 and department rules in 701—Chapter 10. To file an amended inheritance tax return, Form IA 706 shall be completed and at the top of the front page of the return the word "AMENDED" shall be printed.* If additional ~~assets or~~ liabilities are discovered or incurred after the filing of the inheritance tax return~~,~~ which ~~results~~ *result* in an overpayment of tax, an amended inheritance tax return ~~may~~ *must* be filed ~~in lieu of a claim for refund.~~ *in the manner indicated above. For amended returns resulting from federal audit adjustments—see subrule 86.3(6) and rules 701—86.9(450) and 86.12(450). For permitted and amended returns not permitted for change of values—see subrule 86.9(4).*

~~86.2(10)~~ ***86.2(6)*** Due date for filing—return on present property interests. Unless an extension of time has been granted, the final inheritance tax return, or the inheritance tax return in case of decedents dying on or after July 1, 1983, must be filed and any tax due paid, for all property in present possession or enjoyment:

a. On or before the last day of the ninth month after death for estates of decedents dying on or after July 1, 1984, *subject to the due date falling on a Saturday, Sunday, or legal holiday, which would then make the return due on the following business day.* The following table for return due dates illustrates this subrule:

Deaths Occurring During:	Return Due Date:
July ~~1984~~ *1996*	April 30, ~~1985~~ *1997*
August ~~1984~~	~~May 31, 1985~~ *June 2, 1997 (May 31 is a Saturday and June 1 is a Sunday)*
September ~~1984~~ *1996*	~~July 1, 1985~~ *June 30, 1997* ~~(June 30th is a Sunday)~~
October ~~1984~~ *1996*	July 31, ~~1985~~ *1997*
November ~~1984~~ *1996*	September ~~3~~ *2*, ~~1985~~ *1997* (August 31 is a ~~Saturday and Monday~~ *Sunday,* September ~~2~~ *1* is Labor Day)
December ~~1984~~ *1996*	September 30, ~~1985~~ *1997*
January ~~1985~~ *1997*	October 31, ~~1985~~ *1997*
February ~~1985~~ *1997*	December ~~2~~ *1*, ~~1985~~ *1997* (November 30 is a ~~Saturday~~ *Sunday*)
March ~~1985~~ *1997*	December 31, ~~1985~~ *1997*
April ~~1985~~ *1997*	~~January 31, 1986~~ *February 2, 1998 (January 31 is a Saturday and February 1 is a Sunday)*
May ~~1985~~ *1997*	~~February 28, 1986~~ *March 2, 1998 (February 28 is a Saturday and March 1 is a Sunday)*
June ~~1985~~ *1997*	March 31, ~~1986~~ *1998*

b. Within nine months after death for estates of decedents dying during the period beginning July 1, 1981, and ending June 30, 1984.

~~86.2(11)~~ ***86.2(7)*** Election to file—before termination of prior estate. The tax due on a future property interest may be paid, at the taxpayer's election, on the present value of the future interest as follows:

a. On or before the last day of the ninth month after the decedent's death~~,~~ *(*or within one year after the death of the decedent~~,~~ for estates of decedents dying prior to July 1, ~~1984~~ *1981)*. Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date of the decedent's death. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date of the decedent's death that must be used.

b. After the last day of the ninth month following the decedent's death (one year after death for estates of decedents dying prior to July 1, ~~1984~~ *1981*) but prior to the termination of the prior estate. Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date the tax is paid. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date the tax is paid that must be used. In re Estate of Wickham, 241 Iowa 198, 40 N.W.2d 469 (1950); In re Estate of Millard, 251 Iowa 1282, 105 N.W. 2d 95 (1960). In re Estate of Dwight E. Clapp, Clay County District Court, Probate No. 7251 (1980).

~~86.2(12)~~ ***86.2(8)*** Mandatory due date—return on a future property interest.

a. No change.

b. Mandatory due date—return on a future property interest for estates of decedents dying on or after July 1, ~~1984~~ *1981*. Unless the tax due on a future property interest has been paid under the provisions of subrule ~~86.2(11)~~ *86.2(7)*, paragraphs "a" and "b," the tax due must be paid on or before the last day of the ninth month following the termination of the prior estate. The statute does not provide for an extension of the mandatory due date for payment of the tax.

~~86.2(13)~~ ***86.2(9)*** Extension of time—return and payment.

~~a. For estates of decedents dying prior to July 1, 1984. For good cause, the department may grant an extension of time to file the inheritance tax return and pay the tax due on a property interest in present possession or enjoyment for a period not to exceed ten years after the decedent's death. The nine months (one year for future property interests created prior to July 1, 1981) period to file a supplemental inheritance tax return and pay the deferred tax due on a future estate cannot be extended if the prior estate terminates after the expiration of a previously granted extension of time. Application for an extension of time must be on forms prescribed by the director and must be made prior to the time the tax is due.~~

~~b. Extension of time—return and payment—for~~ *For* estates of decedents dying on or after July 1, 1984~~.~~, *the department may grant an extension of time to file an inheritance tax return on an annual basis. To be eligible for an extension, an application for an extension of time must be filed with the department on a form prescribed or approved by the director. The application for extension must be filed with the department prior to the time the tax is due and an estimated payment of 90 percent of the tax due must accompany the application—see Iowa Code section 421.27 and rule 701—10.85(422). An extension of time to pay the tax due may be granted in the case of hardship. However, for extensions to be granted, the request must include evidence of the hardship—see 701—Chapter 10. An extension of time to file cannot be extended for a period of time longer than ten years after the last day of the month in which the death of the decedent occurs.* ~~The provisions of this subrule also apply to estates of decedents dying on or after July 1, 1984, with the exception that an extension of time to file and pay cannot be ex-~~

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~~tended for a period of time longer than ten years after the last day of the month in which the death of the decedent occurs.~~

~~86.2(14) Renumbered as 701—10.85(422), IAB 1/23/91.~~

~~86.2(15) Renumbered as 701—subrule 10.85(1), IAB 1/23/91.~~

~~86.2(16) Renumbered as 701—subrule 10.85(2), IAB 1/23/91.~~

~~86.2(17) Renumbered as 701—subrule 10.85(3), IAB 1/23/91.~~

~~86.2(18) Renumbered as 701—subrule 10.85(4), IAB 1/23/91.~~

~~86.2(19) Renumbered as 701—subrule 10.85(5), IAB 1/23/91.~~

~~86.2(20) Renumbered as 701—subrule 10.85(6), IAB 1/23/91.~~

~~86.2(21)~~ ***86.2(10)*** Discount. There is no discount allowed for early payment of the tax due.

This rule is intended to implement Iowa Code sections 421.14, 450.5, 450.6, 450.9 as amended by 1997 Iowa Acts, Senate File 35, 450.22, 450.44, 450.46, 450.47, 450.51, 450.52, 450.53, 450.63, and 450.94.

ITEM 3. Amend rule 701—86.3(450) as follows:

701—86.3(450) Audits, assessments and refunds.

86.3(1) Audits. Upon filing of the inheritance tax return, the department ~~shall~~ *must* audit and examine it and determine the correct tax due. A copy of the federal estate tax return ~~shall~~ *must* be filed with the inheritance tax return in those estates where federal law requires the filing of a federal estate tax return. The department may request the submission of wills, trust instruments, contracts of sale, deeds, appraisals, and such other information as may reasonably be necessary to establish the correct tax due. *See Iowa Code sections 450.66 and 450.67 and* Tiffany v. County Board of Review, 188 N.W.2d 343, 349 (Iowa 1971). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4). The person or persons liable for the payment of the tax imposed by Iowa Code chapter 450 shall keep the records relating to the gross and net estate required for federal estate tax purposes under 26 U.S.C. Section 6001 of the Internal Revenue Code and federal regulation section 20.6001-1.

86.3(2) Assessments for additional tax. ~~If the audit and examination of the inheritance tax return or claim being filed, to the taxpayer with interest at 6 percent per annum after 60 days from the date of payment until December 31, 1981. See rule 701—10.2(421) for the assessment for the amount of tax due together with any penalty and interest. The amount of the assessment shall be a sum certain if paid on or before the last day of the month in which the notice of assessment is postmarked, or on or before the last day of the following month if the notice is postmarked after the twentieth day of a month and before the first day of the following month.~~ If the inheritance tax return is not filed within the time prescribed by law, taking into consideration any extensions of time, *or the return as filed is not correct,* the department may make an assessment for the tax and any penalty and interest due based on the inventories, wills, trust instruments, and other information ~~available~~ *necessary to ascertain the correct tax. For interest and penalty rate information, see 701—Chapter 10.*

86.3(3) Refunds.

~~a.~~ If the examination and audit of the inheritance tax return discloses an overpayment of tax, the department ~~shall~~ *will* refund the excess~~, without the necessity of an amended return or claim being filed,~~ to the taxpayer ~~with interest at 6 percent per annum until December 31, 1981.~~ See ~~rule 701—10.2(421)~~ *701—Chapter 10* for the statutory interest rate commencing on or after January 1, 1982. ~~Interest on refunds shall only be paid on overpayment of tax made in estates of decedents dying on or after July 1, 1975. No interest shall be allowed on refunds due the estates of decedents dying prior to July 1, 1975. (1976 O.A.G. 871.)~~ For estates of decedents dying *prior to* January 1, 1988, *interest shall be computed for* a period beginning 60 days from the date of the payment to be refunded. For estates of decedents dying on or after January 1, 1988, interest ~~shall~~ *must* be computed for a period beginning the first day of the second calendar month following the date of ~~the refunded~~ payment, or the date upon which the return which sets out the refunded payment was *actually* filed, or the date that return was due to be filed, whichever date is the latest. For the purposes of computing the period, each fraction of a month counts as an entire month. If the taxpayer, after the tax has been paid, discovers additional liabilities which, when offset by any additional assets results in an overpayment of the tax, the excess payment ~~shall~~ *will* be refunded to the taxpayer upon filing with the department ~~either~~ an amended inheritance tax return ~~or a claim for~~ *claiming a* refund. No refund for excessive tax paid shall be made by the department unless ~~a claim or~~ an amended return is filed with the department within three years (five years for estates of decedents dying prior to July 1, 1984) after the tax payment upon which the claim is made became due, or one year after the tax was paid, whichever time is the later—*see Iowa Code section 450.94(3).*

~~b. Special rule for refunds for estates electing special use value and qualified terminable interest property.~~

~~(1) If an additional inheritance tax has been paid in an estate of a decedent dying on or after July 1, 1983, by reason of the cessation of the qualified use of special use property due to renting the property by the spouse to a member of the family for cash, and the period for claiming a refund has expired under paragraph "a" of this subrule, the estate shall nevertheless have until November 10, 1989, to make a claim for a refund of the additional inheritance tax paid.~~

~~(2) An estate of a decedent dying on or after July 1, 1985, shall have until November 10, 1990, to make an election not to treat a joint and survivor annuity as passing to the surviving spouse as qualified terminable interest property. If the election made within the time period specified in this subparagraph results in an overpayment of the tax and the period for claiming a refund has expired under 86.3(3)"a," the estate shall nevertheless have until November 10, 1990, to make a claim for a refund of the excessive inheritance tax paid.~~

86.3(4) Supplemental assessments and refund adjustments. The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

86.3(5) Assessments—period of limitations. Effective for estates of decedents dying on or after July 1, 1984, assess-

ments for additional tax due must be made within the following periods of time:

a. Within three years after the return is filed for property reported to the department on the return. The three-year period of limitation does not begin until the return is filed. The time of the decedent's death is not relevant. For purposes of determining the period of limitations, the assessment period shall terminate on the same day of the month three years later which corresponds to the day and month the return was filed. If there is no numerically corresponding day three years after the return is filed, or if the expiration date falls on a Saturday, Sunday, or *legal* holiday, the assessment period expires the preceding day in case there is no corresponding day, or the next day following which is not a Saturday, Sunday, or *legal* holiday~~, as the case may be~~.

b. No change.

c. If a return is filed with the department, but property which is subject to taxation is omitted from the return, the three-year period for making an assessment for additional tax on the omitted property does not begin until the omitted property is reported to the department on an amended return. The omission of property from the return only extends the period of limitations for making an assessment for additional tax against the beneficiary, surviving joint tenant, or transferee whose share is increased by the omitted property. ~~Shares of the estate are not affected by the omitted assessment period.~~ *Other shares of the estate are not affected by the extended assessment period due to the omitted property.* The inheritance tax is a separate succession tax on each share of the estate, not on the estate as a whole. In re Estate of Stone, 132 Iowa 136, 109 N.W. 455(1906).

86.3(6) Period of limitations—federal audits. ~~Effective for audit periods of limitation (three years for estates of decedents dying on or after July 1, 1984) that expire after July 1, 1985,~~ *In the case of a federal audit,* the department, notwithstanding the normal three-year audit period specified in Iowa Code paragraphs 450.94(5)"a" and "b," shall have an additional six-month period for examination of the inheritance tax return to determine the correct tax due and for making an assessment for additional tax that may be due.

The additional six-month period begins on the date the taxpayer performs two affirmative acts: (1) notifies the department, in writing, that all controversies with the Internal Revenue Service concerning the federal estate, gift, and generation skipping transfer taxes have been concluded and (2) submits to the department a copy of the federal audit, closing statement, court decision, or any other relevant federal document concerning the concluded controversy. The additional six-month examination period does not begin until both of the acts are performed. See Iowa Code sections 622.105 and 622.106 for the mailing date as constituting the filing date and Iowa Code section 4.1(~~22~~ *34*) and Emmetsburg Ready Mix Co. v. Norris, 362 N.W.2d 498 (Iowa 1985) when the due date falls on a *legal* holiday.

The additional audit period does not limit or shorten the normal three-year examination period. As a result, a six-month additional examination period has no application if the additional six-month examination period would expire during the normal three-year audit period. If additional tax is found to be due, see paragraph 86.12(5)"b" for the inheritance tax lien filing requirements for securing the additional tax after an inheritance tax clearance has been issued. The six-month additional examination period means the department shall have at least six months to examine the return after the notification. The department will have more time if the normal three-year examination period expires after the six-month additional period for examination. After the expiration of the normal three-year examination period, and absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments for real property is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5), 701—86.9(450) and 701—86.12(450), and Kelly-Springfield Tire Co. v. Iowa Board of Tax Review, 414 N.W.2d 113 (Iowa 1987).

This rule is intended to implement Iowa Code sections 422.25, 422.30, 450.53, 450.65, 450.71, 450.94, 450A.12 and 451.12.

ITEM 4. Amend rule 701—86.4(450) as follows:

701—86.4(450) Appeals. A determination made by the department of either the correct amount of the tax due, or the amount of refund for excessive tax paid, shall be final unless the taxpayer, or any other party aggrieved by the determination, appeals to the director for a revision of the department's determination. ~~The appeal must be made to the director within 30 days (90 days for determinations made prior to January 1, 1987) from the postmark date of the determination.~~ For notices of assessment issued on or after January 1, 1995, the department will consider a protest to be timely filed if filed no later than 60 days following the date of assessment notice or, if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make a payment pursuant to rule 701—7.8(17A) and file a refund claim within the period provided by law for filing such claims. In the event of an appeal, the provisions of 701—Chapter 7 of the department's rules of practice and procedure before the department of revenue and finance and Iowa Code chapter 17A shall apply.

This rule is intended to implement Iowa Code chapter 17A and section 450.94 ~~as amended by 1994 Iowa Acts, chapter 1133~~.

ITEM 5. Amend subrules 86.5(1), 86.5(4), and 86.5(7) to 86.5(12) as follows:

86.5(1) Iowa *real and* tangible *personal* property. Real estate and tangible personal property ~~within~~ *with* a situs in the state of Iowa and in which the decedent had an interest at the time of ~~his~~ death is includable in the gross estate regardless of whether the decedent was a resident of Iowa. It is immaterial whether the property, or interest, is owned singly, jointly, or in common. Certain other real and tangible personal property with a situs in the state of Iowa in which the decedent did not have an interest at death may also be part of the gross estate for tax purposes. Examples of such property transfers include, but are not limited to, transfers of real estate in which the grantor retained a life estate, *life interest,* interest or the power of revocation, *property or interest in property in trust,* and gifts made within three years of death ~~which are in contemplation of death~~ *in excess of the federal gift tax exclusion.* These constitute transfers of property in which the decedent may not have an interest at death, but are includable in the gross estate for inheritance tax purposes. In re Dieleman's Estate v. Dept. of Revenue, 222 N.W.2d 459 (Iowa 1974); In re English's Estate, 206 N.W.2d 305 (Iowa 1973); and Lincoln's Estate v. Briggs, 199 N.W.2d 337 (Iowa 1972).

86.5(4) Intangible personal property—decedent domiciled outside Iowa. Intangible personal property may have more than one inheritance tax situs and be subject to multiple state inheritance taxation. ~~Thus~~ *Therefore,* it has been held that the situs of intangible personal property is the place

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where the owner is domiciled and also where the intangible has acquired a business situs or is located for state inheritance tax purposes. More than one state can subject the succession to such intangible property to tax. State Tax Commission of Utah v. Aldrich, 316 U.S. 174, 62 S. Ct. 1008, 86 L.Ed. 1358 (1942); Curry v. McCanless, 307 U.S. 357, 59 S.Ct. 900, 83 L.Ed. 1339 (1939); Chaffin v. Johnson, 200 Iowa 89, 204 N.W. 424 (1925). Intangible personal property owned by a decedent domiciled outside Iowa may be subject to the Iowa inheritance tax and, therefore, includable in the gross estate if the physical evidence of the property has an Iowa situs or if the intangible property is an account or obligation of an Iowa financial institution. This intangible personal property is not subject to Iowa inheritance tax if the state of domicile subjects the property to a state death tax and either does not subject intangible personal property owned by a decedent domiciled in Iowa to a state death tax, or grants reciprocity to Iowa-domiciled decedents on like intangible personal property. Intangible personal property owned by a decedent domiciled outside Iowa is subject to the Iowa inheritance tax if the state of domicile does not grant an exemption or reciprocity to like intangible personal property owned by Iowa decedents, or does not impose a death tax on intangible property.

EXAMPLE. Decedent is a resident of the state of Illinois. Decedent owns stock in an Iowa brokerage firm. The stock has an Iowa business situs and, therefore, could be includable in the gross estate of the decedent. However, Illinois imposes a death tax on such property and grants reciprocity to Iowa-domiciled decedents on like intangibles. As a result, Iowa would not impose Iowa inheritance tax on the stock.

86.5(7) Gifts in contemplation of death—for estates of decedents dying prior to July 1, 1984, only. A transfer of property, or interests in property by a decedent, except in the case of a bona fide sale for ~~a~~ fair consideration within three years of the grantor's death, made in contemplation of death, is includable in the decedent's gross estate. Any such transfer made within the three-year period prior to the grantor's death is presumed to be in contemplation of death, unless it is shown to the contrary. Whether a transfer is made in contemplation of death depends on the intention of the grantor in making the transfer and will depend on the facts and circumstances of each individual transfer.

a. Factors to be considered ~~are~~ *include*, but *are* not limited to:

(1) to (4) No change.

b. Factors which tend to establish that the motive for the gift was prompted by the thought of death ~~are~~ *include*, but *are* not limited to:

(1) to (4) No change.

c. Factors which tend to establish that the gift was ~~motivated~~ *inspired* by living motives ~~are~~ *include*, but *are* not limited to:

(1) Made on an occasion and in an appropriate amount that is usually associated with such gift giving occasions as Christmas, birthdays, marriage, or graduation.

(2) to (4) No change.

d. Gifts made within three years of death—for estates of decedents dying on or after July 1, 1984. All gifts made by the donor within three years of death, which are in excess of the annual calendar year federal gift tax exclusion provided for in 26 U.S.C. Section 2503, subsections b and e, are included in the gross estate for inheritance tax purposes. The motive, intention or state of mind of the donor is not relevant. *Gifts will be valued at the date of the decedent's death, unless alternative valuation is chosen.* The fact alone that the transfer is a gift, in whole or in part, and exceeds the annual calendar year exclusion for federal gift tax purposes, is sufficient to subject the excess of the transfer over the exclusion to tax. The exclusion is applied to the total amount of the gifts made to a donee in a calendar year, allocating the exclusion to the gifts in the order made during the calendar year. This rule has important application to the earliest year of the three-year period before death because the three-year period for inheritance tax purpose is measured from the date the decedent-donor died. This will only rarely coincide with a calendar year. As a result, none of the gifts made in the earliest calendar year of the three-year period prior to death, regardless of the amount, which are made before the beginning of the three-year period, measured by the decedent's death date, is subject to tax. However, gifts made before the three-year period begins in this earliest year will reduce or may completely absorb the exclusion amount that is available for the remaining part of this first-year period. The significance of the difference between the three-year period prior to death and the calendar year exclusion amount is illustrated by the following:

~~EXAMPLES:~~

~~1.~~ *EXAMPLE A.* The decedent-donor, A, died July 1, ~~1985~~ *1995*. The three-year period during which gifts may be subject to inheritance begins July 1, ~~1982~~ *1992*. During the calendar year ~~1982, the decedent-donor~~ *1992, A* made a cash gift to ~~son~~ *nephew* B of $11,000 on May 1, ~~1982~~ *1992*, and a second gift to B of $4,000 on August 1, ~~1982~~ *1992*. In this example, none of the $11,000 gift made on May 1, ~~1982~~ *1992*, is includable for inheritance tax purposes because it was made before the three-year period began, based on ~~the decedent-donor's~~ *A's* date of death. All of the $4,000 gift made on August 1, ~~1982~~ *1992*, is includable for inheritance tax purposes because it is in excess of the calendar year ~~1982~~ *1992* federal gift tax exclusion of $10,000.

~~2.~~ *EXAMPLE B.* The decedent-donor, A, died July 1, ~~1985~~ *1995*. The three-year gift inclusion period for inheritance tax purposes begins July 1, ~~1982~~ *1992*. During the three-year period, based on the decedent's date of death, A made the following gifts to ~~son~~ *niece* B: $10,000 on August 1, ~~1982~~ *1992*, and $10,000 May 1, ~~1983~~ *1993*. Neither gift is includable for inheritance tax purposes because during calendar year ~~1982~~ *1992* and ~~1983~~ *1993* neither gift exceeds the federal annual calendar year exclusion. The gifts to B, however, would be $20,000 ~~and~~ *with* $10,000 subject to tax if the federal gift tax exclusion year were measured by the decedent's death date instead of a calendar year.

(1) Split gift. At the election of the donor's spouse, a gift made by a donor to a person, other than the spouse, shall be considered, for inheritance tax purposes, as made one half by the donor and one half by the donor's spouse. This split gift election for inheritance tax purposes is subject to the same terms and conditions that govern split gifts for federal gift tax purposes under 26 U.S.C. Section 2513.

The consent of the donor's spouse signified under 26 U.S.C. Section 2513(b) shall also be presumed to be consent for Iowa inheritance tax purposes, unless the contrary is shown. If the split gift election is made, the election shall apply to all gifts made during the calendar year. Therefore, if the election is made, each spouse may use the annual exclusion ($10,000 for ~~1984~~ *1994*) which shall be applied to one-half of the total value of all gifts made by both spouses during the calendar year to each donee.

(2) Types of transfers which may result in a gift. Whether a transfer of property constitutes a gift depends on the facts and circumstances surrounding each individual transfer.

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Transfers which may result in a gift, in whole or in part, include, but are not limited to: sales of property where the purchase price, or terms of sale, are less than fair market value; a loan of money, interest free, even though the loan is payable on demand; the release of a retained life use of property; and the payment of a debt or other obligation of another person.

(3) Types of transfers that are not a gift. However, certain transfers which in property law would be considered a present transfer of an interest in property may not be considered gifts within the Iowa three-year rule under Iowa Code ~~subsection~~ *section* 450.3(2). Rather the transfers may be transfers intended to take effect in possession or enjoyment at death. Examples of this kind of transfer would include, but are not limited to, transfers in trust or otherwise, with a retained life use or interest; commercial annuities where payments are made to a beneficiary upon the death of the primary annuitant; *transfers that place property in joint tenancy;* irrevocable transfers of real or personal property where the deed or bill of sale is placed in escrow to be delivered only upon the grantor's death. Transfers of this kind are subject to inheritance tax under Iowa Code ~~subsection~~ *section* 450.3(3) as a transfer to take effect in possession or enjoyment at death, even though under property law an interest in the property may have been transferred prior to death. Different kinds of transfers that may constitute a taxable gift, in whole or in part, include but are not limited to the following:

~~EXAMPLES:~~

~~1.~~ *EXAMPLE A.* Grantor-decedent, A, on July 1, ~~1982~~ *1992*, transferred to ~~son~~ *nephew* B, without consideration, a 160-acre Iowa farm, reserving the life use. On the date of transfer, the farm had a fair market value of $2,000 per acre, or $320,000. On August 1, ~~1984~~ *1994*, A released the retained life estate without any consideration being given and then died on December 1, ~~1984~~ *1994*. The release on August 1, ~~1984~~ *1994*, constitutes a gift, for inheritance tax purposes, of the value of the entire farm (less the annual gift tax exclusion), within the three-year period prior to death. What is taxable is what would have been taxable had the release not been given. United States v. Allen, 293 F.2d 916 (10th Cir. 1961); Rev. Ruling 56-324, 1956 2 C.B. 999. In this example, the gift is not to be valued at the time of the release of the life use, but rather at its fair market value at the time of death. See subrule 86.9(1). The real estate cannot be valued at its alternate valuation date because it is not included in the federal gross estate for federal estate tax purposes, but rather it constitutes an adjusted taxable gift not eligible for the alternate valuation date. See rule 86.10(450) and Federal Estate Tax Regulation Section 20.2032-1(a) and (d).

~~2.~~ *EXAMPLE B.* A, on August 1, ~~1982~~ *1992*, loaned ~~son~~ *brother* B $450,000 which was evidenced by a non-interest-bearing promissory note, payable on demand. A died on October 1, ~~1984~~ *1994*, with no part of the loan having been repaid. The principal amount of the note is includable in A's gross estate. The free use of money is a valuable property right to the debtor. Dickman v. Commissioner, 465 U.S. 330 (1984). Thus, in effect, A has made a gift of the value of the interest to B each year the debt remains unpaid. Assuming for purposes of illustration that the applicable federal short-term rate for the entire year is 9 percent for each year and no other gifts were made to B, A has made a gift to B of $40,500 through August ~~1983~~ *1993* (one year after the note was executed) and an additional gift of $40,500 through August 1, ~~1984~~ *1994*, and two months' interest of $6,750 from August 1, ~~1984~~ *1994*, to the date of death on October 1, ~~1984~~ *1994*. Therefore, in calendar year ~~1982~~ *1992* A has made a gift of 5/12 of $40,500, or $16,875. After deducting the annual calendar year exclusion of $10,000, $6,875 is subject to inheritance tax. Since the loan was outstanding for all of calendar year ~~1983~~ *1993*, $40,500, less the $10,000 exclusion, or $30,500, is subject to inheritance tax. For calendar year ~~1984~~ *1994* the loan was outstanding for nine months. Three-fourths of $40,500, less $10,000, or $20,375, is subject to inheritance tax.

In this example it is not necessary that the loan be made within the three-year period prior to death. It is the free use of the loan during the three-year period prior to death that constitutes the gift.

~~3.~~ *EXAMPLE C.* On March 1, ~~1982~~ *1992*, A sold a 160-acre Iowa farm to ~~son~~ *niece* B for $1,500 per acre, or $240,000. On the date of sale, the fair market value of the farm was $2,500 per acre, or $400,000. A died on August 1, ~~1984~~ *1994*. This sale is, in part, a gift. It is not a bona fide sale for an adequate and full consideration in money or money's worth and as a result, the difference between the sale price and the fair market value of the farm on the date of sale constitutes a gift. The sale price in this example represents only 60 percent of the farm's fair market value~~,~~ *;* therefore, 40 percent of the farm is a gift. However, the gift percentage to apply to the farm's value at death is 38 percent, not 40 percent, because the $10,000 annual gift tax exclusion must be deducted from the value of the gift. See the computation of this percentage in Example ~~4~~ *D* immediately following.

~~4.~~ *EXAMPLE D.* On March 1, ~~1982~~ *1992*, A sold a 160-acre Iowa farm to ~~son~~ *niece* B for $2,500 per acre, or $400,000, which was also the fair market value of the farm on the date of sale. The sale was an installment sale contract, payable in 20 equal annual installments of principal and interest. The unpaid principal balance is to draw interest at one-half of the prevailing Federal Land Bank loan rate, *which for purposes of illustration we will assume to be the rate* of 12 percent, or 6 percent per year. The annual payments of principal and interest are $34,873.82 per year. A died on August 1, ~~1984~~ *1994*. In this example, the sale price in and of itself does not constitute a gift because the sale price was also the fair market value of the farm. However, the difference between the prevailing Federal Land Bank loan rate of 12 percent and the contract rate of 6 percent constitutes a gift from A to B.

The amount of the gift that is includable in the gross estate is computed by determining the present value of the future annual payments of $34,873.82 discounted to reflect a 12 percent return on the investment. The discounted value is then divided by the fair market value of the farm on the date of the sale to determine the percentage of the sale price that is a bona fide sale for full consideration and the percentage of the sale price that represents a gift before the annual exclusion. The gift percentage is then applied to the fair market value of the farm (or special use value, if applicable) at death, to determine the amount that is includable in the gross estate.

The computation in this example is as follows:

The present value of the future annual payments of $34,873.82 for 20 years to reflect a 12 percent return on an investment is $260,488.05. That is, an investor who desires to earn the market rate of return of 12 percent on an investment would only pay $260,488.05 for this 6 percent $400,000 contract of sale.

Bona Fide Sale Percentage

Present value: 260,488.05
Sale price: 400,000.00 = 65%

This is the percentage of the sale price of $400,000 that represents a bona fide sale for full consideration.

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Gift Percentage

The sale price of $400,000 - $260,488.05 or $139,511.95 is the gift portion of the sale price due to the 6 percent interest rate on the contract, before the $10,000 annual exclusion is deducted.

The gift percentage is computed as follows:

$$\$139,511.95 - \$10,000 = \frac{129,511.95}{400,000.00} = 32\%$$

In this example the gift percentage used to determine the amount of the farm value at death that is taxable is only 32 percent of the value because deducting the $10,000 exclusion reduced the gift percentage from 35 percent to 32 percent. The gift took place in the year of sale not in the year of death. As a result, 32 percent of fair market value (or special use value, if applicable) of the farm at the time of the donor's death is includable in the gross estate for inheritance tax purposes.

86.5(8) Joint tenancy property—in general. Whether the form of ownership of property is considered to be joint tenancy is determined by the property law of the state of the situs of the property. ~~The~~ *Generally, the* words and phrases "to A and B as joint tenants with full rights of survivorship and not as tenants in common" create a joint tenancy form of ownership unless a contrary interest can be shown by material evidence. "To A or B, payable to the order of self" creates an alternative right of ownership and for tax purposes is treated as joint tenancy property. In re Estate of Martin, 261 Iowa 630, 155 N.W.2d 401 (1968); Petersen v. Carstensen, 249 N.W.2d 622 (Iowa 1977); In re Estate of Louden, 249 Iowa 1393, 92 N.W.2d 409 (1958). Joint tenancy property may be held by more than two persons. In re Estate of Horner, 234 Iowa 624, 12 N.W.2d 166 (1944). However, the use of the words "as joint tenants" alone without the use of the phrase "with right of survivorship" may only create a tenancy in common. Albright v. Winey, 226 Iowa 222, 284 N.W. 86 (1939).

a. Joint tenancy property—husband and wife alone. ~~Since~~ *Generally* there are no shares in joint tenancy property because each joint tenant owns the whole property. *As a result, joint tenancy property* ~~it~~ *is not* taxed like tenancy in common property where each owner has a specific share. If the joint tenancy property is held by husband and wife alone, only one-half of the property is includable in the gross estate for inheritance tax purposes in the estate of the first joint tenant to die. However, if the survivor can establish by competent evidence that the separate money or property contributed a larger percentage than one-half to the acquisition of a specific item or items of jointly held property, then the larger percentage of such item or items shall be excluded from taxation. Ida M. Jepsen v. Bair, No. 85, State Board of Tax Review, June 18, 1975. ~~The one-half exclusion is not automatically available without proof of contribution if any of the surviving joint tenants is not the spouse of the decedent.~~

b. Joint tenancy property—not held by husband and wife alone. Property held in this form of joint tenancy is includable in the gross estate of the deceased joint tenant, except to the extent the surviving joint tenant or tenants can establish contribution to the acquisition of the joint property, in which case the proportion attributed to the contribution is excluded from the gross estate. In the case of multiple joint tenancy property, excess contribution established by one surviving joint tenant cannot be attributed to another surviving joint tenant. For tax purposes, the requirement of contribution in effect establishes percentage ownership—or shares—in jointly held property that does not exist in property law. Contribution to the acquisition of jointly held property can be established by the survivor by proof, which includes, but is not limited to, evidence that the property was acquired by gift, inheritance, or purchase from the survivor's separate funds or property. *Contribution means cash or cash in kind that is applied to the cost of obtaining the property at issue. Unlike joint tenancy property held solely between husband and wife, if any of the surviving joint tenants is not the spouse of the decedent, the presumed one-half exclusion is not automatically available without proof of contribution.*

c. Joint tenancy—convenience or constructive trust. If the record ownership of bank accounts, certificates of deposit, and other kinds of property are held in the form of joint tenancy, but in fact are held by the decedent and another person, or persons who have a confidential or fiduciary relationship with the decedent, the property is not held in joint tenancy but is held in constructive or resulting trust by the survivor for the decedent. A confidential or fiduciary relationship is any relationship existing between the parties to a transaction wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other party. In its broadest connotation, the phrase embraces those multiform positions in life wherein one comes to rely on and trust another in one's important affairs. First National Bank v. Curran, 206 N.W.2d 317 (Iowa 1973). The fact that the decedent furnished the funds to acquire the property or demonstrated a kind, considerate, and affectionate regard for the survivor does not in itself establish a confidential relationship between the decedent and the survivor. If the evidence to establish a contrary relationship with respect to property in the form of joint tenancy is not substantial, a joint tenancy exists as a matter of law. Petersen v. Carstensen, 249 N.W.2d 622 (Iowa 1977).

If a confidential relationship constituting a constructive or resulting trust is established on behalf of the decedent, the property or property interest that is the subject of the trust is part of the decedent's gross estate as singly owned property.

86.5(9) Transfers reserving a life income or interest. If the grantor transfers property, except in the case of a bona fide sale for ~~a~~ fair consideration, reserving the income, use, possession, or a portion thereof for life, the property is includable in the gross estate for inheritance tax purposes. In re Sayres' Estate, 245 Iowa 132, 60 N.W.2d 120 (1953); In re Estate of English, 206 N.W.2d 305 (Iowa 1973). If there is a full reservation of income, the entire value of the property in which the reservation exists is includable for tax purposes. If only a portion of the income is reserved, the amount subject to tax is the full value of the property at death multiplied by a fraction of which the total income reserved is the numerator and the total average earning capacity of like property is the denominator. See ~~the case of~~ In re Estate of English, 206 N.W.2d at 310~~, for the formula to be used~~.

The reservation of the life income, or portion thereof, need not necessarily be stated or contained in the instrument of transfer to be includable for taxation. The transfer of property may contain no reservation *of income* or other incidents of ownership in the grantor, but if there is a contemporaneous agreement between the grantor and grantee to pay the income, or portion thereof, to the grantor for life, the two instruments or agreements when considered together may be construed to be reservation of the income from the transferred property. See In re Sayres' Estate, 245 Iowa 132 at 141, 142, 60 N.W.2d 120 (1953) for a full discussion of the subject.

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The instrument need not be in any special form. For example, it may take the form of a contract of sale to terminate at death where the payments consist of the income from the property only. In addition, the transfer to be includable for taxation is not limited to income-producing property. For example, the transfer of the grantor's dwelling, reserving the life occupancy, falls within the meaning of a reserved life income or interest. *Generally, revocable trusts can be classified as reserving a life income or interest. This type of transfer does not fall within the $10,000 gift exclusion.*

86.5(10) Powers of appointment—in general. Iowa Code ~~subsection~~ *section* 450.3(4) is concerned with two aspects of powers of appointment that are subject to inheritance tax. First, the taxation of the decedent's property subject to the power of appointment in the estate of the donor (decedent), and second, the exercise, or nonexercise, of the power of appointment over the property in the estate of the donee (the decedent possessing the power).

~~Transfers by power of appointment were not specifically made subject to inheritance tax until 1921. See section 2(c), chapter 38, Acts of the Thirty-ninth General Assembly; In re Estate of Higgins, 194 Iowa 369 at 374, 189 N.W. 752 (1922). From 1921 until July 4, 1965, present Iowa Code subsection 450.3(4) contained only the first sentence of the section. Transfers by exercise of the power of appointment do not concern the creation of the power in the donor's estate. Until a change in the law in 1965, powers of appointment were disregarded in the donor's estate and the donee of the power was taxed as receiving a life estate or term, as the case may be, and those who would take in the event of the nonexercise of the power were taxed as receiving the remainder of the property subject to the power. Prior to 1965 no distinction was made in the donor's estate between a general or special power of appointment.~~

~~The second and third sentences of subsection 450.3(4) were added by chapter 366, Acts of the Sixty-first General Assembly (1965). The 1965 amendment addressed itself to the taxation of the transfer which created the power in the donor's estate and a distinction was made for the first time between a general and special power of appointment.~~

a. General power of appointment. Whether the instrument of transfer utilized by the donor creates a general or special power of appointment is a matter of property law. ~~A~~ *For example, a* devise to A for life with "power to dispose of and pass clear title...if A so elects," creates a life estate with a general power of appointment. In re Estate of Cooksey, 203 Iowa 754, 208 N.W. 337 (1927). Also to A for life, "Especially giving unto A the right to use and dispose of the same as A may see fit," creates a general power of appointment, Volz v. Kaemmerle, 211 Iowa 995, 234 N.W. 805 (1931). However, the power to sell and convert the assets subject to the power does not in itself create a general power of appointment. In re Estate of Harris, 237 Iowa 613, 23 N.W.2d 445 (1946). A power is general if being testamentary, it can be exercised wholly in favor of the estate of the donee. In re Estate of Spencer, 232 N.W.2d 491 at 495, 496 (Iowa 1975). The definition of a general power of appointment contained in 26 U.S.C. Section 2056(b)(5) of the Internal Revenue Code would meet the test of a general power under Iowa law.

b. Special power of appointment. If there is a limitation on the donee's right to use the corpus only for care, maintenance and support, the power is special, not general. Brown v. Brown, 213 Iowa 998, 240 N.W. 910 (1932). Also, to A for life with power to handle the property for A's interest, limits the power of invasion of the principal for care and support only, and is therefore a special, not a general, power of appointment. Lourien v. Fitzgerald, 242 Iowa 1258, 49 N.W.2d 845 (1951). Also, to A for life, with unrestricted power of sale with no power over the sale proceeds creates only a special power of appointment in the donee. McCarthy v. McCarthy, 178 N.W.2d 308 (Iowa 1970).

If the donee's power to appoint is limited to a class or group of persons, a special, not a general, power is created. In re Estate of Spencer, 232 N.W.2d 491, at 496 (Iowa 1975).

c. Powers of appointment—taxation in donor's estate. If the instrument in the donor's estate creates a general power of appointment, the property subject to the power is taxed as if the property had been transferred to the donee in fee simple. Those who would succeed to the property in the event *the power is not exercised, are treated in the donor's estate* as if they receive no interest in the property, even though in property law those who succeed to the property either by the exercise, or nonexercise, take from the donor of the power. In re Estate of Higgins, 194 Iowa 369 at 373, 189 N.W. 752 (1922); Bussing v. Hough, 237 Iowa 194 at 200, 21 N.W.2d 587 (1946).

If the instrument in the donor's estate creates a special power of appointment, the property subject to the power is taxed as if the donee of the power had received a life estate or term for years, as the case may be. Those persons who would take the property in the event the special power is not exercised are taxed in the donor's estate as if they had received the remainder interest in the property subject to the special power, although an election to defer payment of the tax may result in either no tax or a different tax obligation. This could happen, for example, if the special power is the power to invade the corpus for the health, education, and maintenance of the donee.

~~d. Powers of appointment—in the estate of a donee dying prior to January 1, 1988. Iowa Code subsection 450.3(4), prior to the effective date of 1985 Iowa Acts, chapter 148, imposed the tax on property passing under the exercise of a power of appointment. The statute did not draw a distinction between the exercise of a general or special power of appointment. The statute did not impose the tax on property passing by the nonexercise of a power of appointment in the estate of the donee and, therefore, the nonexercise of a power of appointment was not subject to Iowa inheritance tax in the estate of a donee dying prior to January 1, 1988.~~

~~It is an underlying assumption that Iowa Code subsection 450.3(4) imposes the inheritance tax on the exercise of the power only if the exercise is to take effect at the death of the donee, or if exercised inter vivos within three years of death (when permitted by the governing instrument) it was exercised in contemplation of death. Any other inter vivos exercise of the power is not within the scope of Iowa Code chapter 450 and, therefore, would not be subject to inheritance tax. What constitutes an exercise of the power of appointment is a matter of property law. When Iowa property is involved, the law of the domicile of the donor and not the law of the domicile of the donee determines whether a power of appointment has been exercised. Bussing v. Hough, 237 Iowa 194, 21 N.W.2d 587 (1946). A power of appointment is not exercised by the residuary clause in a will unless an intent to exercise the power appears in addition thereto from the terms of the will. In re Wills of Proestler, 232 Iowa 640, 645, 5 N.W.2d 922 (1942); In re Trust of Stork, 233 Iowa 413, 420, 9 N.W.2d 273 (1943). The power is exercised, but not limited to, the following three classes of cases: (1) where there has been some reference in the will or other instrument to the power; (2) a reference to the property which is the subject on which the power is to be executed; (3) where the pro-~~

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~~vision in the will or other instrument executed by the donee of the power would otherwise be ineffectual or a mere nullity, in other words, would have no operation except as an execution of the power. In re Trust of Stork, 233 Iowa 413, 421, 9 N.W.2d 273 (1943). In the absence of any of these three requirements, it is usually held that the power of appointment does not constitute a part of the estate (of the donee). In re Wills of Proestler, 232 Iowa 640, 646, 5 N.W.2d 922 (1942). Even if one of the three criteria has been satisfied the donee must provide for a different disposition of the property subject to the power than was provided for by the donor for there to be a valid exercise of the power. In re Trust of Stork, 233 Iowa 413, 424, 9 N.W.2d 273 (1943). If the purported exercise of the power is to the same persons as the takers in default and they take exactly what would have been taken on failure to appoint, the appointment is a nullity and is not subject to tax in the donee's estate. Cook v. Dove, 32 Ill.2d 109, 203 N.E.2d 892 (1965).~~

~~The test of whether a donee who purports to exercise the power in favor of individuals has in fact exercised the power turns on whether the shares of those who would take in the event of the nonexercise of the power have been altered by the purported exercise. If the share, or shares, have been altered, there has been an exercise of the power, even though only in part, in favor of some person. The rule is this: If the exercise purports to appoint to those individuals who take in default, the same or a smaller share than they would have taken had there been no purported exercise, the power has not been exercised as to those appointees. If the shares of those who would take in default have been altered, the power has been exercised to the extent of the excess over the amount the appointee, or appointees, would have received had the power not been exercised. This rule would apply to an appointment to individuals under both a general and a special power of appointment.~~

~~e. Examples—exercise and nonexercise in estate of donee.~~

~~(1) Donor A grants to donee B a life estate, with power to appoint the property by will, to C, D and E, and their spouses. In the event of default, the property is devised to C, D and E in equal shares. At the time of B's death, the property subject to the power is valued at $500,000. B by will appoints the entire $500,000 to C and C's spouse in equal shares. The power has been exercised in favor of C's spouse in the amount of $250,000 and to C in the amount of $83,333.33 ($250,000 less $166,666.67) which is one-third of the $500,000 C would have received had the power not been exercised. The power has not been exercised as to D and E because they take less (zero) than they would have taken had the power not been exercised.~~

~~(2) Same facts as example (1), only B purports to exercise the power in favor of C, D and E in equal shares. The power has not been exercised because C, D and E receive exactly the same amount of property they would have received had the power not been exercised.~~

~~(3) B in examples (1) and (2) makes the same appointment except the appointment is made under a general power of appointment created by A. The result is the same as in examples (1) and (2). The determining questions are not whether the power is a general or special but whether the instrument creating the power authorizes the appointment made and whether the power has been exercised.~~

~~f~~ *d.* Powers of appointment in the estate of a donee dying on or after January 1, 1988. Property which is subject to a general power of appointment is includable for inheritance tax purposes in the gross estate of a donee dying on or after January 1, 1988, if the donee has possession of the general power of appointment at the time of the donee's death, or if the donee has released or exercised the general power of appointment within three years of death. Whether or not the donee of a general power exercises the general power at death is not relevant to the includability of the property subject to the general power in the estate of the donee. The mere possession of the power at death is sufficient for the property subject to the power to be included in the estate of the donee for inheritance tax purposes.

Property subject to a special power of appointment is not includable in the gross estate of the donee of the power regardless of whether the donee possesses the special power or exercised the power at death, unless a QTIP election was made under Iowa Code subsection 450.3(7) in which case the rule governing QTIP elections shall control. See paragraphs 86.5(10)"a" and "b" for the distinction between a general and special power and subrule 86.5(11) for the rule governing QTIP elections.

For inheritance *tax* purposes, if there is an exercise or release of the general power within three years of the donee's death, the property subject to the exercise or release is includable in the donee's estate just as if the donee had retained possession of the power at death and is taxable to those to whom the property is appointed in case the power is exercised, or to those who take in default of the exercise in case the power is released.

The general power of appointment is considered to have been exercised for the purposes of this ~~section~~ *rule* when the nature of the disposition is such that if it were a transfer or disposition of the donee's property, the transfer would be subject to inheritance tax under Iowa Code section 450.3. *The power is considered exercised in the following three nonexclusive classes of cases: (1) where there has been some reference in the will or other instrument to the power; (2) the will or other instrument contains a reference to the property which is the subject on which the power is to be executed; (3) where the provision in the will or other instrument executed by the donee of the power would otherwise be ineffectual or a mere nullity; in other words, the provision would have no operation except as an execution of the power. In re Trust of Stork, 233 Iowa 413, 421, 9 N.W.2d 273 (1943).* For the purposes of ~~subsection~~ *section* 450.3(4), a release of a general power is considered to be a transfer of the property subject to the power to those who would take in default if the power was not exercised.

86.5(11) Qualified terminable interest property (QTIP).

a. No change.

b. Property transfers eligible. Four factors are relevant in determining whether property passing from a decedent grantor-donor is eligible for the Iowa qualified terminable interest election. They are: (1) the death of the decedent-transferor, but not necessarily the transfer, must have occurred on or after July 1, 1985; (2) the property must meet the qualifications required in 26 U.S.C. Section 2056(b)(7)(B), or in the case of a gift within three years of the decedent-transferor's death, the qualifications in 26 U.S.C. Section 2523(f); (3) a federal election must have been made *on a required federal return* with respect to the qualified property for federal estate tax purposes or, for federal gift tax purposes, if the transfer occurred within three years of the transferor's death, and (4) the property must be included in the decedent-transferor's gross estate for Iowa inheritance tax purposes, either because the transfer occurred at death or within three years of the transferor's death.

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If property is not eligible for an Iowa qualified terminable interest election, or if eligible, but an Iowa election is not made, it is not included in the estate of the surviving spouse grantee-donee for inheritance tax purposes by reason of Iowa Code section 450.3. The fact that the qualified property is included in the estate of the surviving spouse for federal estate tax purposes does not necessarily mean the property is automatically included in the surviving spouse's Iowa gross estate.

The treatment of the qualified property in both the grantor-donor's and the surviving spouse's estates for Iowa inheritance tax purposes~~,~~ is determined by the Iowa election, or lack of an election, being made in the grantor-donor's estate.

This subrule is illustrated by the following examples:

EXAMPLE 1. Decedent A died testate, a resident of Iowa, July 2, ~~1985~~ *1995*, leaving a surviving spouse, B, and two children, C and D. On February 1, ~~1982~~ *1992*, A transferred by deed a 160-acre Iowa farm to spouse B for life, with the remainder at B's death to two children, C and D. An election was made under 26 U.S.C. Section 2523(f) to treat the gift of the 160-acre farm as passing entirely to B in fee.

Upon A's death the 160-acre farm is not part of A's gross estate either for federal estate or for Iowa inheritance tax purposes because the transfer was made more than three years prior to death. However, upon the death of B, the surviving spouse, the 160 acres is included in B's gross estate (unless disposed of prior to death) for federal estate tax purposes, but is not included in B's Iowa gross estate. The transfer by A took place more than three years prior to death, and therefore is not included in A's Iowa estate and is not eligible for an Iowa qualified terminable interest election.

EXAMPLE 2. On October 1, ~~1982~~ *1992*, grantor A executed a revocable inter vivos trust which consisted of cash and a 160-acre Iowa farm. Under the terms of the trust agreement A was to receive the trust income for life and upon A's death the trustee was to pay the trust income to A's spouse, B, for life, with the power to invade the principal for B's care and support. Upon B's death the trust was to terminate and the balance of the corpus was to be paid to A's children, C and D. A died July 2, ~~1985~~ *1995*, and the personal representative elected to treat the trust assets as passing entirely in fee to the surviving spouse, B, for federal estate tax purposes. An Iowa qualified terminable interest election was not made. In this fact situation, the election qualified the trust assets for the marital deduction for federal estate tax purposes. For Iowa inheritance tax purposes, since an Iowa election was not made, the trust assets are taxed on the basis of a life estate passing to B, the surviving spouse, and the remainder passing to the children, C and D. Upon B's death, the trust corpus will be included in B's estate for federal estate tax purposes, but not in B's estate for Iowa inheritance tax purposes, because an Iowa qualified terminable interest election was not made in A's estate.

c. The qualified terminable interest election—in general. The election to treat qualified terminable interest property as passing entirely in fee to the surviving spouse in the estate of the decedent grantor-donor is an affirmative act. In the event an election is not made, the qualified property will be ~~subject to tax on the basis of~~ *treated as* a life estate passing to the surviving spouse with a remainder over as provided in Iowa Code ~~subsection~~ *section* 450.3(4).

An Iowa election cannot be made unless an election has been made on the same qualified property for federal estate tax purposes *on a required federal return*, or in case of a gift made within three years of the decedent grantor-donor's death, for federal gift tax purposes. However, even though a federal election has been made, the personal representative of the decedent grantor-donor's estate has the option to either make or not to make the election with respect to the qualified property for Iowa inheritance tax purposes. It is sufficient for Iowa inheritance tax purposes that a valid federal election has been made. What constitutes a valid election for federal estate or gift tax purpose is determined under applicable federal law and practice and not by the department.

However, it is permissible for Iowa inheritance tax purposes to make an election for a smaller but not larger percentage of the qualified property than was made for federal estate or gift tax purposes. These general principles can be illustrated by the following examples:

EXAMPLE 1. Decedent-grantor A created a revocable inter vivos trust on October 15, ~~1982~~ *1992*, which was funded by $200,000 in cash and a 160-acre Iowa farm worth $200,000. The trust provided that the trustee pay the income to A for life and upon A's death, the trustee was to pay the income to A's surviving spouse B for life, with power to invade the principal for B's care and support. Upon B's death the trust was to terminate and the balance of the principal was to be distributed to A's two children, C and D.

A died on July 2, ~~1985~~ *1995*, and the principal of the trust is included in A's gross estate both for federal estate and Iowa inheritance tax purposes because the trust was revocable and A retained the income for life. A's personal representative elected to treat 50 percent of the trust assets as qualified terminable interest property for federal estate tax purposes. A's personal representative elected not to treat the qualified property as passing to B for Iowa inheritance tax purposes. This is permissible because the personal representative has the option to either elect or not to elect to treat 50 percent of the qualified property as passing in fee to the surviving spouse for Iowa inheritance tax purposes.

EXAMPLE 2. Same factual situation as Example 1. A's personal representative elects to treat only 25 percent of the qualified property as passing in fee to the surviving spouse for Iowa inheritance tax purposes. This is permissible because the personal representative is not required to make an election on all of the qualified terminable interest property on which the federal election has been made. It is sufficient that a federal election has been made for at least as large a percentage of the qualified property on which the Iowa election is made. However, an Iowa election cannot be made for a larger percentage of the qualified property than the percentage made on the federal election.

EXAMPLE 3. Same factual situation as Example 1. In this example, A's personal representative, for Iowa inheritance tax purposes, purports to elect to treat the $200,000 cash in the trust as passing in fee to the surviving spouse, but not the 160-acre Iowa farm, which is also valued at $200,000. Although the federal estate tax election is for 50 percent of the qualified property, the Iowa election is invalid even though it is made in respect to an asset which is equal in value to 50 percent of the trust principal. If the election is made for less than all of the qualified terminable interest property, the election must be for a fraction of all the qualified property. The personal representative is not permitted to select for the election some qualified assets and reject others. See Federal Estate Tax Regulation 20.2056-1(b).

d. The election—manner and form. The qualified terminable interest election shall be in writing and made by the personal representative of the decedent grantor-donor's estate on the Iowa inheritance tax return. The election once made shall be irrevocable. If the election is not made on the

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first inheritance tax return, the election may be made on an amended return, provided the amended return is filed on or before the due date of the return (taking into consideration any extensions of time granted to file the return and pay the tax due). The personal representative may make an election on a delinquent return, provided it is the first return filed for the estate. *The filing for the purpose of protective election is not allowed.* Failure to make the election on the first return filed after the due date has passed precludes making an election on a subsequent return. See 26 U.S.C. Section 2056(b)(7)(B)(V) and Internal Revenue Service Letter Ruling 8418005.

The election consists of two affirmative acts performed by the personal representative on the inheritance tax return: (1) by answering in the affirmative the question—Is the estate making a qualified terminable interest election with respect to the qualified property? and (2) by computing the share of the surviving spouse to include the qualified terminable interest property on which the election was made. In the event of an inconsistency in complying with the two requirements, the treatment given to the share of the surviving spouse shall be controlling.

e. No change.

f. Inclusion in the estate of the surviving spouse. Upon the death of the surviving spouse the qualified terminable interest property, which was the subject of an election, that was not disposed of prior to death, shall be included in the gross estate of the surviving spouse and be treated as if it passed in fee from the surviving spouse to those succeeding to the remainder interests. The included QTIP property will receive a stepped up basis for gain or loss as property acquired from a decedent. See 26 U.S.C. Section 1014(b)(10). The relationship of the surviving spouse to the owners of the remainder interest shall determine whether the individual exemptions provided for in Iowa Code section 450.9 apply and which tax rate in Iowa Code section 450.10 shall be applicable.

Qualified property included in the estate of the surviving spouse shall be valued as if it passed from the surviving spouse in fee and shall be valued either (1) at the time of the surviving spouse's death under the provisions of Iowa Code section 450.37 and rule 86.9(450), or at its special use value under Iowa Code chapter 450B and rule 86.8(450B), if the real estate is otherwise qualified; or (2) at the alternate valuation date under the provisions of Iowa Code section 450.37(1)"b" and rule 86.10(450), if the property is otherwise eligible.

This subrule can be illustrated by the following examples:

EXAMPLE 1. Decedent A died testate on July 2, ~~1985~~ *1997*, survived by a spouse, B, aged 65, and two ~~stepchildren~~ *step-grandchildren*, C and D. Under A's will all property was left in trust to pay all of the income *to B for life. Upon B's death,* the trust was to terminate and the principal was to be divided equally between C and D, who are the ~~children~~ *grandchildren* of surviving spouse B. The personal representative elected to treat the trust assets as passing entirely in fee to surviving spouse B. The net corpus of the trust consists of a 160-acre farm valued at ~~$200,000~~ *$250,000* and personal property valued at $200,000.

Tax on the basis of all property passing in fee to B

Share	Tax
~~$400,000~~ *$450,000*	~~$13,425.00~~ *$0*

EXAMPLE 2. Same facts as Example 1, with the exception *that* the personal representative did not make an Iowa qualified terminable interest election. In this fact situation, the trust assets are taxed on the basis of a life estate passing to *the* surviving spouse B with a remainder over to C and D.

Share		Tax
Spouse B: Life estate factor ~~.35817~~ *.42226*		
~~$400,000 × .35817 =~~	~~$143,268~~	
$450,000 × .42226 =	*$190,017*	-0-
C's share ½ remainder factor ~~.64183~~ *.57774*		
~~$400,000 × .64183 ÷ 2 =~~	~~$128,366.00~~	~~$9,427.94~~
$450,000 × .57774 ÷ 2 =	*$129,991.50*	*$15,498.73*
D's share—same as C's share	~~$128,366.00~~ *$129,991.50*	~~9,427.94~~ *15,498.73*
Total	~~$400,000~~ *$450,000*	~~$18,855.88~~ *$30,997.46*

In Example 1, the qualified terminable interest election ~~cost the surviving spouse $13,425.00 in tax, but~~ *results in no inheritance tax. However,* as shown in Example 2, it would *have* cost the ~~children~~ *step-grandchildren, C and D,* ~~$18,855.88~~ *$30,997.46* if the election had not been made. ~~The election resulted in a net saving to the estate of $5,430.88 ($18,855.88 - $13,425.00 = $5,430.88).~~

EXAMPLE 3. B, the surviving spouse of A in Example 1, died testate, a resident of Iowa, on October 15, ~~1986~~ *1997*. Under the terms of B's will, B's ~~children~~ *grandchildren,* C and D, inherit B's entire estate in equal shares. B's net estate consists of $200,000 in personal property and a 160-acre Iowa farm with a value of ~~$200,000~~ *$250,000* both of which were the subject of a qualified terminable interest election in A's estate and in which C and D own the remainder interest. ~~B paid $13,425 in tax on the $400,000 qualified property in A's estate because of the qualified terminable election. If the election had not been made, the inheritance tax on a life estate in the $400,000 would have been zero, because at age 65 at the time of A's death the exemption of a spouse of $180,000 was more than the $143,268 value of the life estate.~~ B's net estate also consisted of $100,000 in intangible personal property which B owned in fee simple~~, plus the right to recover the $13,425 additional tax paid on the qualified property in A's estate~~.

B's net estate for Iowa inheritance tax purposes consists of the following:

$200,000, personal property from A's estate.

~~$200,000~~ *$250,000*, 160-acre farm from A's estate.

$100,000, owned by B in fee simple.

~~$13,425, additional tax paid in A's estate which is subject to a right of recovery.~~

~~$513,425~~ *$550,000* Total

The shares of C and D and their tax owed in B's estate are computed as follows:

Share		Tax
Beneficiary C: ½ of the net estate, or		
	~~$256,712.50~~ *$275,000*	~~$12,362~~ *$0*
~~Less: ½ of the credit of $13,425.00 paid by B on the qualified property in A's estate (see credit limit computation below)~~	~~$(6,712.50)~~	~~$ 5,649.50~~
Beneficiary D: (same as C)		
	~~$256,712.50~~ *$275,000*	~~$5,649.50~~ *$0*
Totals	~~$513,425.00~~ *$550,000*	~~$11,299~~ *$0*

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~~Note Credit Limitation in B's Estate~~

~~The credit C and D are entitled to in B's estate for the tax B paid on the qualified terminable interest property in A's estate cannot exceed the percentage of the tax generated in B's estate by including the qualified property. The percentage is computed as follows:~~

$$\frac{\text{Qualified property in B's estate}}{\text{B's total net estate}} \quad \frac{\$400,000}{\$513,425} = 77.91\%$$

~~The credit limit for beneficiary B is:~~

~~77.91% × $12,362.00 = $9,331.23. The tax credit therefore is the lesser of $9,331.23 or $6,712.50 (which is C's half of the tax B paid in A's estate in Example 1). The credit limitation therefore does not apply in this example. The statute makes no provision for a refund in the event the credit is greater than the beneficiary's tax liability.~~

g. The QTIP tax credit and the credit for tax on prior transfers. The credit for the additional tax paid by the surviving spouse in the estate of the decedent grantor-donor on property, which was the subject of a qualified terminable interest election, is governed exclusively by the provisions of Iowa Code section 450.3 and these rules. The credit for tax paid on prior transfers allowable under Iowa Code section ~~450.10, subsection 6,~~ *450.10(6)* shall not apply. However, property received by the surviving spouse from the estate of the decedent grantor-donor, which was not the subject of a qualified terminable interest election, is eligible for the credit for the tax paid on a prior transfer, if the conditions of Iowa Code ~~chapter 450B~~ *section 450.10(6)* are otherwise met.

~~86.5~~(12) Annuities.

a. General rule. Annuities in general are considered to be taxable under Iowa Code ~~subsection~~ *section* 450.3(3) as a transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor. In re Estate of English, 206 N.W.2d 305 (Iowa 1973); In re Endemann's Estate, 307 N.Y. 100, 120 N.E.2d 514 (1954); Cochrane v. Commission of Corps & Taxation, 350 Mass. 237,214 N.E.2d 283 (1966).

b. Exception to the general rule. Iowa Code ~~subsection~~ *section* 450.4(5) provides for an exception to the general rule of taxability of annuities. ~~The exception is limited to the portion of the~~ *Essentially, an exemption from Iowa inheritance tax is allowed if the following three elements are met: (1) payment under the plan must be installments; (2) the* annuity payment, ~~which wholly~~ *in whole* or in part, ~~as the case may be, is includable~~ *must be included* as net income for Iowa income tax purposes under Iowa Code section 422.7. ~~In addition, to come within the exception, the~~*; and (3) the* annuity must be derived from ~~an~~ *a qualifying* employee's pension or retirement plan. *In essence, the portions of payments received under a qualified annuity plan that are subject to Iowa income tax are exempt from Iowa inheritance tax and the portions of such payments that are not subject to Iowa income tax are subject to Iowa inheritance tax.* The exclusion makes reference only to installment payments and not to lump-sum distributions to a beneficiary. It is within the exclusion, if the payments, or a portion ~~as the case may be~~, are subject to Iowa income tax irrespective of the type of income tax treatment given the payments. Whether the payments ~~be~~ *are* includable as ordinary income~~,~~ *or* receive capital gain treatment~~, or are eligible for income averaging (for federal income tax purposes)~~ is not material to determining the exclusion. *Iowa Code section 450.4(5) purports to exclude from inheritance tax what is subject to income tax and Iowa Code section 422.7(4) purports to exclude from income tax what is subject to inheritance tax. The apparent ambiguity can be resolved by an analysis of Iowa Code section 422.7(4). Iowa Code section 422.7(4) excludes from income tax the commuted value of the installment payments, not just a portion of the payments. "Commuted value" has been defined as the sum necessary to provide future payments as provided for in an annuity policy. In other words, the present value of the full amount of each annuity payment is the commuted value. This can be construed to mean only those estates which had been taxed for inheritance tax purposes on the full amount of each installment payment are entitled to the income tax exclusion.*

~~Prior to 1961 the department subjected to inheritance tax the commuted value of the full amount of each annuity payment regardless of whether the annuity was derived from an employee's pension or retirement plan or not. This resulted in a portion or all of the annuity payments being subject to both inheritance and income taxes in certain circumstances.~~

~~In 1961, Iowa Code subsections 450.4(5) and 422.7(4) were enacted by the Fifty-ninth General Assembly. See section 1, chapter 238 and section 1, chapter 227 respectively. It has been said the two exclusion sections are circular and confusing. See Kurtz and Reimer, Iowa Estates: Taxation and Administration, section 16.30 (1975). Iowa Code subsection 450.4(5) purports to exclude from inheritance tax what is subject to income tax and Iowa Code subsection 422.7(4) purports to exclude from income tax what was subject to inheritance tax. The apparent ambiguity can be resolved by an analysis of Iowa Code subsection 422.7(4). Subsection 422.7(4) excludes from income tax the commuted value of the installment payments, not just a portion of the payments. "Commuted value" has been defined as the sum necessary to provide future payments as provided for in an annuity policy. In other words, the present value of the full amount of each annuity payment is the commuted value. This can be construed to mean only those estates which had been taxed for inheritance tax purposes on the full amount of each installment payment are entitled to the income tax exclusion.~~

~~Therefore, Iowa Code subsection 422.7(4) addresses itself only to those beneficiaries of estates of decedents dying prior to 1961, whose gross share of the estate subject to Iowa inheritance tax included the commuted value of the full amount of each installment payment. As a result, since 1961, the exclusion under Iowa Code subsection 450.4(5) alone and by itself prevents the double taxation of the portion of the installment payments subject to income tax. Thus the circuity problem is avoided by first ascertaining whether the installment payments, or a portion thereof, are subject to Iowa income tax. The rule since 1961 is this: First determine what portion (which may be all or none) of the installment payments will be subject to Iowa income tax; the portion thus determined is exempt from Iowa inheritance tax. The present value of the portion of the installment payments remaining after the portion subject to income tax has been excluded is includable in the gross estate for inheritance tax purposes.~~ *Annuities typically known as "employee pensions" are generally considered to be qualified plans for exemption for inheritance tax purposes. The qualified plans receive special income tax treatment during the period the annuity is being funded. This special tax treatment is based on the income being deferred to fund the annuity plan and also the postponement of the earnings from the fund until withdrawal. Payment of the proceeds from the annuity must not be in the form of one lump sum. Instead, payment must be in installments to qualify for the inheritance tax exemption. To constitute an installment, there must be two or more payments of the pro-*

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ceeds from the annuity. There is not a set time period imposed between payments to qualify for exemption.

EXAMPLE: The decedent, a resident of Iowa, had a qualified annuity purchased under a retirement plan through the decedent's Iowa employer. The beneficiary of the pension is the decedent's niece who is a resident of Iowa. A portion of the installment payments received by the niece will be included as net income pursuant to Iowa Code section 422.7. As a result, Iowa inheritance tax would not be imposed on the value of the portion of installment payments included as net income. However, the remaining portion of the installment payments not reported as net income pursuant to Iowa Code section 422.7 or subject to Iowa income tax at its commuted value would be subject to Iowa inheritance tax—see Iowa Code sections 422.7(4), 422.7(34), and 450.4.

An exemption from Iowa inheritance tax for a qualified plan does not depend on the relationship of the beneficiary to the decedent. Payments under a qualified plan made to the estate of the decedent are exempt from Iowa inheritance tax. See In re Estate of Heuermann, Docket No. 88-70-0388 (September 21, 1989). In addition, it is not relevant for the purpose of determining the taxable or exempt status of payments under a qualified plan that the decedent rolled over or changed the terms of payment prior to death. Taxation or exemption of payments made under a qualified plan is determined at the date of the decedent's death. A rollover of money in a qualified plan that occurs after the death of the decedent is treated as a lump-sum payment for the purposes of inheritance tax.

ITEM 6. Amend rule 701—86.6(450) as follows:

701—86.6(450) The net estate.

~~86.6(1) Debts. For estates of decedents dying prior to July 1, 1983. In general, Iowa Code section 450.12 provides for the deduction of "debts" before computing the tax due. The term "debts" used in Iowa Code section 450.12 is broader than debts of the decedent. The term includes, but is limited to, those other items specifically allowed as deductions under this section of the Iowa Code. In order to prevent confusion in the different meanings of the word "debt," the term "liabilities" is used in this rule to include all those items allowed as deductions under Iowa Code section 450.12.~~

~~If any doubt or ambiguity exists whether an item is deductible or not, it is to be strictly construed against the taxpayer. Therefore, the burden is on the taxpayer to establish that an item is deductible. In re estate of Waddington, 201 N.W.2d 77 (Iowa 1972).~~

~~The department may require the taxpayer to furnish reasonable proof to establish the deductible items, such as, but not limited to, canceled checks in payment of an obligation, copies of court orders allowing claims against the estate, attorney and fiduciary fees, allowances for the surviving spouse and copies of notes and mortgages.~~

~~Iowa Code section 450.12 draws a distinction between the liabilities that are deductible in the estate of a decedent who was domiciled in Iowa at the time of death and the liabilities that are deductible in estates of decedents domiciled outside of Iowa at death. Iowa Code subsection 450.12(2), which lists the items that are deductible for estates of decedents domiciled outside Iowa, should be construed in conjunction with Iowa Code section 450.89 which also provides for the deduction of debts in foreign estates. In re Estate of Evans, 246 Iowa 893, 68 N.W.2d 289 (1955).~~

~~86.6(2)~~ *86.6(1)* Liabilities deductible.~~—Iowa residents. For estates of decedents dying prior to July 1, 1983.~~

a. Debts owing by decedent. A debt, to be allowed as a deduction in determining the net estate under Iowa Code section 450.12, must be the liability of the decedent and also be owing and not discharged at the time of the decedent's death. The amount allowable as a deduction is the principal amount due, plus interest accruing to the day of the decedent's death. If the decedent is not the only person liable for the debt, only a portion of the debt shall be deducted for inheritance tax purposes. The portion deducted is based on the number of solvent obligors. If a joint and several debt has more than one obligor and one obligor pays the remaining balance owed on the debt, the obligor who pays the remaining debt has a right of contribution for payment of the debt against the other solvent obligors. If the decedent is the obligor and the estate pays the remaining balance of the debt, the estate must list the right of contribution as an asset on the Iowa inheritance tax return. In re Estate of Tollefsrud, 275 N.W.2d 412 (Iowa 1979); In re Estate of Thomas, 454 N.W.2d 66 (Iowa App. 1990); Estate of Pauline Bladt, Department of Revenue and Finance, Hearing Office Decision, Docket No. 95-70-1-0174 (December 16, 1996). The term "debt owing by the decedent" is not defined in Iowa Code section 450.12. However, Iowa Code section 633.3(10) ~~(probate code)~~ defines "debts" as including liabilities of the decedent which survive, whether arising in contract, tort, or otherwise.

~~Examples of what the~~ *The* term "debt of the decedent" does not include ~~are but not limited to,~~ taxes, which are an impost levied by authority of government upon its citizens or subjects for the support of the state. Eide v. Hottman, 257 Iowa 263, 265, 132 N.W.2d 755 (1965). *Please note that this is a nonexclusive example of "debt of the decedent."* Promissory notes executed by the decedent without consideration are not debts of the decedent and are not allowable as a deduction in determining the net estate subject to tax. In re McAllister's Estate, 214 N.W.2d 142 (Iowa 1974). Payments to persons in compromise of their claim to a portion of the estate made by those persons who take from the decedent~~,~~ are not debts nor treated as expenses of settlement. In re Estate of Bliven, 236 N.W.2d 366,371 (Iowa 1975); In re Estate of Wells, 142 Iowa 255, 259, 260, 120 N.W. 713 (1909).

Iowa Code ~~subsection~~ *section* 450.12~~(1)~~ *and Internal Revenue Code Section 2053* ~~provides~~ *provide* that debts owing by the decedent to be allowable in computing the net estate must be the type of obligation of the decedent for which a claim could be filed and be enforced in the probate proceedings of the estate. In re Estate of McMahon, 237 Iowa 236, 21 N.W.2d 581 (1946); In re Estate of Laartz, Cass County District Court, Probate No. 9641 (1973); In re Estate of Tracy, ~~department~~ *Department* of ~~revenue~~ *Revenue* and ~~finance hearing officer decision~~ *Finance Hearing Officer Decision* Docket No. 77-167-3-A (1977). Filing a claim in probate proceedings is not a prerequisite for the allowance of the liability as a deduction in computing the net estate. ~~It is sufficient that the liability is enforceable against the decedent's estate and will be paid.~~ *An allowable liability is deductible whether or not the liability is legally enforceable against the decedent's estate.* Claims in probate founded on a promise or agreement are deductible only to the extent they were contracted bona fide and for an adequate and full consideration. In re McAllister's Estate, 214 N.W.2d 142 (Iowa 1974).

~~If~~ *The debt must have been paid prior to the filing of the inheritance tax return, or if* the debt is not paid at the time the final inheritance tax return is filed (which is frequently the case in installment obligations) the burden is on the taxpayer to establish, if requested by the department, that the debt will be paid at a future date. The validity of a claim in probate

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based on a liability of the decedent is subject to review by the department. In re Estate of Stephenson, 234 Iowa 1315, 1319, 14 N.W.2d 684 (1944).

If any doubt or ambiguity exists whether an item is deductible or not, it is to be strictly construed against the taxpayer. Therefore, the burden is on the taxpayer to establish that an item is deductible. In re Estate of Waddington, 201 N.W.2d 77 (Iowa 1972).

The department may require the taxpayer to furnish reasonable proof to establish the deductible items such as, but not limited to, canceled checks in payment of an obligation, copies of court orders allowing claims against the estate, attorney and fiduciary fees, allowances for the surviving spouse, and copies of notes and mortgages.

b. No change.

c. Mortgages—not decedent's debt. If the gross estate includes property subject to a mortgage or other encumbrance which secures a debt which is not enforceable against the decedent, the amount of the debt, including interest accrued to the day of death, is deductible, not as a debt of the decedent, but from the fair market value of the encumbered property. The deduction is limited to the amount the decedent would have had to pay to remove the encumbrance less the value, if any, of the decedent's right of recovery against the debtor. See Home Owners Loan Corp. v. Rupe, 225 Iowa 1044, 1047, 283 N.W. 108 (1938), for circumstances under which the right of subrogation may exist.

d. Mortgages—nonprobate property. A debt secured by property not subject to the jurisdiction of the probate court, such as, but not limited to, jointly owned property and property transferred within three years of death ~~and in contemplation of death~~ is deducted in the same manner as a debt secured by probate property. The fact the property is includable in the gross estate is the controlling factor in determining the deductibility of the debt (providing the debt is otherwise deductible).

~~e. Local and state taxes. The taxes deductible are limited to Iowa state and local taxes. In re Estate of McMahon, 237 Iowa 236, 21 N.W.2d 581 (1946). The deductible taxes would include taxes on real and personal property, sales and use taxes, income tax and special school district income taxes which are due and unpaid at the time of the decedent's death, including tax on income received during the year of, but prior to, death and miscellaneous Iowa taxes, such as motor vehicle fuel taxes. To be deductible under this category, the obligation must be a tax and not a user charge, such as a sewer fee, which is more properly categorized as a debt. Special assessments on property and penalty and interest accrued to the day of death on taxes owed by the decedent are deductible, not as taxes, but as an offset against the value of the property or as a debt of the decedent as the case may be. However, for administrative convenience, it is permissible to list and deduct such liabilities in the same manner as taxes. Taxes to be deductible must be due and owing at death during the period beginning July 1 and ending June 30 in which the decedent's death occurs.~~

~~EXAMPLE 1—On May 15, 1980, the county board of supervisors levied a tax in the sum of $1,500 on decedent's Iowa real estate. Decedent died July 2, 1980. The entire real estate tax is deductible (it is assumed the taxes were unpaid) because the taxes became due and payable July 1, 1980.~~

~~EXAMPLE 2—Same facts as in Example 1, only the decedent died December 1, 1980. Assuming only the first half of the real estate taxes had been paid in September 1980, the second half ($750) would be deductible from the decedent's gross estate.~~

~~EXAMPLE 3—Same facts as in Example 1, except the decedent died June 15, 1980. No real estate taxes are deductible (it is assumed the decedent had paid the taxes due during the period July 1, 1979 to June 30, 1980) even though the taxes were levied and became a lien May 15, 1980, prior to decedent's death, because they are not due and payable until July 1, 1980. See In re Estate of Luke, 184 N.W.2d 42 (Iowa 1971) for determining when real estate taxes become a lien as distinguished from when they are payable.~~

~~The inheritance tax imposed in the decedent's estate is not a tax on the decedent's property nor is it a state tax due from the estate. It is a succession tax on a person's right to take from the decedent. The tax is the obligation of the person who succeeds to property included in the gross estate. Wieting v. Morrow, 151 Iowa 590 132 N.W. 193 (1911); Waterman v. Burbank, 196 Iowa 793, 195 N.W. 191 (1923). Therefore, inheritance tax is not a deduction in determining the net estate of the decedent in which the tax was imposed. However, if a taxpayer dies owing an inheritance tax imposed in another estate, the tax imposed in the prior estate, together with any penalty and interest owing, if any, is a deduction as a state tax due in the deceased taxpayer's estate.~~

e. Inheritance and accrued taxes.

(1) Inheritance tax. The inheritance tax imposed in the decedent's estate is not a tax on the decedent's property nor is it a state tax due from the estate. It is a succession tax on a person's right to take from the decedent. The tax is the obligation of the person who succeeds to property included in the gross estate. Wieting v. Morrow, 151 Iowa 590 132 N.W. 193 (1911); Waterman v. Burbank, 196 Iowa 793, 195 N.W. 191 (1923). Therefore, inheritance tax is not a deduction in determining the net estate of the decedent in which the tax was imposed. However, if a taxpayer dies owing an inheritance tax imposed in another estate, the tax imposed in the prior estate, together with penalty and interest owing, if any, is a deduction as a state tax due in the deceased taxpayer's estate.

(2) Accrued taxes. In Iowa, property taxes accrue on the date that they are levied even though they are not due and payable until the following July 1. In re Estate of Luke, 184 N.W.2d 42 (Iowa 1971); Merv E. Hilpipre Auction Co. v. Solon State Board, 343 N.W.2d 452 (Iowa 1984).

Death terminates the decedent's taxable year for income tax purposes. Federal regulation Section 1.443-1(a)(2), 701—paragraph 89.4(9)"b." As a result, the Iowa tax on the decedent's income for the taxable year ending with the decedent's death is accrued on date of death.

In addition, any federal income tax for the decedent's final taxable year is owing at death, even though it is not payable until a later date. Therefore, both the decedent's state and federal income taxes, both for prior years and the year of death, are deductible in computing the taxable estate if unpaid at death.

f. Federal taxes. Deductible under this category are the federal ~~taxes such as federal income and gift taxes owing by the decedent at the time of death,~~ *estate taxes and federal taxes owing by the decedent* including any penalty and interest accrued to the ~~day~~ *date* of death. ~~Federal income taxes on the decedent's income received during the year of, but prior to death are deductible. Also deductible are the federal taxes paid from the estate on Iowa property. The term "paid from the estate on Iowa property" is a term of limitation and therefore only the portion of the federal estate tax attributable to Iowa property is deductible.~~ *Prior to 1983, the federal estate tax was prorated based on the portion of federal estate tax attributable to Iowa property and that attributable to proper-*

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ty located outside the state of Iowa. However, currently the deductibility of federal estate tax is treated like other liabilities of the estate. For estates with property located in Iowa and outside the state of Iowa, see the proration computation provided in 86.6(2). The deduction is limited to the net federal tax owing after all allowable credits, such as the federal credit for state death taxes paid, have been subtracted. Any penalty and interest imposed or accruing on federal taxes after the decedent's death is not deductible. ~~The general rule for determining the amount of federal estate tax which is deductible is as follows: Multiply the total net federal estate tax owing by the fraction of which the total Iowa gross estate for federal estate purposes is the numerator and the total gross estate for federal estate tax purposes is the denominator. The general rule is illustrated by the following example:~~

~~EXAMPLE: Decedent died July 1, 1980, a resident of the state of Arizona, survived by two children who are the sole beneficiaries under decedent's will. The gross estate for federal estate tax purposes is composed of a 160-acre Iowa farm, valued at $320,000, grain on hand, with a situs in Iowa valued at $20,000, and a dwelling and intangible personal property with a situs in Arizona valued at $150,000. The estate has liabilities of $75,000, which are allowed in computing the federal adjusted gross estate. The federal estate tax paid was $84,400, less $7,280 credit for state death taxes, or $77,120.~~

~~The amount of federal estate tax deductible for Iowa inheritance tax purposes is computed as follows:~~

~~Federal Gross Estate~~		~~Iowa Gross Estate~~	
~~Iowa real estate~~	~~$320,000~~	~~Iowa real estate~~	~~$320,000~~
~~Iowa grain~~	~~20,000~~	~~Iowa grain~~	~~20,000~~
~~Arizona property~~	~~150,000~~	~~Total Iowa gross estate~~	~~$340,000~~
~~Total gross estate~~	~~$490,000~~	~~x $77,120 = $53,511.84~~	
~~Iowa gross estate:~~	~~$340,000~~		
~~Total gross estate:~~	~~$490,000~~		

~~$53,511.84 is the federal estate tax deduction for Iowa inheritance tax purposes.~~

~~However, if it is established, either by the department or the taxpayer, that the taxable estate for federal estate tax purposes includes Iowa property in a greater or lesser proportion than would result by applying the ratio computed under the general rule (for example, Iowa property included in the marital share or property devised in part to charity), then such greater or lesser proportion of Iowa property shall govern the ratio used in computing the deduction for federal estate taxes paid. The foregoing special rule is illustrated by the following example:~~

~~EXAMPLE: The decedent died July 1, 1980, a resident of the state of Nebraska, survived by a spouse and two children. Under the terms of the decedent's will the spouse was given one-half of the adjusted gross estate for federal estate tax purposes (the gross estate less the debts and expenses) which was to include the family dwelling in Nebraska. The will directed the federal estate and inheritance taxes be paid out of the remaining estate which was given to the two children equally.~~

~~The adjusted gross estate for federal estate tax purposes consists of the following assets:~~

~~Asset~~	~~Value~~	~~Property subject to Federal Estate Tax~~	
~~240-acre Iowa farm~~	~~$480,000~~	~~Iowa farm~~	~~$480,000~~
~~Nebraska intangible property~~	~~80,000~~	~~Iowa grain~~	~~35,000~~
~~Nebraska residence~~	~~75,000~~	~~Nebraska intangible property~~	~~80,000~~
~~Iowa grain~~	~~35,000~~	~~Total~~	~~$595,000~~
~~Total gross estate~~	~~$670,000~~		
~~Less debts and expenses~~	~~70,000~~		
~~Adjusted gross estate~~	~~$600,000~~		

~~The spouse's share (one-half of $600,000), which includes the residence, is not subject to federal estate tax. The federal estate tax on the remaining $300,000 is $41,700 ($45,300 less $3,600 credit for state death taxes paid).~~

~~The Iowa property ($480,000 ÷ $35,000/$595,000) is 87 percent of the total property subject to federal estate tax. The federal estate tax deduction for Iowa inheritance tax purposes is $41,700 x .87 or $36,279. This is so even though the Iowa property is only 77 percent of the total gross estate because a larger proportion of the Iowa property is subject to federal estate tax.~~

g. Funeral expenses. The deduction is limited to the expense of the decedent's funeral. If the decedent at the time of death was liable for the funeral expense of another, such expense is categorized as a debt of the decedent and is deductible subject to the same conditions as other debts of the decedent. In re Estate of Porter, 212 Iowa 29, 236 N.W. 108 (1931). A devise in the decedent's will, or a direction in a trust instrument, to pay the funeral expense of a beneficiary upon death is an additional inheritance in favor of the beneficiary and not a funeral expense deductible in the estate of the testator or grantor. Funeral expense is the liability of the estate of the person who has died. In re Estate of Kneebs, 246 Iowa 1053, 70 N.W.2d 539 (1955).

What constitutes a reasonable expense for the decedent's funeral depends upon the facts and circumstances in each particular estate. Factors to be considered ~~are~~ *include*, but *are* not limited to: the decedent's station in life and the size of the estate, Foley v. Brocksmit, 119 Iowa 457, 93 N.W. 344 (1903); *and* the decedent's known wishes (tomb rather than a grave), Morrow v. Durant, 140 Iowa 437, 118 N.W. 781 (1908). Funeral expense includes the cost of a tombstone or monument. In re Estate of Harris, 237 Iowa 613, 23 N.W.2d 445 (1946). A reasonable fee or honorarium paid to the officiating clergy is a deductible funeral expense. In re Estate of Kneebs, 246 Iowa 1053, 1058, 70 N.W.2d 539 (1955). It is not a prerequisite for deductibility that a claim for funeral expenses be filed and allowed in the probate proceedings. It is sufficient that the expense be paid ~~and be in an amount that would be enforceable in the decedent's estate if a claim in probate had been filed. In re Estate of Ewing, 234 Iowa 950, 14 N.W.2d 633 (1944)~~ *whether or not the claim is legally enforceable against the decedent's estate*. The deduction al-

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lowable is limited to the net expense of the decedent's funeral, after deducting any expense prepaid by the decedent, burial insurance or death benefit, such as the death benefit allowed by the veterans administration or the social security administration.

Funeral expenses that are not deductible include, but are not limited to, flowers, cost of meals, travel expenses of the family, cards, and postage.

h. Allowance for surviving spouse and dependents. An allowance for the support of the surviving spouse and dependents to be deductible in determining the net estate for taxation must meet two conditions: First it must be allowed and ordered by the court and second it must be paid from the assets of the estate that are subject to the jurisdiction of the probate court. The allowance is not an additional exemption for the spouse or children. It is part of the costs of administration of the decedent's estate. Iowa Code section 633.374.; In re Estate of DeVries, 203 N.W.2d 308,311 (Iowa 1972). Upon request of the department, the taxpayer shall submit a copy of the order of *the* court providing for the allowance and copies of canceled checks or other documents establishing payment of the allowance.

For the purpose of determining the shares of heirs or beneficiaries for inheritance tax, the allowance is a charge against the corpus of the shares of the estate even though it is paid from the income of the shares. The allowance is included with the other debts and charges for the purpose of abatement of shares to pay the debts and charges of the estate.

i. Court costs. The deduction under this category is limited to Iowa court costs only. In re Estate of Evans, 246 Iowa 893, 68 N.W.2d 289 (1955). The term "court costs" is not synonymous with "costs of administration" as defined in Iowa Code ~~subsection~~ *section* 633.3(8) or "administration expenses" under Section 2053(a) of the Internal Revenue Code. See federal regulation Section 20.2053-3(d). "Court costs" is ~~the~~ *a* narrower term. Court costs are part of costs of administration in Iowa and are an expense of administration under the Internal Revenue Code, but not all costs or expenses of administration are court costs. For example, interest payable on an extension of time to pay the federal estate tax is a cost of administration in the estate in which the federal estate tax is imposed, but it is not part of court costs, and therefore not deductible for inheritance tax purposes.

In general, court costs include only those statutory fees and expenses relating directly to the probate proceeding, carried on the clerk's docket, and paid routinely in the process of closing every estate. In re Estate of Waddington, 201 N.W.2d 77, 79 (Iowa 1972). The term "court costs" since August 15, 1975, also includes the expenses of selling property. See Iowa Code ~~subsection~~ *sections 450.12 and* 633.3(8) *and Internal Revenue Code Section 2053 for further details.*

~~j. Cost of appraisal. The appraisal costs deductible are the fees and mileage for the services of the inheritance tax appraisers appointed by the court under Iowa Code section 450.24. The deduction is limited to the expense of the appraisal authorized by statute. The expense of private appraisers employed by the estate, or a person interested in the estate, is not deductible, even though it may constitute a cost of administration in certain circumstances. The appraisal costs are limited to the costs of appraising property includable in the Iowa estate for inheritance tax purposes.~~

j. Additional liabilities that are deductible. Subject to subrules 86.6(4) and 86.6(5), the only liabilities deductible from the gross value of the estate include debts owing by the decedent at the time of death, local and state taxes accrued before the decedent's death, federal estate tax and federal taxes owing by the decedent, a sum for reasonable funeral expenses, the allowance for surviving spouse and minor children granted by the probate court or its judge, court costs, and any other administration expenses allowable pursuant to Section 2053 of the Internal Revenue Code.

(1) Criteria for deductible administration expenses under Section 2053 of the Internal Revenue Code. Administration expenses must meet certain requirements to be allowable deductions under Section 2053 of the Internal Revenue Code. To be allowable deductions, expenses must meet the following conditions:

1. The expenses must be payable out of property subject to claims;

2. The expenses are allowable (not based on the deductible amount) by the law governing the administration of the decedent's estate;

3. The expenses are actually and necessarily incurred in the administration of the estate. Administration expenses are limited to those expenses incurred in the settlement of the estate and the transfer of the estate property to beneficiaries and trustees, including an executor that is a trustee. Expenses that are not essential to the settlement of the estate, but are incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions; and

4. The allowable amount of expenses for deduction is limited to the value of property included in the decedent's gross estate and subject to claims, plus amounts paid out of the property not subject to claims against the decedent's estate, on or before the last day of the ninth month after death or within any granted extension(s) of time for filing the return. "Property subject to claims" is defined as the property includable in the gross estate which bears the burden or would bear the burden under law for payment of the deduction in the final adjustment and settlement of the decedent's estate, less an initial deduction allowable under Section 2054 of the Internal Revenue Code, for any losses for casualty or theft attributable to such property and incurred during the settlement of the estate.

(2) Allowable administration expenses. Subject to the limitations in paragraph "a" of this subrule, allowable administration expenses under Section 2053 of the Internal Revenue Code include costs and fees incurred in the collection of assets, payment of debts, distribution of property to entitled persons, executor's commission, attorney's fees, and miscellaneous administration expenses. Miscellaneous administration expenses include costs or fees for surrogates, accountants, appraisers, clerk hire, storing or maintaining property of the estate, and selling the property of the estate. Expenses for preserving and caring for the property do not include expenditures for additions or improvements or expenses for a longer period than the executor is reasonably required to retain the property. Expenses for selling property of the estate are limited to those for sales that are necessary in order to pay the decedent's debts, expenses of administration, and taxes, preserve the estate, or effect distribution. Expenses for selling the property include brokerage fees or auctioneer fees and may include the expenses for a sale of an item in a bona fide sale that is below the fair market value of the item. The allowable selling expense for an item sold below its fair market value to a dealer in such items is the lesser of the amount by which the fair market value of the item on the valuation date exceeded the proceeds from the sale or the amount by which the fair market value of the item on the date of the sale exceeded the proceeds of the sale.

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~~k. Fee of fiduciary. For the purpose of determining the deduction for fees under Iowa Code section 450.12 the term "fiduciary" includes an executor, administrator, trustee, or other personal representative, both temporary and permanent, appointed by the court to settle the decedent's probate estate and also the trustee of an inter vivos trust where the trust assets are part of the gross estate for inheritance tax purposes.~~

~~The deduction under this category is limited to the fee of the executor or administrator, together with the miscellaneous expenses incurred for settling the Iowa probate estate and the trustee's fees which are attributable to the Iowa trust assets includable for Iowa inheritance tax purposes. In re Estate of Evans, 246 Iowa 893, 68 N.W.2d 289 (1955).~~

~~In the case of the fee of a trustee, the amount of the fee deductible under this category is limited to compensation for services rendered the trust commencing with the death of the grantor together with the miscellaneous expenses incurred by the trustee. Trustee fees owed, or the amount of the fee accrued to the day of death, if not the liability of the grantor, constitutes a charge against the trust assets. For administrative convenience it is permissible to deduct fees owing or accrued in the same manner as a debt of the grantor. Fees for the services of a guardian or conservator owed, or accrued to the day of death, are the obligation of the decedent and are properly deductible as a debt of the decedent.~~

~~In case any of the assets of the decedent, or grantor of a trust, are the subject of Iowa probate proceedings, the fee and expenses to be deductible must be allowed by order of the court. It is presumed the fee allowed by the court includes compensation for services rendered in connection with both probate and nonprobate property, unless it is shown to the contrary. In case no part of the decedent's or grantor's assets are the subject of Iowa probate proceedings, the fee allowable as a deduction is the fee that would have been allowable had the assets been included in the probate estate (taking into consideration all relevant factors such as the amount of the assets and the time and expense involved in administering nonprobate assets, as distinguished from probate assets).~~

~~The deduction for fees to be allowable must be paid, or if not paid at the time the final inheritance tax return is filed, the department must be reasonably satisfied that the fee will be paid.~~

~~Iowa Code section 450.12 does not specifically provide that the fee to be allowable must be reasonable. However, since the fee is allowed by order of court and is the same fee allowed under Iowa Code section 633.197, it is an underlying assumption that the deduction is limited to a reasonable fee.~~

~~l. Attorney fees. The deduction is for the reasonable fee for legal services, together with the miscellaneous expenses incurred by the attorney, which have been allowed by court order, rendered the administrator, executor or trustee on property includable for Iowa tax purposes. In re Estate of Evans, 246 Iowa 893, 68 N.W.2d 289 (1955). If the attorney fee for services rendered a trustee of Iowa property includable in the gross estate is not allowable because probate proceedings have not been commenced, it is nevertheless deductible as an expense in the same manner as deductible attorney fees incurred for marshaling assets (subject to the same conditions as reasonableness and deductibility as attorney fees allowed in probate proceedings). Bair v. Randall, 258 N.W.2d 333 (Iowa 1977). If probate proceedings are held on any part of the decedent's assets, it is presumed the fee allowed by the court includes services in connection with both probate and nonprobate property, unless the contrary is shown. See In re estate of Simon, 288 N.W.2d 549 (Iowa 1980) for what constitutes a reasonable fee.~~

~~The fee for an attorney employed by the executor, administrator or trustee for the purpose of prosecuting or defending an action for the benefit of the estate or trust as a whole is deductible in the same manner as the attorney fee for settling the estate. The fee of an attorney employed by a person interested in the estate or trust primarily for the purpose of prosecuting or defending a personal interest in the estate or trust is not deductible in computing the net estate. In re Estate of Law, 253 Iowa 599, 113 N.W.2d 233 (1962).~~

~~The fee to be deductible must be paid, and if not paid at the time the final return is filed, the department must be reasonably satisfied that the fee will be paid.~~

~~m. Extraordinary fees. The fee for extraordinary services of the executor, administrator, trustee or attorney allowed by order of court for settling the estate or trust, is deductible in computing the net estate for taxation in the same manner as the fee for ordinary services.~~

~~n. Fees—outside specialists. The fees of outside specialists employed by the estate under the provision of Iowa Code section 633.84 such as, but not limited to, surveyors, engineers, accountants and financial advisors are not deductible unless the services are part of the expense of selling real or personal property. Iowa Code section 450.12 only provides for the deduction of those specific items listed in the section. In re Estate of Waddington, 201 N.W.2d 77 (Iowa 1972). The fee deduction is limited to the fee of the executor, administrator, trustee and the attorney employed to settle the estate or trust.~~

~~o. Fiduciary bond. The expense deductible under this category is limited to the charge of the surety for the executor's or administrator's bond while settling the estate. If a bond is required of the executor or administrator when selling real or personal property of the estate, the charge of the surety is more properly classified as selling expense and is deductible either as court costs or selling expense.~~

~~p. Selling expense. The deduction under this category is for the expense of selling real and personal property, and not the expense incurred for the purchase of assets for investment during the administration of the estate or trust. Deductible selling expense specifically includes, but is not limited to, real estate agent's commission, abstract expense, documentary stamps and expense for correcting title to property sold. Items of selling expense, in addition to the expenses specifically enumerated, that may be deductible depending on the facts and circumstances of each individual sale, would include, but are not limited to, the commission of the auctioneer for a public sale, cost of advertising the property for sale, the expense of a clerk for a public auction, necessary expenses of preparation of the property for sale, cost of the deed of conveyance and purchase contract (if the seller's obligation), broker's commission for the sale of personal property and cost of a bond required for selling real or personal property.~~

~~The expense deductible is limited to sales by the estate or trust during the period of administration. The expense of a sale by the heirs, beneficiaries, surviving joint tenants and transferees of property for their own benefit is not deductible in computing the net estate for taxation.~~

~~Deductible selling expenses must be paid, and if not paid when the final return is filed, the department must be reasonably satisfied that the expense will be paid.~~

~~Selling expense is part of court costs. However, for administrative convenience, selling expense should be itemized and listed separately from court costs on the final return.~~

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~~86.6(3) Liabilities deductible—nonresident decedents. For estates of decedents dying prior to July 1, 1983.~~

~~a. Liabilities deductible in full. The following items are deductible in full in computing the net estate, subject to the same terms and conditions as like obligations in estates of Iowa-domiciled decedents: Iowa court costs of ancillary administration; the fee of the executor, administrator, trustee and the attorney for settling the Iowa ancillary administration, or the nonprobate assets included in the Iowa gross estate; mortgages or other encumbrances on property includable in the Iowa gross estate; bond of the executor, administrator or trustee in the Iowa ancillary administration; expense of selling Iowa property; and Iowa taxes. In re Estate of Evans, 246 Iowa 893, 68 N.W.2d 289 (1955).~~

~~b. Liabilities not deductible. The following items are not deductible in computing the Iowa net estate subject to taxation: court costs of the primary administration and the fees of the executor, administrator, trustee and attorney employed for settling the primary administration outside Iowa; funeral expense if the burial is outside Iowa; appraisal fees incurred in the primary administration; and debts of the decedent and other obligations secured by property with situs outside Iowa which is not includable in the Iowa gross estate, except that if the secured liability is an obligation of the decedent and is in excess of the value of the security, the excess shall be prorated in the same manner as an unsecured debt of the decedent. In re Estate of Evans, 246 Iowa 893, 68 N.W.2d 289 (1955).~~

~~c. Liabilities—to be prorated. The following liabilities are to be prorated between the primary and the ancillary estate: federal income tax owed by the decedent and the federal estate tax imposed on the decedent's estate; unsecured debts of the decedent; and the excess of a debt of the decedent over the value of the property securing the debt, where the security is not includable in the Iowa gross estate.~~

~~The amount deductible is computed by multiplying the amount of the liability by a fraction of which the Iowa gross estate is the numerator and the total gross estate is the denominator. However, in the case of federal estate tax, if it is established either by the department or the taxpayer that the taxable estate for federal estate tax purposes includes Iowa property in a greater or lesser proportion than the Iowa property included in federal gross estate, then such greater or lesser proportion shall govern the ratio used in computing the deduction for federal estate taxes paid. See paragraph 86.6(2)"f."~~

~~86.6(4)~~ ***86.6(2)*** *Prorated liabilities.* ~~Liabilities deductible—estates of decedents dying on or after July 1, 1983.~~

~~a. In general. Subrules 86.6(1) to 86.6(3) apply to the liabilities deductible in estates of decedents dying on or after July 1, 1983, except as otherwise provided in this subrule.~~

~~b~~ *a.* ~~Residents and nonresident distinction abolished. Effective for estates of decedents dying on or after July 1, 1983, the domicile of the decedent is not relevant in determining whether a liability is deductible in computing the net estate. The case of In re Estate of Evans, 246 Iowa 893, 68 N.W.2d 289 (1955) only applies to estates of decedents dying prior to July 1, 1983. However, the~~ *The* amount of the liability that is deductible depends upon the situs of the property in the gross estate.

If part of the property included in the gross estate has a situs in a jurisdiction other than Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator. For the purpose of apportionment of the liabilities, the term "gross estate" means the gross estate for federal estate tax purposes. Provided, if the federal gross estate formula produces a grossly distorted result then, subject to the approval of the department, an alternate apportionment formula may be used either by the department or the taxpayer which fairly represents the particular facts of the estate.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

~~c~~ *b.* Liabilities that must be prorated~~—estates of decedents dying on or after July 1, 1983~~. If the gross estate includes property with a situs outside Iowa, the liabilities that must be prorated are (1) court costs, both foreign and domestic; (2) unsecured debts of the decedent regardless of where the debt was contracted; (3) federal and state income tax, including the tax on the decedent's final return, federal estate, gift and excise tax, and state and local sales, use and excise tax; (4) expenses of the decedent's funeral and burial, regardless of the place of interment; (5) allowances for the surviving spouse and children allowed by the probate court in Iowa or another jurisdiction; (6) the expense of the appraisal of property for the purpose of assessing a state death or succession tax, ~~if not otherwise included in court costs~~; (7) the fees and necessary expenses of the personal representative and the personal representative's attorney allowed by order of court, both foreign and domestic; (8) the costs of the sale of real and personal property, both foreign and domestic, if not otherwise included in court costs; and (9) the amount paid by the personal representative for a bond, both foreign and domestic.

~~d~~ *c.* Liabilities that are not prorated~~—estates of decedents dying on or after July 1, 1983~~. Liabilities secured by a lien on property included in the gross estate are to be allocated in full to the state of situs. These are liabilities secured by (1) mortgages, mechanic's liens and judgments; (2) real estate taxes and special assessments on real property; (3) liens for an obligation to the United States of America, a state or any of its political subdivisions; and (4) any other lien on property imposed by law for the security of an obligation.

~~e. Accrued taxes—for estates of decedents dying on or after July 1, 1983. Effective for estates of decedents dying on or after July 1, 1983, state and local taxes that have accrued before the decedent's death are deductible in computing the net estate. This modifies paragraph 86.6(2)"e" which allows a deduction only for state and local taxes that are due and payable during the fiscal year beginning July 1 in which the decedent's death occurs. In Iowa property taxes accrue on the date the county board of supervisors makes the tax levy, even though they are not due and payable until the following July 1. In re Estate of Luke, 184 N.W.2d 42 (Iowa 1971). Death terminates the decedent's taxable year for income tax purposes. Federal regulation section 1.443-1(a)(2), 701—paragraph 89.4(9)"b." As a result, the Iowa tax on the decedent's income for the taxable year ending with the decedent's death is accrued on date of death. In addition, any federal income tax for the decedent's final taxable year is owing at death, even though it is not payable until a later date. Therefore, both the decedent's state and federal income tax, both for prior years and the year of death, are deductible in computing the taxable estate, if unpaid at death.~~

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d. Prorated cash bequests. If the distribution of an estate includes pecuniary legacies with an estate with property located in and outside Iowa, or the estate includes specific bequests from a fund containing property located in and outside Iowa, then the Iowa inheritance tax liability for those legacies or bequests will be based on the pro rata portion of the property of the estate located in Iowa. For further details see Estate of Dennis M. Billingsley, Iowa District Court of Emmet County, Case No. 13394 (July 15, 1982).

~~86.6(5)~~ *86.6(3)* Liabilities deductible from property not subject to the payment of debts and charges. ~~For estates of decedents dying on or after July 1, 1990.~~

a. Estates with all of the property located in Iowa. ~~Effective for estates of decedents dying on or after July 1, 1990, and subject~~ *Subject* to the special provisions in ~~86.6(5), paragraph "c,"~~ *86.6(3)"c,"* the liabilities deductible under Iowa Code section 450.12 may be deductible in whole or in part from property includable in the gross estate for inheritance tax purposes which under Iowa debtor-creditor law is not liable for the payment of the debts and charges of the estate under the following terms and conditions:

(1) The application of liabilities.

1. and 2. No change.

3. The property included in the gross estate that is under Iowa debtor-creditor law subject to the payment of the deductible liabilities must first be applied to the liabilities, and only after this property has been exhausted can the excess liabilities be applied to the ~~other~~ *remaining* property included in the gross estate.

4. Any excess liabilities remaining unpaid after exhausting the property subject to the payment of the liabilities must be allocated to the remaining property included in the gross estate for inheritance tax purposes on the basis of ~~which~~ *the ratio* the value of each person's share of the ~~other~~ *remaining* property in the gross estate bears to the total value of the ~~other~~ *remaining* property included in the gross estate.

(2) No change.

b. Estates with part of the property located outside Iowa. Iowa Code ~~subsection~~ *section* 450.12(2) and *subrule* 86.6~~(4)"b"~~ *(2)* require that the liabilities deductible be prorated in those estates where a portion of the property included in the gross estate has a situs outside Iowa. Subject to the special provision in ~~86.6(5), paragraph "c,"~~ *86.6(3)"c,"* in these estates the portion of the liabilities deductible which is allocated to the Iowa property under the proration formula must first be applied to the Iowa situs property which is subject to the payment of the liabilities. Any portion of the liabilities allocated to Iowa remaining unpaid may then be applied to the other Iowa property included in the gross estate subject to the same limitations provided for in 86.6(~~5~~ *3*)"a"(1)"1" to "4."

c. Special rule for liabilities secured by property included in the gross estate. If a liability which is deductible under Iowa Code section 450.12(1)"a" is secured by property included in the gross estate, then the liability is deductible from the specific property that secures the liability, regardless of whether or not the property is subject to the payment of the ordinary debts and charges of the estate. If the liability exceeds the value of the property that secures it and is the obligation of the decedent, then any excess liability is deductible under the same rules that govern unsecured obligations. ~~Examples illustrating this subrule:~~

~~EXAMPLE 1~~

~~Decedent A, a widow and resident of Iowa, by will left her son, B, 50 percent of her estate and 25 percent to each of her two grandchildren, C and D, children of her deceased daughter E.~~

~~The assets and liabilities of the estate are as follows:~~

~~**Assets**~~		
~~1. Farm in joint tenancy with her son, B~~	~~$160,000~~	
~~2. Checking account in decedent's name~~	~~$3,500~~	
~~3. Certificates of deposit in decedent's name~~	~~$15,000~~	
~~4. Series E government bonds in the names of A or grandchild C~~	~~$20,000~~	
~~5. Series E government bonds in the names of A or grandchild D~~	~~$20,000~~	
~~Total gross estate~~	~~$218,500~~	~~$218,500~~
~~**Liabilities**~~		
~~Promissory note owed to bank~~	~~$15,000~~	
~~Doctor bill in excess of insurance~~	~~$1,500~~	
~~Hospital bill in excess of insurance~~	~~$750~~	
~~Utilities~~	~~$75~~	
~~Real estate taxes~~	~~$4,000~~	
~~Attorney fees~~	~~$4,500~~	
~~Credit cards~~	~~$250~~	
~~Funeral bill~~	~~$4,000~~	
~~Total liabilities~~	~~$30,075~~	~~$30,075~~
~~Net estate~~		~~$188,425~~

~~**Computation of shares**~~

~~In this estate only the checking account and the certificates of deposit in the amount of $18,500 are subject to the payment of the debts and charges of the estate. The real estate taxes of $4,000 are allocated to the joint tenancy farm.~~

~~Property subject to debts and charges~~	
~~Bank account and certificates of deposit~~	~~$18,500~~
~~$4,000 of the joint tenancy real estate for taxes~~	~~$4,000~~
~~Total~~	~~$22,500~~

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Property not subject to debts and charges			
Joint tenancy real estate ($160,000 - $4,000 taxes)			$156,000
Series E U.S. bonds			$40,000
Total			$196,000
Liabilities			
To be paid from property subject to debts			$22,500
To be prorated from property not subject to debts and charges			$7,575
Total liabilities			$30,075

Each Beneficiary's Share of Liabilities To Be Paid From Joint Property

Property not subject to debts and charges:

$$\text{B's share } \frac{156{,}000}{196{,}000} = 79.60\%$$

$$\text{C's share } \frac{20{,}000}{196{,}000} = 10.20\%$$

$$\text{D's share same as C} = 10.20\%$$

$$100\%$$

Computation of net shares of estate

Son B			
Gross share			
Farm in joint tenancy	$160,000		
50% of checking account & CDs	$9,250		
		$169,250.00	
Less liabilities			
Liability allocated to property subject to debts	$9,250.00		
Real estate taxes	$4,000.00		
Excess liabilities (79.60% of $7,575)	$6,029.70		
Total Liabilities	$19,279.70	$19,279.70	
Net share			$149,970.30
Grandchild C			
Gross share			
Series E bonds in joint tenancy	$20,000.00		
25% checking account & CDs	$4,625.00		
		$24,625.00	
Less liabilities			
Liabilities allocated to property subject to debts	$4,625.00		
Excess liabilities (10.20% of $7,575.00)	$772.65		
	$5,397.65	$5,397.65	
Net share			$19,227.35
Grandchild D			
Same as Grandchild C			$19,227.35
Total Shares			$188,425.00

EXAMPLE 2

Decedent A, a widower and resident of Dickinson County, Iowa, died testate, leaving his estate in equal shares to his two children, B and C.

Assets	
160-acre farm owned by the decedent in Minnesota	$160,000
Residence in Milford, Iowa, in joint tenancy with children	$50,000
Checking account - decedent owned	$1,500
Certificate of deposit - decedent owned	$1,000

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Total Assets (Iowa $52,500, Minnesota $160,000)	$212,500
Liabilities	
Attorney and fiduciary fees, Minnesota	$6,680
Court costs, Minnesota	$500
Attorney fees, Iowa	$750
Iowa court costs	$150
Funeral bill	$3,500
Miscellaneous unsecured debts	$1,000
Total Liabilities	$12,580

Proration of the liabilities between Iowa and Minnesota under Iowa Code section 450.12(2) and subrule 86.6(4).

Iowa Gross 52,500 = 24.71% × $12,580 = $3,108

Total Gross 212,500

In this example the liabilities allocated to the Iowa estate in the amount of $3,108 exceed the $2,500 in Iowa property subject to debts and charges. The excess debts and charges of $608 are deductible from the children's joint tenancy property for inheritance tax purposes even though there is sufficient Minnesota property which is subject to debts and charges. To take the excess Iowa debts and charges from the Minnesota property would allocate more liabilities to Minnesota than Iowa Code section 450.12(2) allows.

Computation of Shares—Iowa Estate

Child B

Assets	Liabilities	Net Share
½ joint tenancy house $25,000	½ excess liabilities $304	$24,696
½ checking account $750	Less $750 for debts	0
½ certificate of deposit $500	Less $500 for debts	0
Total Net Share		$24,696
Child C—Same as Child B		$24,696
		$49,392

Recap

Total Iowa Gross	$52,500
Less Iowa Liabilities	3,108
Iowa Net Estate	$49,392

EXAMPLE 3

Decedent A, a widow, died intestate in a nursing home, a resident of Iowa. The assets of her estate consisted of $100,000 in stocks and bonds held in joint tenancy with her only child, B, and $10,000 Series E U.S. savings bonds registered in equal amounts in joint tenancy with her grandchildren, C and D. A also owned at death a checking account with the amount of $5,000 registered in her name alone. The debts and charges in the estate were $10,000.

In this estate, the $5,000 checking account was applied against the $10,000 debts and charges. The decedent's son, B, paid the remaining debts and charges of $5,000 from his personal funds. Since the grandchildren's exemption of $15,000 is in excess of each grandchild's inheritance of $5,000, allocating 9.09 percent of the excess debts and charges against their joint tenancy U.S. bonds confers no tax benefit on the grandchildren. Under this set of facts, son B is not permitted to deduct from his joint property all of the excess debts and charges in the amount of $5,000 he paid. The statute only permits him to deduct his protestor rata share (90.91 percent of $5,000 or $4,545.45) even though he paid all of the excess deductions. The surviving joint tenants are not permitted to choose which joint tenants will receive the benefit of the excess deductions. The statute requires that the deductions be prorated.

86.6(6) Liabilities deductible—estates of decedents who died on or after July 1, 1995. Subject to 701—86.6(4) and 701—86.6(5), the only liabilities deductible from the gross value of the estate include debts owing by the decedent at the time of death, local and state taxes accrued before the decedent's death, federal estate tax and federal taxes owing by the decedent, a sum for reasonable funeral expenses, the allowance for surviving spouse and minor children granted by the probate court or its judge, court costs, and any other administration expenses allowable pursuant to Section 2053 of the Internal Revenue Code.

a. Criteria for deductible administration expenses under Section 2053 of the Internal Revenue Code. Administration expenses must meet certain requirements to be allowable deductions under Section 2053 of the Internal Revenue Code. To be allowable deductions, expenses must meet the following conditions:

(1) The expenses must be payable out of property subject to claims;

(2) The expenses are allowable (not based on the deductible amount) by the law governing the administration of the decedent's estate;

(3) The expenses are actually and necessarily incurred in the administration of the estate. Administration expenses are limited to those expenses incurred in the settlement of the estate and the transfer of the estate property to beneficiaries and trustees, including an executor that is a trustee. Expenses that are not essential to the settlement of the estate, but are incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions; and

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~~(4) The allowable amount of expenses for deduction is limited to the value of property included in the decedent's gross estate and subject to claims, plus amounts paid out of the property not subject to claims against the decedent's estate, on or before the last day of the ninth month after death or within any granted extension(s) of time for filing the return. "Property subject to claims" is defined as the property includable in the gross estate which bears the burden or would bear the burden under law for payment of the deduction in the final adjustment and settlement of the decedent's estate, less an initial deduction allowable under Section 2054 of the Internal Revenue Code, for any losses for casualty or theft attributable to such property and incurred during the settlement of the estate.~~

~~b. Allowable administration expenses. Subject to the limitations in paragraph "a" of this subrule, allowable administration expenses under Section 2053 of the Internal Revenue Code include costs and fees incurred in the collection of assets, payment of debts, distribution of property to entitled persons, executor's commission, attorney's fees and miscellaneous administration expenses. Miscellaneous administration expenses include costs or fees for surrogates, accountants, appraisers, clerk hire, storing or maintaining property of the estate, and selling the property of the estate. Expenses for preserving and caring for the property do not include expenditures for additions or improvements or expenses for a longer period than the executor is reasonably required to retain the property. Expenses for selling property of the estate are limited to those for sales that are necessary in order to pay the decedent's debts, expenses of administration, and taxes, preserve the estate, or effect distribution. Expenses for selling the property include brokerage fees or auctioneer fees, and may include the expenses for a sale of an item in a bona fide sale that is below the fair market value of the item. The allowable selling expense for an item sold below its fair market value to a dealer in such items is the lesser of the amount by which the fair market value of the item on the valuation date exceeded the proceeds from the sale or the amount by which the fair market value of the item on the date of the sale exceeded the proceeds of the sale.~~

86.6(4) Resident and nonresident deductions distinction abolished. Effective for estates of decedents dying on or after July 1, 1983, the domicile of the decedent is not relevant in determining whether a liability is deductible in computing the net estate. In the case of In re Estate of Evans, 246 Iowa 893, 68 N.W.2d 289 (1955) applies only to estates of decedents dying prior to July 1, 1983. However, the amount of the liability that is deductible depends upon the situs of the property in the gross estate.

If part of the property included in the gross estate has a situs in a jurisdiction other than Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

EXAMPLE:

Iowa gross estate (per IA 706)	*$400,000*
Exempt insurance	*$100,000*
Nebraska real estate	*$250,000*
Total federal gross estate	*$750,000*

To determine schedule J and K liabilities that must be prorated for inheritance tax, Iowa does not consider insurance in the proration formula. As a result, proration of liabilities for this example would be as follows:

Iowa gross $400,000
Total gross $650,000 = 61.54%

This rule is intended to implement Iowa Code sections 450.7(1), 450.12, 450.22, 450.24, 450.38, 450.89, 633.278, and 633.374.

ITEM 7. Amend subrule 86.7(4), introductory paragraph, as follows:

86.7(4) Tables for life estates and remainders for estates of decedents dying on or after January 1, 1986. For estates of decedents dying on or after January 1, 1986, the following tables are to be used in computing the value of a life estate, an annuity for life and the value of a remainder in property. The table is based on the commissioners' standard ordinary mortality tables of life expectancy, with no distinction being made between the life expectancy of males and females of the same age. As a result, the sex of the recipient is not relevant in computing the value of the property interest received. Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris, 463 U.S. 1073, 103 S.Ct. 3492, 77 L.Ed.2d 1236 (1983). *Valuation is based on the age at the nearest birthday.* The following tables are to be applied in the same manner as specified in subrule 86.7(1).

ITEM 8. Amend subrules 86.8(1), 86.8(4) to 86.8(8), 86.8(11), 86.8(13), and 86.8(15) as follows:

86.8(1) In general. Effective for estates of decedents dying on or after July 1, 1982, real estate which has been valued at its special use value under 26 U.S.C. Section 2023A for computing the federal estate tax~~,~~ is eligible to be valued for inheritance tax purposes at its special use value, subject to the limitations imposed by statute and these rules. Special use valuation under the provisions of Iowa Code chapter 450B is in lieu of valuing the real estate at its fair market value in the ordinary course of trade under Iowa Code ~~sections~~ *section* 450.37 ~~and 450.39~~. The valuation of real estate at its special use value must be made on the entire parcel of the real estate in fee simple. The value of undivided interests, life or term estates and remainders in real estate specially valued~~,~~ is determined by (1) applying the life estate, remainder or term tables to the special use value—*see rule 86.7(450)*, or (2) by dividing the special use value by the decedent's fractional interest in case of an undivided interest. The eligibility of real estate for special use value is not limited to probate real estate. Real estate transfers with a retained life use or interest, real estate held in joint tenancy, real estate transferred to take effect in possession or enjoyment at death, *real estate held by a partnership or corporation* and real estate held in trust are noninclusive examples of real estate not subject to probate that may be eligible for special use valuation.

86.8(4) Real estate—not eligible.

a. Real estate otherwise qualified is not eligible to be specially valued for inheritance tax purposes if it is not includable in the federal gross estate. ~~For example, real estate subject to a special power of appointment is includable in the gross estate of the donee for inheritance tax purposes, if the~~

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~~power is exercised, but it is not includable in the gross estate for federal estate tax purposes unless a qualified terminable interest property (QTIP) election is made in the donor's estate. In this case, the real estate is not eligible to be valued at its special use value, though it might otherwise be qualified. See 86.5(10)"d" regarding an exercise of a power of appointment. Also, Kurtz on Iowa Estates, section 23.9, page 1083.~~ *For example, a gift of real estate may not be part of the federal gross estate. However, the real estate may be a taxable gift, but the real estate would not qualify for special valuation.*

b. Real estate, otherwise qualified, will not be eligible for the special use valuation provisions of Iowa Code chapter 450B, if the owner of a remainder, or other future property interest in the real estate, defers the payment of the inheritance tax until the termination of the prior estate. Special use valuation is made at the date of the decedent's death, while Iowa Code section 450.44 requires the future interest to be revalued at the time of the termination of the prior estate when the tax is deferred. See In re Estate of Wickham, 241 Iowa 198, 40 N.W.2d 469 (1950); department subrules 86.2(~~12~~ *8*) and 86.2(~~13~~ *9*). In addition, when the tax has been deferred the life estate-remainder factor to be used in computing the tax on the future interest is the factor existing at the time of payment or the termination of the prior estate, while the additional inheritance tax under special use value is based on the life estate-remainder factor at the time of death. See In re Estate of Millard, 251 Iowa 1982, 105 N.W.2d 95 (1960). A second valuation after death is not within the scope of either 26 U.S.C. Section 2032A or Iowa Code chapter 450B. Since all persons with an interest in the real estate must sign the agreement specified in 86.8(5)~~"d,"~~ *"e,"* the deferral of the inheritance tax on a future property interest disqualifies all of the property interests in the real estate because the future property interest is not eligible to be specially valued in case of a deferral of the tax.

86.8(5) Election and agreement.

a. In general. The election to specially value real estate under the provisions of Iowa Code chapter 450B must be made by the fiduciary for the estate or trust on the ~~final~~ inheritance tax return or on a statement attached to the return. The election may be made on a delinquent return. However, once made, the election is irrevocable. The election is an affirmative act. Therefore, failure to make an election on the ~~final~~ inheritance tax return shall be construed as an election not to specially value real estate under Iowa Code chapter 450B.

b. Form—election. The election to value real estate at its special use value shall comply with the requirements of 26 U.S.C. Section 2032A(d) and federal regulation Section 20.2032A-8. An executed copy of the election filed ~~with~~ *as part of* the federal estate tax return and accepted by the Internal Revenue Service will fulfill the requirements of this subrule.

c. Content of the election. The election must be accompanied by the agreement specified in 86.8(5)~~"d"~~ *"e"* and shall contain the information required by federal regulation 20.2032A-8. Submission of an executed copy of the information required by federal regulation Section 20.2032A-8(3) in support of the election to specially value property for federal estate tax purposes~~,~~ will fulfill the requirements of this subrule.

d. Protective elections. A protective election may be made to specially value qualified real property for inheritance tax purposes. The availability of special use valuation is contingent upon values, as finally determined for federal estate tax purposes, meeting the requirements of 26 U.S.C. Section 2032A. The protective election must be made on the ~~final~~ inheritance tax return and shall contain substantially the same information required by federal regulation Section 20.2032A-8(b). Submission of an executed copy of the protective election filed and accepted for federal estate tax purposes will fulfill the requirements of this subrule.

If it is found that the real estate qualifies for special use valuation as finally determined for federal estate tax purposes, an additional notice of election must be filed within 60 days after the date of the determination. The notice must set forth the information required in 86.8(5)"c" and is to be attached, together with the agreement provided for in 86.8(5)~~"d,"~~ *"e,"* to an amended final inheritance tax return. Failure to file the additional notice within the time prescribed by this subrule shall disqualify the real estate for special use valuation.

e. Agreement. An agreement must be executed by all parties who have any interest in the property to be valued at its special use value as of the date of the decedent's death. In the agreement, the qualified ~~heir~~ *heirs* must consent to personal liability for the additional inheritance tax imposed by Iowa Code section ~~450B.4~~ *450B.3* in the event of early disposition or cessation of the qualified use. All other parties with an interest in the property specially valued must consent to liability for the additional inheritance tax to the extent of the additional tax imposed on their share of the property no longer eligible to be specially valued. The liability of the qualified heir or the successor qualified heir for the additional inheritance tax is not dependent on the heir's share of the property specially valued, but rather it is for the amount of the additional inheritance tax imposed on all of the shares of the parties with an interest in the property no longer eligible for special use value.

f. Failure to file the election and agreement. Failure to file with the ~~final~~ inheritance tax return either the election provided for in 86.8(5)"b" or the agreement specified in 86.8(5)"e" shall disqualify the property for the special use value provisions of Iowa Code chapter 450B. In the event of disqualification, the property shall be valued for inheritance *tax* purposes at its market value in the ordinary course of trade under the provisions of Iowa Code ~~sections~~ *section* 450.37 ~~and 450.39~~.

86.8(6) Value to use.

a. Special use value. The special use value established and accepted by the Internal Revenue Service for the qualified real property shall also be the value of the qualified real property for the purpose of computing the inheritance tax on the shares in the specially valued property. ~~In the event the property interests in the specially valued real property are taxed for inheritance tax purposes as a life or term estate with a remainder over, the value of the life or term estate and the remainder are valued by applying the appropriate life estate-remainder or term tables in rule 86.7(450) to the special use value of the qualified real property.~~

b. Fair market value when a recapture tax is imposed. The additional inheritance tax imposed by Iowa Code section ~~450B.4~~ *450B.3*, due to the early disposition or cessation of the qualified use, is based on the fair market value of the qualified real property at the time of the decedent's death as reported and established in the election to value the real estate at its special use value, subject to the limitations in 86.8(6)"c." Iowa Code chapter 450B makes reference only to the use of federal values. Therefore, a fair market value appraisal made by the Iowa inheritance tax appraisers cannot be used in computing the amount of the additional inheritance tax imposed unless it is accepted by the Internal Reve-

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nue Service. Iowa Code section ~~450.27~~ *450.37* only applies to property which is not specially valued under Iowa Code chapter 450B.

c. No change.

1. to 3. No change.

As a result, failure to fulfill the agreement provided for in 86.8(5)~~"d"~~ *"e"* may, in certain circumstances, result in a lower tax liability than would have been the case had the special use valuation election not been made.

The rule for computing the additional federal estate tax under 26 U.S.C. Section 2032A(c) is different. See lines 8 to 11, Additional Federal Estate Tax Form 706-A and IRS letter ruling 8215036 (1982).

86.8(7) Imposition of additional inheritance tax.

a. In general. If within ten years after the decedent's death there is a disposition of the property or a cessation of the qualified use within the meaning of 26 U.S.C. Section 2032A(c), an additional inheritance tax is imposed on the shares in the qualified real property specially valued, subject to the limitation in 86.8(6)~~"c," "3"~~ *"c."* Failure to begin the special use within two years after the decedent's death disqualifies the property for the special use valuation provisions of Iowa Code chapter 450B. However, the ten-year period for imposing an additional inheritance tax is not extended by the period of time between the decedent's death and the beginning date of the special use. The rule for federal estate tax purposes is different. The ten-year period for federal estate tax purposes is extended by the period of time between the decedent's death and the time the special use begins. See 26 U.S.C. Section 2032A(c)(7)(A)(ii). In this respect, the Iowa law does not conform to the federal statute. See Iowa Code section 450B.3.

b. Additional tax on life or term estates and remainders. The additional tax on life or term estates and remainders in real estate which no longer qualifies for special use valuation~~,~~ is computed as if the special use valuation had not been elected. Therefore, if age or time is a determining factor in computing the additional tax, it is the age or time at the date of the decedent's death which governs the computation, not the age or time at the date of the disposition or cessation of the qualified use. Therefore, ~~subrules 86.2(12) and 86.2(13)~~ *subrule 86.2(7)* implementing Iowa Code section 450.44 ~~do~~ *does* not apply. Iowa Code section 450B.3 makes no provision for deferral of the additional tax on a future property interest in real estate which is no longer eligible to be specially valued.

c. No change.

~~EXAMPLE. When the Iowa estate tax is the additional tax due. Farmer A died testate July 1, 1982, a resident of Iowa, survived by a spouse, B, and two children, C and D. Child C farmed the family farm. The will provided for the surviving spouse to receive all of the personal property and a life estate in the real estate, with remainder over to the two children. The surviving spouse did not elect to qualify the life estate-remainder as marital deduction property. The surviving spouse was 74 years old on July 1, 1982. The decedent's estate consisted of the following:~~

~~Asset~~	~~Fair Market Value~~	~~Special Use Value~~
~~240-acre Iowa farm~~	~~$ 600,000 (240 × $2,500 per acre)~~	~~$ 228,000 ($950 per acre)~~
~~Grain & livestock~~	~~40,000~~	~~40,000~~
~~Stocks, bonds & bank accounts~~	~~35,000~~	~~35,000~~
~~Gross Estate~~	~~$675,000~~	~~$303,000~~
~~Less: Deductions without federal estate tax~~	~~30,000~~	~~30,000~~
~~Net estate before federal estate tax~~	~~$645,000~~	~~$273,000~~

~~COMPUTATION OF THE INHERITANCE TAX UNDER SPECIAL USE VALUATION~~

~~Net estate before federal estate tax~~	~~$273,000~~
~~Less: Federal estate tax: see note~~	~~0~~
~~Net estate~~	~~$273,000~~

~~NOTE: $75,000 qualified for the marital deduction. The debts and charges are deductible from the children's share under the law of abatement. See In re Estate of Noe, 195 N.W.2d 361 (Iowa 1972).~~

~~TAX ON SHARES~~

~~Beneficiary~~	~~Share~~	~~Tax~~
~~Spouse B~~		
~~Grain & livestock~~	~~$40,000.00~~	
~~Stocks & bonds, bank accounts~~	~~35,000.00~~	
~~Total personal property~~	~~$75,000.00~~	
~~Life estate in farm (.24481 x 228,000)~~	~~55,816.68~~	
~~Total Share~~	~~$130,816.68~~	~~166.33~~
~~Child C~~		
~~½ remainder (228,000 × .75519) / 2~~	~~$86,091.66~~	
~~Less: ½ debts & charges~~	~~15,000.00~~	
~~Net share~~	~~$71,091.66~~	~~$457.75~~

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~~Child D~~

~~Same as Child C~~	~~$71,091.66~~	~~$475.75~~
~~Total Shares & Tax~~	~~$273,000.00~~	~~$1,081.83~~

~~On October 15, 1985, the surviving spouse and the two children, due to adverse economic conditions, sell the farm to a nonrelated party for $2,100 per acre or $504,000. Under 86.8(6)"c," the $2,100 per acre valuation, rather than the $2,500 per acre, governs the computation of the additional tax. This example illustrates the point that the credit for state death taxes paid will be the additional tax in many cases.~~

~~COMPUTATION OF THE ADDITIONAL INHERITANCE TAX~~
~~DUE TO THE EARLY DISPOSITION OF THE QUALIFIED USE PROPERTY~~

~~Assets~~		
~~240-acre Iowa farm ($2,100 per acre × 240)~~		~~$504,000~~
~~Livestock & grain~~		~~40,000~~
~~Stocks, bonds & bank accounts~~		~~35,000~~
~~Gross Estate~~		~~$579,000~~
~~Less: Deductions without federal estate tax~~	~~$30,000~~	
~~Add'l federal estate tax ($118,900 less $12,800 credit for state taxes paid)~~	~~106,100~~	~~136,100~~
~~Net Estate~~		~~$442,900~~

~~TAX ON SHARES~~

~~Beneficiary~~	~~Share~~	~~Tax~~
~~Spouse B~~		
~~Grain & livestock~~	~~$40,000.00~~	
~~Stocks & bonds, bank accounts~~	~~35,000.00~~	
~~Life estate in farm (.24481 × 504,000)~~	~~123,384.24~~	
~~Total Share~~	~~$198,384.24~~	~~$3,028.05~~
~~Child C~~		
~~½ remainder~~ ~~504,000 × .75519 / 2~~	~~$190,307.88~~	
~~Less: ½ debts & charges~~	~~68,050.00~~	
~~Net Share~~	~~$122,257.88~~	~~$2,687.89~~
~~Child D~~		
~~Same as Child C~~	~~122,257.88~~	~~2,687.89~~
~~Total shares and add'l inheritance tax~~	~~$442,900.00~~	~~$8,403.83~~
~~Credit for state death taxes paid (since this is greater, it is the add'l tax due before credit for tax previously paid)~~		~~$12,800.00~~
~~Less tax previously paid ($1,081.83 total for A, B & C)~~		~~1,081.83~~
~~Additional inheritance/estate tax due~~		~~$11,718.17~~
~~Interest from 4-1-83 to 4-15-86, the due date.~~		~~$3,563.61~~
~~Total additional tax and interest~~		~~$15,281.78~~

~~NOTE: The life estate-remainder factor is based on the age of the life tenant in 1982, not in 1985 when the early disposition of the real estate was made.~~

d. Computation of the tax—full disposition or full cessation. If there is an early disposition or a cessation of the qualified use of all of the real estate specially valued, the inheritance tax on the shares of all persons who succeed to the real estate from the decedent are recomputed based on the fair market value of the specially valued real estate. See 86.8(6)"c" on which market value to use. The total revalued share of each person who had an interest in the disqualified real property is the value of that person's share of the property not specially valued plus the revalued share of the special use property. The tax is then recomputed based on the applicable exemption, if any, allowable under Iowa Code section 450.9 and the rates of tax specified in Iowa Code section 450.10 in effect at the time of the decedent's death. A credit is allowed against the amount of the recomputed tax, without interest, for the tax paid which was based on the special use value.

EXAMPLES: Disposition of all of the qualified real property.

It is assumed in these examples that the real estate has qualified for special use valuation and that prior to the date of disposition, the real estate remained qualified.

EXAMPLE 1. Farmer A, a widower, died July 1, ~~1982,~~ *1992,* a resident of Iowa, and by will left all of his property to his three ~~children~~ *nephews* in equal shares. ~~Child~~ *Nephew* B ~~farms~~ *operates* the ~~family~~ farm. ~~Child~~ *Nephew* C lives in Des Moines, Iowa, and ~~Child~~ *Nephew* D lives in Phoenix, Arizona. At the time of death, Farmer A's estate consisted of:

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Asset	Fair Market Value	Special Use Value
160-acre Iowa farm	$ 480,000 ($3,000 per acre)	$ 160,000 ($1,000 per acre)
Grain and livestock	~~60,000~~ *90,000*	~~60,000~~ *90,000*
Stocks, bonds and bank accounts	~~50,000~~ *80,000*	~~50,000~~ *80,000*
Gross Estate	~~$590,000~~ *650,000*	~~$270,000~~ *330,000*
Less: Deductions without federal estate tax	25,000	25,000
Net estate before federal estate tax	~~$565,000~~ *625,000*	~~$245,000~~ *305,000*

COMPUTATION OF THE INHERITANCE TAX
UNDER SPECIAL USE VALUATION

Net estate before federal estate tax	~~$245,000~~ *$305,000*
Less: federal estate tax	4,120
Net Estate	~~$240,880~~ *$300,880*

TAX ON SHARES

Beneficiary	Share	Tax
To each ~~child~~ *nephew*	~~$80,293.33~~ *101,666.67*	~~$786.73~~ *11,250.00*
Total Tax Paid	~~$786.73~~ *11,250* x 3 =	~~$2,360.19~~ *33,750.00*

~~NOTE: The federal credit for state death taxes paid is $2,280, which is less than the inheritance tax. Therefore, the tax due is 2,360.19.~~

On October 15, ~~1985, Child~~ *1995, Nephew* B, the qualified heir, retires from farming and all three ~~children~~ *nephews* sell the farm to a nonrelated party for $3,200 per acre, or $512,000. Under 86.8(6)"c," the $3,000 per acre valuation at death governs the computation of the additional inheritance tax.

COMPUTATION OF THE ADDITIONAL INHERITANCE TAX
DUE TO THE EARLY DISPOSITION OF THE QUALIFIED USE PROPERTY

Net estate before federal estate tax	~~$565,000~~ *625,000*
Less: Revised federal estate tax (~~$12,600~~ *9250* was deducted for credit for state death taxes paid)	~~104,450~~ *0*
Net Estate	~~$460,550~~ *625,000*

Tax on Shares	Share	Tax
To each ~~child $153,516.66~~ *nephew $208,333.33*	~~$4,571.16~~	*27,250.00*
Less tax previously paid	~~786.73~~	*11,250.00*
		= 16,000.00
~~Additional tax due~~		~~$3,784.43~~
Interest at 10% from 4-~~1~~ *30-* ~~83~~ *93* to due date 4-15-~~86~~ *96*		~~1,150.88~~ *4,734.40*
Total Due Each ~~Child~~ *Nephew*		~~$4,935.31~~ *20,734.40*

Total additional tax and interest for all three shares: ~~$4,935.31~~ *20,734.40* × 3 = ~~$14,805.93~~ *62,203.20.*

NOTE: In this example, the total additional tax for the three ~~children~~ *nephews* before a credit for tax previously paid, is ~~$4,571.16~~ *$27,250.00* × 3 or ~~$13,713.48~~ *$81,750.00*. The credit for state death taxes paid on the revalued federal estate is ~~$12,600.00~~ *$9,250.00*. Therefore, the larger amount is the additional tax, before the credit for tax previously paid is deducted. The additional inheritance or Iowa estate tax bears interest at 10 percent beginning ~~nine months~~ *the last day of the ninth month* after the decedent's death until the due date, which is six months after the disposition of the specially valued real estate. Interest accrues on delinquent tax at the same rate. Since interest only accrues on unpaid tax, the amount of the interest in this example would have been less if the tax had been paid prior to its due date, April 15, ~~1986~~ *1996*.

e. Computation of the tax—partial disposition or cessation of the qualified use.

(1) First partial disposition or cessation of the qualified use. Compute the maximum amount of the additional tax that would be due from each person who has an interest in the portion of the real estate no longer eligible to be specially valued, as if there were an early disposition or cessation of the qualified use of all that person's specially valued real estate. The additional tax on a partial disposition or cessation of the qualified use is computed by multiplying the maximum amount of the additional tax by a fraction of which the fair market value of the portion no longer eligible is the numerator and the fair market value of all of that person's specially valued real estate is the denominator. The resulting amount is the tax due on the first partial disposition or cessation of the qualified use.

EXAMPLE 1. First partial additional tax. Assume the fair market value of three parcels of real estate owned by a single qualified heir *(brother of the decedent)* is $100,000 and the special use value of the three parcels is $75,000. The qualified heir is in the 10 percent tax bracket. FMV in this example means fair market value.

Parcel 1, fair market value	$25,000
Parcel 2, fair market value	50,000
Parcel 3, fair market value	25,000

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Computation of Maximum Amount of Additional Tax

Tax based on fair market value($100,000 x 10%)	$10,000
Tax based on special use value($75,000 x 10%)	7,500
Maximum amount of additional tax	$2,500

Computation of the First Partial Additional Tax

Parcel 1, sale to an unrelated party

FMV of Parcel 1 / FMV of all special use property = $25,000 / $100,000 × $2,500 (Maximum add'l tax) = $625 (First add'l tax)

(2) No change.

EXAMPLE 2. Second partial additional tax. Same facts *as* in Example 1. In this example, Parcel 2 is sold to an unrelated party.

Computation of the Second Partial Additional Tax

FMV of Parcels 1 & 2 / FMV of all special use property	$75,000 / $100,000 × $2,500 (Maximum add'l tax)	=	$1,875
Less tax paid on Parcel 1			625
Second Add'l Tax			$1,250

EXAMPLE 3. Third partial additional tax. Same facts *as* in Example 1. In this example, Parcel 3 is sold to an unrelated party.

Computation of the Third Partial Additional Tax

FMV of Parcels 1, 2, & 3 / FMV of all specially valued real estate	$100,000 / $100,000 × $2,500 (Maximum add'l tax)	=	$2,500
Less tax paid on Parcels 1 & 2			1,875
Third Additional Tax			$625

f. No additional tax on shares not revalued. The shares of persons who received no interest in the real estate which is no longer eligible to be specially valued are not subject to an additional tax. Therefore, on the amended final inheritance tax return only the shares of the persons receiving interest in the real estate need to be revalued when computing the additional tax under this subrule.

EXAMPLE. Decedent A, a widower and resident of Iowa, died testate July 1, ~~1982~~ *1992*, survived by ~~son~~ *nephew* B and ~~daughter~~ *niece* C. His estate consisted of two Iowa farms and certain personal property. Under A's will, ~~each child~~ *the niece and nephew* ~~shares~~ *share* equally in the personal property. ~~Son~~ *Nephew* B received one farm and ~~daughter~~ *niece* C the other one. ~~Son~~ *Nephew* B, a qualified heir, elected to specially value his farm and ~~daughter~~ *niece* C did not. The inheritance tax was paid on this basis. Five years after A's death, ~~son~~ *nephew* B quits farming and sells his inherited farm to an unrelated party, thus incurring an additional inheritance tax. Only ~~son~~ *nephew* B owes an additional tax. ~~Daughter~~ *Niece* C's share in the estate is not revalued.

86.8(8) Return for additional inheritance tax. The return reporting the additional inheritance or Iowa estate tax imposed due to the early disposition or cessation of the qualified use shall conform as nearly as possible to the federal additional estate tax return, Form 706A, as can be done within the framework of an inheritance tax on shares instead of an estate tax. The return must be executed by the qualified heir and filed with ~~Fiduciary and Inheritance Tax Processing, P.O. Box 10467,~~ *the Iowa Department of Revenue and Finance, Hoover State Office Building,* Des Moines, Iowa ~~50306~~ *50319*.

86.8(11) Interest on additional tax. The additional inheritance or Iowa estate tax imposed under Iowa Code section 450B.3 or 451.2, accrues interest at the rate of 10 percent per annum until paid commencing ~~nine months~~ *the last day of the ninth month* after the decedent's death. The variable prime interest rate made applicable to inheritance tax by 1981 Iowa Acts, chapter 131, sections 15 and 16, on real estate not specially valued, does not apply to interest due on the additional tax imposed by Iowa Code section 450B.3 or 451.2. In addition, the federal rule that interest only accrues on the additional federal estate tax when an election is made under 26 U.S.C. Section 1016(c) to increase the basis for gain or loss on the real estate no longer eligible to be specially valued, has no application to Iowa special use valuation. In this respect the Iowa law does not conform to the federal statute.

86.8(13) Penalty for failure to file or failure to pay. Department ~~subrules 86.2(15) and 86.2(16)~~ *rules 701—Chapter 10,* pertaining to the penalty for failure to timely file the return or to pay the inheritance tax imposed by Iowa Code chapter 450, also apply where there is a failure to timely file the return reporting the additional inheritance or Iowa estate tax or to pay the additional tax due imposed by Iowa Code section 450B.3 or 451.2.

86.8(15) Special lien for additional inheritance tax.

a. to e. No change.

f. Application to release the lien. Ten years after the decedent's death, unless there is an additional tax remaining unpaid, the qualified heir may submit to the department an application in writing for release of the lien on the real estate specially valued. The application must contain information necessary to enable the department to determine whether or not the special use valuation lien should be released. *Supporting documentation may include a copy of the federal release.* If, after audit of the application, it is determined the real estate remained eligible for special valuation, the department will release the lien ~~and file a certificate of nonliability in the probate proceedings of the decedent's estate~~.

ITEM 9. Amend rule 701—86.9(450), introductory paragraph, and subrules 86.9(1) to 86.9(3) as follows:

701—86.9(450) Market value in the ordinary course of trade. Fair market value of real or personal property is established by agreement or the appraisal and appeal procedures set forth in Iowa Code section 450.37 and 701—~~paragraph 86.8(4)"b."~~ *subrules 86.9(1) and 86.9(2).* If the value is es-

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tablished by agreement, the agreement may be to accept the values of such property as submitted on the Iowa inheritance tax return, to accept a negotiated value or to accept the values as finally determined for federal estate tax purposes. Values submitted on an inheritance tax return constitute an offer regarding the value of the property by the estate. An inheritance tax clearance that is issued based upon property values submitted on an inheritance tax return constitutes an acceptance of those values on that return. An agreement to accept negotiated values or accept values as finally determined for federal estate tax purposes must be an agreement between the department of revenue and finance, the personal representative, and the persons who have an interest in the property. If an agreement cannot be reached regarding the valuation of real property, then the department may request, within 30 days after the return is filed, an appraisal pursuant to Iowa Code sections 450.37 and 450.27 and subrule 86.9~~(4)~~*(2)*. If an appraisal is not requested within the required period, then the value listed on the return is the agreed value of the real property. If an agreement cannot be reached regarding the valuation of personal property, the personal representative or any person interested in the personal property may appeal for a revision of the department's value as set forth in Iowa Code section 450.37 and ~~paragraph 86.9(4)"b."~~ *subrule 86.9(2)*. Any inheritance tax clearance granted by the department may be subject to revision based on federal audit adjustments. Absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5) and Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review, 414 N.W.2d 113 (Iowa 1987).

86.9(1) In general. With the exception of real estate which has been specially valued under Iowa Code chapter 450B, property included in the gross estate for inheritance tax purposes must be valued under the provisions of Iowa Code section 450.37 at its market value in the ordinary course of trade. See rule 701—86.10(450) for the rule governing the market value in the ordinary course of trade if the alternate valuation date is elected. "Market value in the ordinary course of trade" and "fair market value" are synonymous terms. In re Estate of McGhee, 105 Iowa 9, 74 N.W. 695 (1898). Fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includable in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item whenever appropriate. See federal regulation Section 20.2031(1)(b) and Iowa Code section 441.21(1)"b" for similar definitions of fair market value.

~~86.9(2)~~ *a.* Values not to be used. Other kinds of value assigned to property such as, but not limited to, assessed value of real estate for property tax purposes, cost price, true value, or book value are only relevant in computing the value of the property for inheritance tax purposes, to the extent they may be properly used in the determination of fair market value or special use value. In re Estate of McGhee, 105 Iowa 9, 74 N.W. 695 (1898). Fair market value cannot be determined alone by agreement between the persons succeeding to the decedent's property. Also, fair market value cannot be determined alone by setting out in the decedent's will the price for which property can be sold. In re Estate of Fred W. Rekers, Probate No. 28654, Black Hawk County District Court, July 26, 1972.

~~86.9(3)~~ *b.* Date of valuation. Unless the alternate valuation date is elected under Iowa Code section 450.37, or the tax has been deferred according to Iowa Code sections 450.44 to 450.49, all property includable in the gross estate must be valued at the time of the decedent's death for the purpose of computing the tax imposed by Iowa Code section 450.2. Subject to the two exceptions listed, any appreciation or depreciation of the value of an asset after the decedent's death is not to be taken into consideration. Insel v. Wright County, 208 Iowa 295, 225 N.W. 378 (1929).

ITEM 10. Amend rule 701—86.9(450) by rescinding subrules 86.9(4) and 86.9(5), adopting the following new subrule 86.9(2) and by amending the implementation clause as follows:

86.9(2) Market value—how determined.

a. In general. The fair market value of an item of property, both real and personal, that is included in the gross estate for inheritance tax purposes is expressed in the property's monetary equivalent. The process used to determine fair market value presupposes the voluntary exchange of the item in a market for its equivalent in money. Hetland v. Bilstad, 140 Iowa 411, 415, 118 N.W. 422 (1908). The fact the item of property is not actually sold or exchanged or even offered for sale is not relevant. It is sufficient for establishing the item's value to arrive at the specific dollar amount that a seller would voluntarily accept in exchange for the property and the amount that a buyer would be willing to pay. Juhl v. Greene County Board of Review, 188 N.W.2d 351 (Iowa 1971). It is assumed when determining this specific dollar amount, which is the item's fair market value, that the seller is desirous of obtaining the highest possible price for the property and that the buyer does not wish to pay more than is absolutely necessary to acquire the property.

The item of property must be valued in a market where it is customarily traded to the public. See federal regulation 20.2031-1(b). Therefore, if an item of property is valued in a market which is not open to the general public, the party asserting the value in the restricted market has the burden to prove by a preponderance of the evidence that the value in the restricted market is the item's fair market value.

The distinction between a public and a restricted market can be illustrated by the following:

EXAMPLE 1. Under the provisions of the decedent's will the personal representative of the estate is given the power to sell the decedent's property at either a public or private sale. Pursuant to this power, the personal representative sold the decedent's household goods at public auction held on a specific day and time which was widely advertised both in the newspaper in the locality where the decedent lived and also by sale bills posted in numerous public places in the decedent's community. The household goods sold at auction for $2,500. The fair market value of the household goods on the day of sale is $2,500. The public auction is a market where such items are commonly sold and the public had knowledge of the impending sale. The public was also invited to bid and the items to be sold were available for inspection.

EXAMPLE 2. Pursuant to an agreement between the beneficiaries of the estate, the personal representative sold the decedent's household goods and personal effects at an auction where only members of the decedent's family were permitted to bid. The items sold for $2,500, which may or may not be the fair market value of the property. Family pride,

sentiment, and other personal considerations may have entered into the selling price. In this type of sale the burden is on the personal representative to prove that the selling price is the fair market value of the items sold.

b. Values established by recognized public markets.

(1) Stocks, bonds, and notes. Items of personal property such as, but not limited to, corporate stock, bonds, mutual funds, notes, and commodities which are traded on one or more of the nation's stock or commodity exchanges shall be valued under the provisions of Federal Estate Tax Regulation 20.2031-2, which regulation is incorporated in and made a part of this subrule by reference.

Individuals who have a registration of a security indicating sole ownership by one individual or multiple ownership by two or more individuals with a right of survivorship and not as tenants in common, may obtain a registration in beneficiary form as provided in the uniform transfer on death security registration Act as provided in Iowa Code section 633.800. A "registering entity" under this Act must provide notice to the department of revenue and finance of all reregistrations made pursuant to this Act. Such notice must include the name, address, and social security number of the decedent and all transferees. Until the division of the security, after the death of all the owners, multiple beneficiaries surviving the death of all the owners hold their interest as tenants in common. If no beneficiary survives the death of all the owners, the security belongs to the estate of the deceased sole owner of the estate of the last to die of the multiple owners.

(2) Local elevator and sale barn prices. The fair market value of grain and livestock may be determined either by the quoted price from the grain elevator or sale barn in the community where the grain or livestock is located or by the price quoted from the nearest commodity exchange, less the customary delivery discount.

(3) Public auctions by the court. The fair market value of an item may be established in a public market other than a market which has a permanent location and which holds sales at periodic stated intervals. It is common for estates or the probate court to hold a public auction to sell estate property and if the sale meets certain criteria the selling price received in this type of public auction will establish the fair market value of the property. Factors in an estate or court sale which tend to establish the selling price as one at fair market value include but are not limited to the time and place of the sale were well advertised; the public was invited and encouraged to bid; members of the decedent's family or business associates were not given special consideration as to price or terms of sale; and the terms of sale were comparable to those offered at sales in a regularly established public market.

(4) Sales in a regularly established market. Sales made in a regularly established market pursuant to Iowa Code section 633.387 would qualify as a sale at fair market value for inheritance tax purposes.

c. Private sales that may establish fair market value. Private sales of estate assets may establish the fair market value of the item depending on the facts and circumstances surrounding each sale. Factors which tend to establish a private sale as one at fair market value include but are not limited to:

(1) Sales made by a recognized broker who receives a commission from the seller based on the selling price and who has exercised diligence in obtaining a buyer.

(2) Sales made by the personal representative to nonfamily members after a good-faith effort was made to solicit bids from persons who are known to be interested in buying that particular kind of property.

(3) Sales made by the attorney or the personal representative after the item of property was advertised for sale in a newspaper of general circulation or in trade publications and a good-faith effort was made to obtain the best possible price.

(4) Sales made by the personal representative when the sale price is the price quoted on one of the nation's stock or commodity exchanges.

(5) Private sales made by the personal representative to members of the decedent's family or business associates are suspect due to personal, family, or business reasons, but nevertheless may constitute a sale at fair market value, depending on the facts and circumstances surrounding each sale. The personal representative has the burden to establish that this kind of private sale is a sale at fair market value. Factors which have a bearing on whether this type of private sale is one at fair market value include, but are not limited to the following: Did the decedent's will give a sale or price preference to a member of the decedent's family or business associate? Were the terms of sale more advantageous than terms that would be given to the general public? Was a good-faith effort made to solicit bids from other persons known to be interested in buying that particular kind of property? Was the sale made as part of a family settlement of a will contest or dispute on a claim against the estate?

d. Fair market value—no regularly established market.

(1) In general. Certain items of personal property such as, but not limited to, closely held corporate stock, real estate contracts of sale, private promissory notes, accounts receivable, partnership interests, and choses in action are not customarily bought and sold in a public market. Occasional sales of these items of personal property at infrequent intervals do not establish a market for this kind of personal property, but the lack of a regular market does not indicate that the item is of no value. When there is not a regularly established market to use as a reference point for value, it is necessary to create a hypothetical market to determine fair market value. The factors used to create a hypothetical market vary with the kind of property being valued and depend on the facts and circumstances in each individual case.

(2) Fair market value of closely held corporate stock. A closely held corporation is a corporation whose shares are owned by a relatively limited number of stockholders. Often the entire stock issue is held by members of one family or by a small group of key corporate officers. Because of the limited number of stockholders and due to a family or business relationship, little, if any, trading in the shares takes place. There is, therefore, no established market for the stock. Sales that do occur are usually at irregular intervals and seldom reflect all of the elements of a representative transaction as is contemplated by the term fair market value. The term "fair market value" has the same meaning for federal estate tax purposes as it does for Iowa inheritance tax purposes. As a result, the federal revenue rulings establishing the criteria for valuing closely held corporate stock are equally applicable to inheritance tax values. Therefore, corporate stock which meets the standards for being closely held must be valued for inheritance tax purposes under the provisions of Federal Revenue Ruling 59-60, 1959-1 C.B. 237 as modified by Revenue Ruling 65-193, 1965-2 C.B. 370 and amplified by Revenue Ruling 77-287, 1977-2 C.B. 319, Revenue Ruling 80-213, 1980-2 C.B. 101, and Revenue Ruling 83-120, 1983-2 C.B. 170, which Federal Revenue Rulings are incorporated in and made a part of this subrule by reference.

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(3) Fair market value of real estate contracts, notes, and mortgages. The fair market value of promissory notes, secured or unsecured, contracts for the sale of real estate, and other obligations to pay money which are included in the gross estate is presumed to be the amount of the unpaid principal plus the amount of interest, if any, accrued to the day of the decedent's death. If the asset is not reported on the return at face value plus accrued interest, the burden is on the party claiming a greater or lesser value to establish that face value plus accrued interest is not the asset's fair market value.

Factors which have a bearing on whether the fair market value of an asset is greater or less than face value include, but are not limited to, the rate of interest charged on the obligation; the length of time remaining on the obligation; the credit standing and payment history of the debtor; the value and nature of the property, if any, securing the obligation; the relationship of the debtor to the decedent; and whether the obligation is to be offset against the debtor's share of the estate. See Iowa Code section 633.471 and Welp v. Department of Revenue, 333 N.W.2d 481 (Iowa 1983). This subrule can be illustrated by the following:

EXAMPLE 1. The decedent at the time of death owned a seller's interest in an installment sale contract for the sale of a 160-acre farm. The contract contained a forfeiture provision in the event the buyer failed to make the payments and further provided that the purchase price was to be paid in 20 equal annual principal payments plus interest at 7 percent per year on the unpaid principal balance. At the time of the decedent's death, the contract of sale had ten years yet to run and the current federal land bank interest rate for farm land loans was 12 percent. Assuming in this example that other valuation factors are not relevant, the fair market value of the contract is the face amount of the contract, plus interest, discounted to reflect a 12 percent interest return on the outstanding principal balance. A prudent investor would not invest at a lower rate of interest when a comparable investment with equal security would earn 12 percent interest.

EXAMPLE 2. A tenant of the decedent owed the decedent $5,000, which was evidenced by a promissory note, payable on demand, drawing 6 percent interest, and which was executed in 1992, a year prior to the decedent's death. Assuming no other valuation factors are relevant, the fair market value of the $5,000 promissory note is its face value, plus accrued interest. The less than market interest rate on the note does not affect its fair market value because the note is due on demand and, as a consequence, there is no loss of a higher rate of interest which would be the case if the note specified a future payment date.

EXAMPLE 3. Decedent A died intestate July 1, 1993, survived by two nephews, B and C. The estate consisted, after debts and charges, of $300,000 in cash and U.S. Government bonds and a noninterest bearing promissory note for $10,000 executed by nephew B in 1975 for money borrowed for his college education. No payments were ever made on the note. The note is outlawed by the statute of limitations and would be worthless if anyone other than nephew B or C had executed the note. However, since nephew B inherits one-half of A's estate, and is required under the law of setoff and retainer to pay the note before he can participate in the estate, the fair market value of the note in this particular fact situation is $10,000 because it is collectible in full. Each nephew's share of the estate is $155,000. Nephew C receives $155,000 in cash and nephew B receives $145,000 in cash plus his canceled note for $10,000. In this example, the statutory right of setoff and retainer supersedes other factors which are relevant in determining the fair market value of the asset. See Iowa Code section 633.471; In re Estate of Farris, 234 Iowa 960, 14 N.W.2d 889 (1944); Indiana Department of Revenue v. Estate of Cohen, 436 N.E.2d 832 (Ind. App. 1982), Gearhart's Ex'r and Ex'x v. Howard, 302 Ky. 709, 196 S.W.2d 113 (1946).

(4) Fair market value of a sole proprietorship or partnership interest. The fair market value of the decedent's interest in a business, whether a partnership or a proprietorship, is the net amount a willing buyer would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts. Relevant factors in determining net value include but are not limited to the following: a fair appraisal as of the applicable valuation date of all of the assets of the business, tangible and intangible, including goodwill; the demonstrated earning capacity of the business; and the other factors in rule 701—89.8(422), to the extent they are applicable, that must be considered in valuing closely held corporate stock.

(5) Fair market value of choses in action. The fair market value of the decedent's interest in a right to sue for a debt or a sum of money often cannot be determined with certainty at the time of the decedent's death. The value of this right is dependent on many factors which include, but are not limited to the following: the strength and credibility of the decedent's evidence; the statutory and case law supporting the decedent's claim or position; the ability of the opposing party to pay a judgment; the extent, if applicable, of the decedent's contributory negligence; and the other normal hazards of litigation. However, this lack of certainty does not mean the right to sue has no value at the time of the decedent's death. Evidence of what was actually received for this right by the decedent's estate or its beneficiary is evidence of the fair market value of the right at death.

This subrule can be illustrated by the following example:

The decedent died in a fire of uncertain origin that destroyed his dwelling. Due to the circumstances surrounding the fire, the estate's right of recovery from the fire insurance carrier was speculative and, therefore, the value of this right at death was unknown. After the estate was closed, the beneficiary of the estate settled the fire insurance claim for $15,000. The amount received in settlement of the claim can be considered as evidence of the fair market value of the right of action at death. Bair v. Randall, 258 N.W.2d 333 (Iowa 1977). In addition, interest on the unpaid tax begins and continues to accrue from the date of the decedent's death.

(6) Wrongful death proceeds are not included in the gross estate. Estate of Dieleman v. Department of Rev., 222 N.W.2d 459 (Iowa 1974).

e. By agreement between the department, the estate and its beneficiaries. Iowa Code section 450.37 provides that the market value in the ordinary course of trade is to be determined by agreement between the estate and its beneficiaries and the department. The term "agreement" when used with reference to the value of an asset, whether it is real or personal property, has the same meaning as the term is used in the law of contracts. The agreement between the department, the estate and its beneficiaries may be contained in a single written instrument, or it may be made by an offer submitted by the estate and its beneficiaries and its acceptance by the department. The agreement establishing values for computing the tax may specify that the values as finally determined for federal estate tax purposes on all or a portion of the assets will be the values used in computing the tax.

(1) Offer by the estate and the beneficiaries. It is the duty of the taxpayer to list on the inheritance tax return the values

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of the assets in the gross estate which the estate and those beneficially entitled to the decedent's property are willing to offer as the values for computing the taxable shares in the estate. The value of the assets listed on the return will constitute an offer for the department to accept or reject. Counteroffers may be made in the event an offer is rejected. This rule applies equally to real and personal property.

(2) Acceptance of values by the department. The values offered on the inheritance tax return by the estate and its beneficiaries are accepted by the department when:

1. The department has accepted the offered values in writing, or

2. A clearance certifying full payment of the tax due or a clearance certifying no tax due is issued by the department, or

3. The department does not request an appraisal within 30 days after the return has been filed in the case of the value of real estate. Notice of appraisal must be served by certified mail and the notice is deemed completed when the notice is deposited in the mail and postmarked for delivery. However, see 86.9(2)"e"(3) for the rule governing values listed as "unknown" or "undetermined." See Iowa Code sections 622.105 and 622.106 for the law determining the filing date of a tax return that is mailed.

(3) Values listed on the return as "undetermined" or "unknown." If at the time the inheritance tax return is filed the information necessary to determine the value of an asset cannot be presently ascertained, the taxpayer may list the value of that asset as "unknown" or "undetermined." The return must contain a statement signed by the taxpayer on behalf of the estate and the beneficiaries with an interest in the property granting the department an extension of time for requesting an appraisal until 30 days after an amended return is filed listing a value for the real estate. Failure to grant an extension of time will subject the real estate to an immediate request for an appraisal. The amended return shall be accompanied with sufficient facts and other information necessary to substantiate the value offered. An agreement concerning the value of an asset presupposes that both the department, the beneficiaries and the estate have knowledge of the relevant facts necessary to determine value. There can be no meaningful agreement or appraisal until the relevant facts relating to value are known. See Bair v. Randall, 258 N.W.2d 333 (Iowa 1977), regarding the criteria that may be used to determine the value of an asset which was unknown at the time of the decedent's death.

f. Values established—no agreement.

(1) Real estate. If the department, the estate and the persons succeeding to the decedent's property have not reached an agreement as to the value of real estate under 86.9(2)"e," the market value for inheritance tax purposes will be established by the appraisal proceedings specified in Iowa Code sections 450.27 to 450.36. Use of the inheritance tax appraisers to determine value for other purposes such as, but not limited to, determining the share of the surviving spouse in the estate or for determining the fair market value of real estate for the purposes of sale, are not controlling in determining values for inheritance tax purposes. In re Estate of Giffen, 166 N.W.2d 800 (Iowa 1969); In re Estate of Lorimor, 216 N.W.2d 349 (Iowa 1974). If either the department or the estate does not agree with the results of an appraisal that is conducted pursuant to Iowa Code sections 450.27 through 450.36, either the department or the estate may file an objection to the appraisal pursuant to Iowa Code section 450.31. See 701—subrule 86.9(2) for additional factors to assist in the determination of fair market value of real property.

(2) Personal property. Effective for estates of decedents dying on or after July 1, 1983. If an agreement is not reached on the value of personal property under 86.9(2)"e," the estate or any person beneficially receiving the personal property may appeal to the director under Iowa Code section 450.94, subsection 3, for a resolution of the valuation dispute, with the right of judicial review of the director's decision under Iowa Code chapter 17A.

g. Amending returns to change values.

(1) Amendment permitted or required. Unless value has been established by the appraisal or administrative proceedings, the inheritance tax return may be amended by the estate to change the value of an asset listed on the return as long as the amendment is filed before an agreement is made between the estate and the department as to the asset's value. The return must be amended to list the value of an asset omitted from the original return or to assign a value for an item listed on the original return as "unknown" or "undetermined."

If the facts and circumstances surrounding the value agreement would justify a reformation or rescission of the agreement under the law of contracts, the return may be amended by the estate, and must be amended at the department's request, to change the value of the item to its correct fair market value or its special use value as the case may be.

(2) Amendment not permitted. A return cannot be amended:

1. To change the agreed value of an asset, if the facts and circumstances surrounding the agreement would not justify a reformation or rescission of the agreement,

2. To change a real estate value that has been established by the appraisal proceedings under Iowa Code sections 450.31 to 450.33, Insel v. Wright County, 208 Iowa 295, 225 N.W. 378 (1929), or

3. To change the value of an item of personal property that has been established by the department's administrative procedure under 701—Chapter 7, or, if an appeal is taken from the director's decision, by judicial review under Iowa Code chapter 17A. Provided, in no event may the return be amended to lower the value of an asset that would result in a refund of tax more than three years after the tax became due or one year after the tax was paid, whichever time is the later. Iowa Code section 450.94, Welp v. Department of Revenue, 333 N.W.2d 481 (Iowa 1983).

This rule is intended to implement Iowa Code sections 450.27 to 450.37, ~~and~~ 450.44 to 450.49 *and 633.800 to 633.811*.

ITEM 11. Amend rule 701—86.10(450) as follows:

701—86.10(450) Alternate valuation date.

86.10(1) When available. The alternate valuation date allowed by 26 U.S.C. Section 2032 is available for estates of decedents dying on or after July 1, 1983, on the same terms and conditions which govern the alternate valuation date for federal estate tax purposes. Effective for estates of decedents dying after July 18, 1984, the alternate valuation date cannot be elected unless the value of the gross estate for federal estate tax purposes is reduced and the amount of federal estate tax owing, after all credits have been deducted, has also been reduced. See 26 U.S.C. Section 2032(c) enacted by Public Law 98-369 Section 1023(a). In general, the alternate valuation date is ~~the date~~ six months after the *date of the* decedent's death. If property is sold within the six-month period, the date of sale is the alternate date for valuing the property sold. See Federal Regulation Section 20.2032-1, as amended December 28, 1972, for the rules governing the valuation of property in the gross estate at its alternate valua-

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tion date for federal estate tax purposes. If the election is made, all of the property included in the gross estate and not just a portion of the property, must be valued at the alternate valuation date. ~~Provided, the~~ *The* estate may elect both the alternate valuation date and the special use value under Iowa Code chapter 450B, if the estate is otherwise qualified. See Federal Revenue Ruling 83-31(1983). It is a precondition for valuing the property at its alternate value for Iowa inheritance tax purposes that the property has been valued at the alternate value for federal estate tax purposes. However, even if the property in the gross estate is valued at the alternate valuation date for federal estate tax purposes, the estate has the option either to elect or not to elect the alternate valuation date for Iowa inheritance tax purposes. If the alternate valuation date is elected, the value established for federal estate tax purposes shall also be the alternate value for inheritance tax purposes. The election is an affirmative act and for estates of decedents dying prior to July 19, 1984, it must be made on a timely filed inheritance tax return, taking into consideration any extensions of time granted to file the return. Effective for estates of decedents dying after July 18, 1984, the election may be made on the first return filed for the estate, regardless of whether the return is delinquent, providing the return is filed no more than one year after the due date, taking into consideration any extensions of time granted to file the return and pay the tax due. See 26 U.S.C. 2032(d) as amended by Public Law 98-369 Section 1024(a). Failure to indicate on the inheritance tax return whether the alternate valuation date is elected shall be construed as a decision no to elect the alternate valuation date.

86.10(2) When not available.

a. and b. No change.

c. The alternate valuation date cannot be elected if th size of the gross estate for federal estate tax purposes, base on the fair market value of the assets at the time of death, i less than the minimum filing requirements ~~($275,000 fo 1983) specified in 26 U.S.C. Section 6018(a)~~ *under curren federal authority.* The fact *that* the gross estate for inheri tance tax purposes is less than the minimum federal estate ta filing requirement is not relevant.

This rule is intended to implement Iowa Code section 422.3 and 450.37.

ITEM 12. Amend rule 701—86.11(450) as follows:

701—86.11(450) Valuation—special problem areas.

86.11(1) No change.

86.11(2) Single life estate and remainder. The value of a single life estate and remainder in property is computed by first determining the value of the property as a whole. The life estate is then computed by multiplying the value of the property as a whole by the life estate factor in rule 86.7(450) for the age of the life tenant. The value of property remaining after the value of the life estate is subtracted is the value of the remainder interest in the property.

The computation of the value of a single life estate and remainder in property is illustrated by the following:

EXAMPLE: Decedent A, by will, devised to surviving spouse B, age 68, a life estate in a 160-acre farm, with the remainder at B's death to ~~daughter~~ *niece* C. Special use value and the alternate value were not elected. The 160-acre farm at the time of the decedent's death had a fair market value of $2,000 per acre, or $320,000.

COMPUTATION OF B's LIFE ESTATE: The life estate factor for a life tenant aged 68 under *701*—86.7(450) is ~~.31829~~ *.37936*; that is, the use of the $320,000 for life at the statutory rate of return of 4 percent is worth ~~31.829~~ *37.936* percent of the value of the farm. ~~Daughter~~ *Niece* C's remainder factor is ~~.68171~~ *.62064*. The life estate-remainder factors when combined equal 100 percent of the value of the property. It is the age of the life tenant which governs the value of the remainder. The age of the person receiving the remainder is not relevant.

Value of B's Life Estate	$320,000 × ~~.31829~~ *.37936* =	~~$101,852.80~~ *$121,395.20*
Value of C's Remainder	$320,000 × ~~.68171~~ *.62064* =	~~$218,147.20~~ *$198,604.80*
Total Value		$320,000

86.11(3) Joint and succeeding life estates. If property includable in the gross estate is subject to succeeding or joint life estates, the following general rules shall govern their valuation:

a. and b. No change.

c. The age of a life tenant alone determines the value of that life tenant's interest in the property. The life tenant's state of health is not relevant to valuation. In re Estate of Evans, 225 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed. 62. As a result, if a succeeding life tenant is older than the preceding life tenant, the value of the succeeding life estate is zero. These general rules can be illustrated by the following examples:

EXAMPLE 1. Decedent A, by will, devised a 160-acre farm to surviving spouse B, aged 68, for life, and upon B's death, to daughter C, aged 45, for life, and the remainder upon C's death to ~~C's daughters~~ *nephews* D and E, in equal shares. The 160-acre farm had a fair market value at A's death of $320,000. Neither the alternate valuation date nor special use value was elected.

COMPUTATION OF THE SUCCEEDING LIFE ESTATES AND REMAINDER

1. Value of B's Life Estate:
   Life estate factor for age 68 is ~~.31829~~ *.37936*
   $320,000 × ~~.31829~~ *.37936* = ~~$101,852.80~~ *$121,395.20*
2. Value of C's Succeeding Life Estate
   Life estate factor for age 45 is ~~.62044~~ *.67131*
   ~~Remainder factor for a life tenant aged 45 is .37956~~
   $320,000 × ~~.62044~~ *.67131* = ~~$198,540.80~~ *$214,819.20*
   Less: B's life estate ~~101,852.80~~ *$121,395.20*
   Value of C's life estate ~~$96,688.00~~ *$93,424.00*

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3. Value of D's ½ remainder		
Remainder factor for a life tenant aged 45 is .32869		
as ½ of $320,000 × ~~.37956~~ *.32869* =		~~$60,729.60~~ *$52,590.40*
4. Value of E's ½ remainder ~~(same as D's)~~		
½ of $320,000 × .32869		~~$60,729.60~~ *$52,590.40*
Total Value—life estates and remainders		$ 320,000.00

NOTE: In this example, the value of C's succeeding life estate is reduced by the value of B's preceding life estate because C does not have the use of the farm during B's lifetime. The value of the remainder to D and E is fixed by the age of ~~their mother,~~ C, the succeeding life tenant.

EXAMPLE 2: Joint and survivorship life estates and remainder. In this example, the estate elected both the alternate valuation date and special use value. This is permitted by Federal Revenue Ruling 83-31 (1983) if the gross estate and the real estate are otherwise qualified.

Decedent A, a widow, by will devised her 240-acre Iowa farm to her ~~son~~ *nephew*, B, aged 52, and ~~her daughter-in-law~~ *the nephew's wife*, C, aged 48, for their joint lives and for the life of the survivor, with the remainder to D and E in equal shares. The farm had a fair market value at death of $2,200 per acre, or $528,000; the alternate value of the farm six months after death was $2,100 per acre or $504,000. Its special use value is $1,000 per acre or $240,000. The life estates and the remainder are computed on the basis of the special use value of $240,000.

COMPUTATION OF JOINT LIFE ESTATE—REMAINDER VALUES

1. B's share of joint life estate.		
$240,000 × ~~.53412~~ *.59399* (life estate factor, age 52) =	~~$128,188.80~~ *$142,557.60*	
½ as B's share =		~~$64,094.40~~ *$71,278.80*
2. C's share of joint life estate.		
$240,000 × ~~.58464~~ *.63966* (life estate factor, age 48) =	~~$140,313.60~~ *$153,518.40*	
~~Less: value of life estate for B's life~~	~~$128,188.80~~	
	~~$12,124.80~~	
~~Plus~~ *Less*: ½ value of life estate for B's life	~~$64,094.40~~ *$71,278.80*	~~$76,219.20~~ *$82,239.60*
3. Value of the remainder.		
The value of the remainder is computed by using the remainder factor at the age of the youngest life tenant. In this example, it is ~~.41536~~ *.36034*, based on C's age of 48.		
D's share of the remainder.		
½ $240,000 × ~~.41536~~ *.36034* =		~~$49,843.20~~ *$43,240.80*
E's share of the remainder. Same as D's		~~$49,843.20~~ *$43,240.80*
Total value of joint life estates and the remainder		$ 240,000.00

NOTE: In this example, B and C share equally in the life use of the farm during the life of B, who is the eldest. As a result, each life tenant's share during B's life is worth ~~$64,094.40~~ *$71,278.80*. Since C is younger than B, the difference between the value of the life estates for B and C is set off to C alone. The age of the youngest life tenant (C in this example) fixes the value of the remainder interest in the farm.

86.11(4) Fixed sum annuity for life or for a term of years. The value of an annuity for a fixed sum of money, either for the life of the annuitant or for a specific period of time, shall be computed by determining the present value of the future annuity payments using the 4 percent annuity tables in rule 86.7(450). A fixed sum annuity, either for life or for a term of years, is to be distinguished from a life estate and remainder in property. A life estate in property is the use of property and the present value of the life use cannot exceed the value of the property in which the life estate-remainder exists, regardless of the rate of return used to determine the life estate factor. A fixed sum annuity on the other hand is different. The amount of *the* annuity does not necessarily bear any relationship to the earning capacity or value of the property which funds the annuity. The fixed sum annuity may be for an amount larger than the 4 percent used to compute a life estate. As a result, the present value of the fixed sum annuity, computed at the statutory rate of 4 percent per year, may exceed the value of the property which funds the fixed annuity. In this case, the present value of the future annuity payments cannot exceed the value of the property which funds the annuity. The remainder in this situation has no value for inheritance tax purposes.

This subrule is illustrated by the following examples:

EXAMPLE 1. Decedent A devises a 240-acre farm to daughter B, with the provision that B pay the sum $5,000 per year to C for life. The farm is subject to a lien as security for the payment of the annuity. C, the annuitant, is 54 years old. The fair market value of the farm at A's death is $2,000 per acre, or $480,000. Neither special use value nor the alternate valuation date was elected.

COMPUTATION OF THE VALUE OF THE $5,000 ANNUITY AND THE REMAINDER—REVERSION TO B. Under rule 86.7(450) the 4 percent annuity factor for life at age 54 is ~~12.697~~ *14.245* for each dollar of the annuity received. Therefore, C's life annuity is computed as follows:

C's Annuity	
$5,000 × ~~12.697~~ *14.245* =	~~$63,485~~ *$71,225*

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

B's Reversionary—Remainder Interest		
Value of farm	$480,000	
Less: C's annuity	~~$63,485~~ *$71,225*	~~$416,515~~ *$408,775*
Total annuity and reversion—remainder		$480,000

NOTE: In this example, the $5,000 annuity is worth less than a life estate in the farm. A life estate would be worth ~~$243,782.40~~ *$273,499.20* because the use of $480,000 at 4 percent per year would return $19,200 per year, which is much greater than the $5,000 annuity.

EXAMPLE 2: Decedent A, by will, directed that the sum of $100,000 be set aside from the residuary estate to be held in trust to pay $500 per month to B for life and upon B's death the remaining principal and income, if any, is to be paid to C and D in equal shares. B, the annuitant, was 35 years old at the time of A's death.

Under rule *701*—86.7(450) the annuity factor for a person 35 years of age is ~~18.098~~ *19.048* for each dollar of the annuity. The annuity factor is ~~based on~~ *multiplied by* the annual amount of the annuity, which in this case is $6,000 per year.

COMPUTATION OF THE PRESENT VALUE OF B's $6,000 ANNUITY

$500.00 × 12 = $6,000 × ~~18.098~~ *19.048* = ~~$108,588~~ *$114,288*, which exceeds the value of the property funding the annuity. As a result, the value for inheritance tax purposes is $100,000, the maximum amount allowed by subrule 86.11(4). The remainder to C and D has no value for inheritance tax purposes.

86.11(5) Valuation of remainder interests. Iowa Code section 450.51 and rule *701*—86.7(450) require the value of a remainder interest in property to be computed by subtracting the present value of the preceding life or term estate from the total value of the property in which the remainder exists. Since age or time is the controlling factor in valuing life or term estates in property, the time when the preceding life or term estate is valued is crucial for determining the value of the remainder interests in the property. Iowa Code sections 450.6, 450.44 and 450.52 provide three alternative dates for valuing a remainder, or other property interest in future possession or enjoyment, for inheritance tax purposes. Each of the three dates requires valuing the preceding life or term estate on the date selected, thus in effect, valuing the remainder interest at the same time. The value of the remainder interest is based on the value of the property on the date elected for payment. In re Estate of Wickham, 241 Iowa 198, 40 N.W.2d 469 (1950). The remainder or term factor in rule 86.7(450) which is based on the age of the life tenant, or the number of years remaining in the term on the date of payment, is then applied to the value of the property to determine the value of the remainder interest. In re Estate of Millard, 251 Iowa 1282, 105 N.W.2d 95 (1960). Therefore, the remainder, or other future property interest, shall be valued by the following general rules.

a. and b. No change.

c. If the tax on the remainder or other future property interest is not paid under paragraphs "a" and "b," the tax must be paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate. In this case, the tax is based on the fair market value of the property and the life estate remainder or term factor corresponding with the time the prior estate is terminated. If the prior estate is terminated due to the death of the life tenant, or due to the expiration of the term of years, the remainder factor is 100 percent of the value of the property. If the prior estate terminates during the life of the life tenant or during the term of years, the tax is computed in the same manner as provided in paragraph "b." If the tax is not paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate, the tax owing is delinquent and is subject to penalty and interest as provided by law. *For information regarding interest rate, see 701—Chapter 10.* However, in this case the value of the remainder interest is not modified to reflect any change in the fair market value of the property or the life or term estate factor that may occur, due to the lapse of time between the due date of the tax and the date the tax is paid.

d. Iowa Code section 450.52 provides that the tax may be paid at any time on the present worth of the future property interest. The term "present worth" means the value of the future property interest at the time the tax is paid. Therefore, if the tax on the remainder or other future property interest is not paid within nine months after the decedent's death (one year for future property interests created prior to July 1, 1981), the estate or the beneficiary receiving the future interest cannot pay the tax on a delinquent basis using a value and a life estate or term factor which does not reflect the present worth of the future interest at the time of payment. In this situation, the tax must be computed under paragraph "b" or "c" of this subrule, whichever applies. In this respect, failure to pay the tax within nine months after the decedent's death (one year for future property interests created prior to July 1, 1981) operates as a deferral of the tax on the future property interest. In re Estate of Dwight E. Clapp, Probate No. 7251, Clay County Iowa District Court, July 2, 1980.

e. If an alternative valuation date is chosen, a liability must be currently owed by the estate to be deductible.

f. Tax rates in effect at the date of the decedent's death are the rates applicable for computation of the tax owed. In re Estate of Wickham, 241 Iowa 198, 40 N.W.2d 469 (1950).

These rules can be illustrated by the following examples:

For an example of computing remainder interests see Examples 1 and 2 in 701—subrule 86.11(3).

~~EXAMPLE 1: Decedent A died July 1, 1983, and, by will, devised all of her personal property to her surviving spouse, B, and her 240-acre Iowa farm to B for his life with the remainder at B's death to C and D in equal shares. The surviving spouse, B, was 74 years of age when A died. The fair market value of the 240-acre farm was $2,000 per acre, or $480,000 on the date of A's death. Neither the alternate valuation date nor special use value was elected by the estate. On March 15, 1984, the inheritance tax return was filed and the tax paid.~~

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

~~COMPUTATION OF THE REMAINDER INTEREST OF C AND D~~

~~Since the return was filed and the tax paid within nine months after the decedent's death, the age of B, the life tenant, and the fair market value of the farm on July 1, 1983, control the value of the remainder. The remainder factor in rule 86.7(450) for a life tenant 74 years old is .75519.~~

~~C's ½ remainder interest ½ $480,000 × .75519 =~~	~~$181,245.60~~
~~D's ½ remainder interest same as C's~~	~~181,245.60~~
~~Total value of remainder~~	~~$362,491.20~~

~~The difference between the value of the remainder and the total value of the farm is the value of B's life estate.~~

~~EXAMPLE 2: Same facts as in Example 1, with the exception that only the tax on B's life estate was paid on March 15, 1984. The tax on the remainder to C and D was therefore deferred, to be paid no later than nine months after the death of B, the life tenant. However, on October 15, 1985, due to adverse economic circumstances, B, C, and D voluntarily sell the 240-acre farm at public auction to an unrelated person for $2,100 per acre, or $504,000. B's life estate was not preserved in the sale proceeds. The tax on the remainder in this fact situation must be computed under subrule 86.11(5), paragraph "b," when the life estate is terminated before the life tenant's death. The sale price of the farm and the life estate remainder factor reflecting B's age on October 15, 1985 (B's age is now 76) control the value of the remainder.~~

EXAMPLE 1: Decedent A died July 1, 1993, and, by will, devised all of her personal property to her surviving spouse, B, and her 240-acre Iowa farm to B for his life with the remainder at B's death to two nephews, C and D in equal shares. The surviving spouse, B, was 74 years of age when A died. The fair market value of the 240-acre farm was $2,000 per acre, or $480,000 on the date of A's death. Neither the alternate valuation date nor special use value was elected by the estate. On March 15, 1994, the tax on B's life estate was paid. The tax on the remainder to C and D was therefore deferred, to be paid no later than nine months after the death of B, the life tenant. However, on October 15, 1995, due to adverse economic circumstances, B, C, and D voluntarily sold the 240-acre farm at public auction to an unrelated person for $2,100 per acre, or $504,000. B's life estate was not preserved in the sale proceeds. The tax on the remainder in this fact situation must be computed under subrule 86.11(5), paragraph "b," when the life estate is terminated before the life tenant's death. The sale price of the farm and the life estate remainder factor reflecting B's age on October 15, 1995, (B's age is now 76) control the value of the remainder.

COMPUTATION OF THE REMAINDER INTEREST OF C AND D

The remainder factor in rule 86.7(450) for a life tenant aged 76 is ~~.77825~~ *.73595*.

C's ½ remainder interest ½ *(*$504,000 × ~~.77825~~ *.73595)* =	~~$196,119.00~~ *$185,459.40*
D's ½ remainder interest same as C's	~~$196,119.00~~ *$185,459.40*
Total value of remainder	~~$392,238.00~~ *$370,918.80*

NOTE: In this example, the value of C and D's remainder interest in the sale proceeds is greater than the value of the remainder at the time of A's death due to the increase in the remainder factor because of B's increased age and the increase in the fair market value of the farm. However, if B's life estate had been preserved in the sale proceeds, the tax could continue to be deferred on C and D's remainder interest. C and D cannot be required to pay the tax on their remainder until they come into possession or enjoyment of the property.

EXAMPLE ~~3~~ *2*: Decedent A at the time of her death on July 1, ~~1983~~ *1993*, owned a vested remainder in a 240-acre Iowa farm, which was subject to the life use of her mother, B, who was 87 years old when A died. A's ownership of the remainder interest was not discovered until after life tenant B's death on October 15, ~~1985~~ *1995*. The fair market value of the farm was $2,000 per acre or $480,000 on July 1, ~~1983~~ *1993*, and $2,200 per acre or $528,000 on October 15, ~~1985~~ *1995*. Neither the alternate valuation date nor special use valuation can be used in this fact situation. See rule 86.10(450) and subrule 86.8(4), paragraph "c." A's estate was reopened to include the omitted remainder in the 240-acre farm. An amended inheritance tax return was filed December 10, ~~1985~~ *1995*, basing the tax on the fair market value and the remainder factor corresponding with the life tenant's age (87) on July 1, ~~1983~~ *1993*. In this fact situation, the tax on A's remainder is not computed correctly, even if A's estate has offered to pay a penalty and interest on the tax due. The tax must be computed on the basis of a fair market value of $2,200 per acre and a remainder factor of 100 percent of the value of the farm. No penalty or interest would be assessed if the correct tax is paid prior to July 15, ~~1986~~ *1996*, which is nine months after the life tenant's death. The life tenant's age at death is not relevant.

86.11(6) Valuation of contingent property interests. Contingent remainders, succeeding life estates and other contingent property interests must be valued as if no contingency exists. *Factors to be considered to determine if a contingency interest exists include, but are not limited to, the interest is generally a future interest, it is not a vested interest, and vesting of the interest depends upon the occurrence of a specific event or condition being met.* As a result, *701—* subrule 86.11(5) applies equally to the valuation of vested and contingent property interests. The tax on a contingent property interest may be deferred until such time as it can be determined who will come into possession or enjoyment of the property. By deferring the tax under Iowa Code sections 450.44 to 450.49, a person does not have to speculate as to who will be the probable owner of the contingent interest. As a result, no one is required to pay tax on a property interest to which a vested right has not been received. Therefore, if a person exercises the right to pay the tax during the period of the contingency, that person cannot obtain a tax advantage by asserting that the value should be reduced due to a contingency, when the person would not be entitled to a reduction in value if the tax had been deferred until the ownership is determined.

This rule is illustrated by the following example.

COMPREHENSIVE EXAMPLE: Decedent A, by will, devised a 240-acre Iowa farm to B for life and upon B's death, then to C for life and the remainder after C's death to D and E in equal shares. In this example, C's succeeding life estate is contingent upon surviving B, the first life tenant. If C elects to pay the tax on the succeeding life estate within nine months after A's death, the tax is computed according to Example 1 in subrule 86.11(3) with no discount for the contingency that C may not survive B. However, C may defer the tax to be paid no later than nine months after B's death. In this case, if C does not survive B, the succeeding life estate lapses, and D and E who own the remainder will come into

possession or enjoyment of the 240-acre farm. No tax will be owing on the succeeding life estate because C receives nothing. D and E will owe tax on the remainder within nine months after the death of B, if the tax was not previously paid.

For another example of computing a contingent remainder interest see In re Estate of Schnepp, 258 Iowa 33, 138 N.W.2d 886 (1965).

This rule is intended to implement Iowa Code sections 450.44 to 450.49, 450.51 and 450.52.

ITEM 13. Amend subrule **86.12(5)**, paragraph **"b,"** as follows:

b. The section 450.7 lien. *For estates with deaths occurring prior to July 1, 1995, there is a 20-year lien for inheritance tax from the date of the decedent's death on property passing in the estate which is not part of the Iowa probate estate and a 10-year lien for inheritance tax from the date of the decedent's death on property passing in the estate which is part of the Iowa probate estate. For exceptions to these lien provisions and for additional information, see Iowa Code section 450.7. For estates with deaths occurring on or after July 1, 1995, a lien is imposed for the inheritance tax on all the property of the estate or owned by the decedent for a period of ten years from the date of death of the decedent, unless a remainder or deferred interest is at issue, then the statutory period for the lien may be extended beyond the ten-year limitation to accommodate the term of the interest. For exceptions and additional information, see Iowa Code section 450.7.* A tax clearance ~~which is not specifically limited to certain property or shares of the estate~~ releases the lien imposed by Iowa Code section 450.7 on all of the property in the gross estate that is reported on the return. ~~If a payment clearance is limited to some of the shares of the estate, but not all of the shares, the lien is only released on the reported property in those shares where the tax has been paid in full.~~

Effective for estates of decedents dying on or after July 1, 1984, if a tax, or additional tax, is found to be due after the issuance of an inheritance tax clearance, ~~which is not limited as to specific shares or property,~~ the lien under Iowa Code section 450.7 does not have priority against subsequent mortgages, purchases or judgment creditors, unless the department gives notice of the lien by recording the notice in the office of the recorder of the county where the estate is probated, or in the county where the property is located, if the estate has not been administered. As a result, if the department has issued an inheritance tax clearance, ~~which is not limited as to specific beneficiaries or property,~~ an examiner of real estate or personal property titles can rely on this clearance as a release of the inheritance tax lien even though additional tax may be due. ~~, if the department has not filed, after issuing its clearance, a notice of its lien for tax or additional tax due.~~ This subrule only pertains to the security for the tax under the lien provisions of Iowa Code section 450.7. Other provisions for security for payment of the tax such as judgment liens, mortgages, bonds, *and* distress warrants, ~~etc.,~~ are not affected by this subrule. See Iowa Code section 450B.6 and subrule 86.8(15) for the lien for additional tax on property which has been valued at its special use value.

This subrule can be illustrated by the following example:

EXAMPLE: Decedent A died August 15, ~~1984~~ *1994*, a resident of Iowa. By will A devised a 160-acre farm to ~~son~~ *nephew* B and all personal property to ~~daughter~~ *niece* C. The net estate consisted of the farm with a fair market value of $2,000 per acre, or $320,000 and personal property worth $320,000. On May 24, ~~1985~~ *1995*, the inheritance tax return was filed and tax of ~~$34,850.00~~ *$88,000* (~~$17,425~~ *$44,000* for each ~~child~~ *beneficiary*) was paid. The department issued its unqualified inheritance tax clearance on June 13, ~~1985~~ *1995*. On July 5, ~~1985~~ *1995*, C pledges some corporate stock inherited from A as security for a bank loan. On August 1, ~~1985~~ *1995*, additional personal property was discovered worth $10,000 *($10,000 × 15% = $1,500)* and an amended inheritance tax return was filed without remittance. On August 15, ~~1985~~ *1995*, the department filed an inheritance tax lien for the ~~$800~~ *$1,500* additional tax plus interest (no penalty was imposed because 90 percent of the tax was timely paid).

In this example, the bank's lien on the pledged corporate stock is superior to the inheritance tax lien under Iowa Code section 450.7, because at the time the stock was pledged (July 5, ~~1985~~ *1995*) the department had not filed its lien for the additional tax owing. Since only C owed additional tax, B's share of the estate was not subject to the lien filed August 15, ~~1985~~ *1995*.

ITEM 14. Amend 701—Chapter 86 by adopting the following new rule:

701—86.14(450) Computation of shares. The following areas of the law should be applied when computing the shares of an estate for the purpose of Iowa inheritance tax:

86.14(1) Right to take against the will. In the event that a decedent dies with a will, a surviving spouse may elect to take against the will and receive a statutory share in real and personal property of the decedent as designated by statute. If a surviving spouse elects to take against the will, this election nullifies gifts to the surviving spouse set forth in the decedent's will. For details regarding this election and statutory share see Iowa Code sections 633.236 to 633.259 and In the Matter of Campbell, 319 N.W.2d 275, 277 (Iowa 1982).

86.14(2) Family settlements. Beneficiaries of an estate may contract to divide real or personal property of the estate, or both, in a manner contrary to the will of the decedent. The court of competent jurisdiction may approve the settlement contract of the beneficiaries. However, the department is not a party to the contract and is not bound to compute the shares of the estate based on the settlement contract. Instead, the department must compute the shares of the estate based upon the terms of the decedent's will, unless a court of competent jurisdiction determines that the will should be set aside. See In re Estate of Bliven, 236 N.W.2d 366 (Iowa 1975).

86.14(3) Order of abatement. Shares to be received by the beneficiaries of an estate are subject to abatement for the payment of debts, charges, federal and state estate taxes in the order as provided in Iowa Code section 633.436.

86.14(4) Contrary order of abatement. An order of abatement contrary to that provided in Iowa Code section 633.436 is provided by statute. For instance, if a provision of a will, trust or other testamentary instrument explicitly directs an order of abatement contrary to Iowa Code section 633.436 or a court of competent jurisdiction determines order of abatement due to a devise that would result in an order of abatement contrary to Iowa Code section 633.436, then the order of abatement indicated is to be followed. For additional information regarding contrary provisions of abatement see Iowa Code section 633.437. For details regarding marital share and contrary order of abatement see Estate of Lois C. Olin, Docket No. 92-70-1-0437, Letter of Findings (June 1993).

86.14(5) "Stepped-up" basis. If a decedent's will provides that taxes are to be paid from the residue of the estate and not the respective beneficial shares, a "stepped-up" basis

will be utilized when computing the shares which will result in the appropriate beneficiaries' shares to include the tax obligation that was paid as an additional inheritance. A "stepped-up" basis is based on gifts prior to the residual share.

EXAMPLE: Decedent's will gives $1,000 to a nephew and directs that the inheritance tax on this bequest be paid from the residue of the estate. The stepped-up share is computed as follows:

Tax: $1,000 x 10% = $100. Divide the tax by the difference between the tax rate and 100 percent (90 percent in this example): $100 divided by 90% = $111.11. Add the stepped up tax of $111.11 to the original bequest of $1,000. This results in a stepped-up share of $1,111.11, which allows the nephew to keep $1,000 after the tax is paid.

86.14(6) Antilapse provision and the exception to the antilapse statute. Iowa Code sections 633.273 and 633.274 set forth guidance on the allocation of property in situations in which a lapse in inheritance may occur. Iowa Code section 633.273 provides that when a devisee predeceases a testator, the issue of the devisee inherits the property, per stirpes, unless from the terms of the will, the intent is clear and explicit to the contrary. However, Iowa Code section 633.274 is an exception to Iowa Code section 633.273. If the spouse of the testator predeceases the testator, the inheritance shall lapse, unless the terms of the will clearly and explicitly provide to the contrary. For details regarding the provisions, please see the cited statutes.

86.14(7) Disclaimer. A person who is to succeed to real or personal property may refuse to take the property by executing a binding disclaimer which relates back to the date of transfer. Unless the transferor of the property has otherwise provided, disclaimed property passes as if the disclaimant has predeceased the transferor. To be valid, a disclaimer must be in writing and state the property, interest or right being disclaimed, the extent the property, right, or interest is being disclaimed, and be signed and acknowledged by the disclaimant. The disclaimer must be received by the transferor or the transferor's fiduciary not later than nine months after the later of the date in which the property, interest or right being disclaimed was transferred or the date the disclaimant reaches 18 years of age. A disclaimer is irrevocable from the date of its receipt by the transferor or the transferor's fiduciary. For additional details regarding disclaimers, please see Iowa Code section 633.704.

86.14(8) Right of retainer. If a distributee of an estate is indebted to the estate, whether the decedent dies testate or intestate, the personal representative has the right to offset the distributee's share in the estate against the amount owed to the estate by the distributee. For additional information regarding this right of offset and retainer, see Iowa Code section 633.471.

86.14(9) Deferred life estates and remainder interest. A deferred estate generally occurs as the result of a decedent granting a life estate in property to one person with remainder of the property to another. In such cases, the determination of the tax on the remainder interest to be received by the remainderman may be deferred until the determination of the previous life estate pursuant to Iowa Code section 450.46. Tax on a remainder interest that has been deferred is valued pursuant to Iowa Code section 450.37, with no reduction based on the previous life estate. Tax due on a deferred interest must be paid before the last day of the ninth month from the date of the death of life tenant pursuant to Iowa Code section 450.46. Penalty and interest is not imposed if the tax is paid before the last day of the ninth month from the date of the life tenant. If the death of the decedent occurred before July 1, 1981, the tax due on a deferred interest must be paid before the last day of the twelfth month from the date of the death of life tenant. Deferment may be elected due to the fact that the remainder interest is contingent and because the value of the remainder interest may be significantly altered from the time of the decedent's death until the death of the life tenant. A request for deferment may be made on a completed department form and the completed form, with any required documentation, may be filed with the department on or before the due date of the inheritance tax return. Failure to file a completed department form requesting a deferral of tax on the remainder interest with the inheritance tax return will allow the department to provide an automatic deferral for qualifying remainder interests.

If deferral is chosen, an inheritance tax clearance cannot be issued for the estate. Expenses cannot be used to offset the value of the deferred remainder interest. Based upon Iowa Code section 450.12, deductible expenses must be expenses paid by the estate. Expenses incurred by a deferred remainder interest would not qualify based on Iowa Code section 450.12 as deductible expenses. Pursuant to Iowa Code section 450.52, the owner of a deferred remainder interest may choose to pay the tax on the present value of the remainder interest and have the lien on such an interest removed prior to the termination of the previous life estate. If early termination of the deferred remainder interest occurs, the value of the remainder interest will be reduced by the value of remaining previous life estate.

ITEM 15. Amend subrules 87.1(1) and 87.1(2) as follows:

87.1(1) Definitions. The following definitions cover 701—Chapter 87 and are in addition to the definitions contained in Iowa Code section 451.1.

"Administrator" means the administrator of the ~~audit and~~ compliance division of the department of revenue and finance.

"~~Audit and compliance~~ *Compliance* division" is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

"Department" means the Iowa department of revenue and finance.

"Director" means the director of revenue and finance.

"Tax" means the Iowa estate tax imposed by Iowa Code chapter 451.

"Taxpayer" means the personal representative of the decedent's estate as defined in Iowa Code section 633.3(29) and any other person or persons liable for the payment of the federal estate tax under 26 U.S.C. Section 2002.

87.1(2) Delegation of authority. The director delegates to the administrator of the ~~audit and~~ compliance division, subject always to the supervision and review by the director, the authority to administer the Iowa estate tax. This delegated authority specifically includes, but is not limited to: the determination of the correct Iowa estate tax liability; making assessments against the taxpayer for additional tax due; authorizing refunds of excessive tax paid; executing releases of the tax lien; and the determination of reasonable cause for failure to file and timely pay the tax due and granting extensions of time to file the return and pay the tax due. The administrator of the ~~audit and~~ compliance division may delegate the examination and audit of tax returns to the supervisors, examiners, agents and ~~clerks of the division~~ *any other employees or representatives of the department.*

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

ITEM 16. Amend subrule 87.2(2) and the implementation clause as follows:

87.2(2) Information not confidential. Copies of wills, probate inventories, trust instruments, deeds, *release of a real estate lien,* and other documents which are filed for public record are not deemed confidential by the department.

This rule is intended to implement Iowa Code chapter 22 and *Iowa Code* chapters 450 and 451 as amended by 1992 Iowa Acts, Second Extraordinary Session, chapter 1001.

ITEM 17. Amend rule 701—87.3(451) as follows:

Amend subrules 87.3(2), 87.3(3), 87.3(5), 87.3(7), 87.3(8), and 87.3(13) as follows:

87.3(2) Duty of the taxpayer. The taxpayer does not have the option of electing on the federal estate return, to claim only the Iowa inheritance tax paid on property included in the gross estate of the decedent, or to claim the maximum credit allowed under 26 U.S.C. Chapter 2011 of the Internal Revenue Code. The maximum credit allowable under the federal statute must be claimed on the federal estate tax return. If the taxpayer has filed a federal estate tax return claiming an amount of credit less than the maximum credit allowable, the taxpayer has the duty to amend the federal estate tax return and claim the maximum credit allowable.

If there is a change in the amount of inheritance tax paid or in the amount of the maximum federal credit allowable for state death taxes paid (such as the result of a federal audit or an audit of the inheritance tax return) which results in an estate tax, or additional estate tax due, the taxpayer has the duty to promptly report the change to the department on an amended return, and pay the tax, or additional tax due, together with any penalty and interest. See Iowa Code section 451.8.

Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner or beneficiary.

87.3(3) Form of return. The final inheritance tax return form provided for in 701—subrule ~~86.2(6)~~ *86.2(2)* shall be the return for reporting the Iowa estate tax due. The amount of the Iowa estate tax due shall be listed separately on the return from the amount of the inheritance tax shown to be due.

87.3(5) Computation of the tax.

a. Iowa decedent. If the decedent was a resident of Iowa at the time of death and all of the property included in the gross estate has a situs in Iowa, the total amount allowable as a credit under 26 U.S.C. Section 2001 shall be the tax imposed. If part of the gross estate of an Iowa resident decedent consists of property with a situs at death in a state other than Iowa, the tax imposed shall be prorated ~~on the basis~~ *in the ratio that* the Iowa property included in the gross estate bears to the total gross estate.

~~EXAMPLE 1~~

~~Decedent died July 1, 1980, a resident of Des Moines, Iowa, survived by five children who received the entire estate in equal shares. The gross estate consists of the following assets:~~

~~160-acre Iowa farm~~	~~$320,000.00~~
~~Residence in Des Moines, IA~~	~~75,000.00~~
~~Intangible personal property in revocable trust, Iowa Bank, Trustee~~	~~100,000.00~~
~~Iowa checking account~~	~~2,500.00~~
~~Total gross estate~~	~~$497,500.00~~
~~Less debts and expenses, except federal estate tax~~	~~75,000.00~~
~~Federal adjusted gross estate~~	~~$422,500.00~~
~~Tax Computation~~	
~~The gross federal estate tax is~~	~~$129,450.00~~
~~Less unified credit for 1980~~	~~42,500.00~~
	~~$86,950.00~~
~~Less credit for state death tax paid~~	~~7,520.00~~
~~Net federal estate tax~~	~~$79,430.00~~

~~* * * * *~~

~~Iowa inheritance tax due (5 children)~~	~~5,597.80~~
~~Iowa estate tax (federal credit for state death taxes paid)~~	~~7,520.00~~
~~Iowa estate tax due ($7,520-$5,597.80)~~	~~$1,922.20~~

~~All of the decedent's assets have a situs in Iowa, therefore, the full amount of the credit allowable for state death taxes, less the Iowa inheritance tax, is the Iowa estate tax.~~

~~For simplicity in Example 2, the values used are the same for federal and state purposes and the debts and expenses are charged to the Iowa estate, even though under Iowa Code section 450.12, certain Wisconsin expenses are not deductible in computing the Iowa inheritance tax. The federal estate tax is prorated.~~

~~EXAMPLE 2~~

~~Decedent died July 1, 1980, a resident of Des Moines, Iowa, survived by five children who receive the entire estate in equal shares. The gross estate consists of the following assets:~~

~~Residence in Des Moines, IA~~	~~$75,000.00~~
~~Intangible personal property in revocable trust, Iowa Bank, Trustee~~	~~200,000.00~~
~~Iowa checking account~~	~~2,500.00~~
~~Summer home in Wisconsin~~	~~60,000.00~~
~~Total gross estate~~	~~$337,500.00~~
~~Less debts and expenses, except federal estate tax~~	~~70,000.00~~

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

~~Federal adjusted gross estate~~	~~$267,500.00~~

* * * * *

~~Iowa Portion of the Gross Estate:~~	
~~Des Moines residence~~	~~$75,000.00~~
~~Trust property~~	~~200,000.00~~
~~Bank account~~	~~2,500.00~~
~~Iowa gross estate~~	~~$277,500.00~~
~~Ratio Iowa gross estate to total gross estate~~ ~~$277,500 = $337,500~~	~~.8222~~
~~Tax Computation~~	
~~Gross federal estate tax~~	~~$76,750.00~~
~~Less: Unified credit for 1980~~	~~42,500.00~~
~~Less: Maximum credit for state death taxes paid~~	~~2,820.00~~
~~Net federal estate tax~~	~~31,430.00~~
~~Iowa inheritance tax due (for 5 children)~~	~~383.17~~
~~Iowa share of credit for state death taxes pd. $277,500/337,500 = .8222 x 2,820 =~~	~~2,318.60~~
~~Iowa estate tax due ($2,318.60 – $383.17) =~~	~~$1,935.43~~

~~EXAMPLE 3:~~

~~Same facts as Example 1 (all Iowa property), only the decedent was survived by three children. No Iowa estate tax is due under the following computation because the inheritance tax is greater than the Iowa estate tax.~~

~~Iowa inheritance tax due (3 children)~~	~~$10,159.20~~
~~Iowa estate tax (federal credit allowable for state death taxes)~~	~~7,520.00~~
~~Iowa estate tax is zero because the inheritance tax is greater than the estate tax.~~	~~-0-~~

EXAMPLE 1.

Decedent dies July 3, 1997, a resident of Iowa. The estate was bequeathed in full to inheritance tax-exempt children, except for a $10,000 bequest to one niece.

Total gross assets =	*$1,200,000*
Less debts and expenses (except federal estate tax)	*(300,000)*
Federal adjusted gross estate =	*$900,000*
Federal tax computation:	
gross federal estate tax =	*306,800*
less 1997 unified credit	*(192,800)*
less credit for state death tax paid	*(27,600)*
Net federal estate tax due =	*$86,400*
Iowa tax computation:	
Inheritance tax on niece's bequest	*1,000*
Iowa estate tax equals the federal credit for state death taxes paid	*27,600*
Less inheritance tax due	*(1,000)*
Estate tax due	*26,600*
Total Iowa tax due (1,000 + 26,600) =	*27,600*

All of the decedent's assets have a situs in Iowa; therefore, the full amount of the credit allowable for state death taxes, less the Iowa inheritance tax, is the Iowa estate tax.

For simplicity in Example 2, the values used are the same for federal and state purposes and the debts and expenses are charged to the Iowa estate, even though under Iowa Code section 450.12, certain Minnesota expenses are not deductible in computing the Iowa inheritance tax. All liabilities, except mortgages, are prorated.

EXAMPLE 2.

Decedent dies July 3, 1997, a resident of Iowa, owning a vacation home in Minnesota. The estate was bequeathed in full to inheritance tax-exempt children, except for a $10,000 bequest to one niece.

Total gross assets:	
Iowa	*$950,000*
Minnesota	*250,000*
Total	*1,200,000*
Less debts and expenses (except for federal estate taxes)	*(300,000)*
Federal adjusted gross estate =	*900,000*

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

Federal tax computation:	
gross federal estate tax =	*306,800*
less 1997 unified credit	*(192,800)*
less credit for state death tax paid	*(27,600)*
Net federal estate tax due =	*86,400*
Iowa tax computation:	
Inheritance tax on niece's bequest	*1,000*
Iowa estate tax	
Proration:	
Iowa $950,000	
Total $1,200,000 = 79.17%	
Iowa portion of federal credit for state death taxes paid: $27,600 x 79.17% =	*$21,850.92*
Less inheritance tax due	*($1,000.00)*
Iowa estate tax =	*$20,850.92*
Total Iowa tax due (1,000 + 20,850.92) =	*$21,850.92*

b. Nonresident decedent. If the gross estate of a nonresident decedent includes property with a situs in the state of Iowa, the tax imposed is the maximum amount of the federal credit for state death taxes allowable prorated on the basis the Iowa situs property in the gross estate bears to the total gross estate. For simplicity in the following two examples, it is assumed the values are the same for federal and state purposes and the debts, expenses and federal estate tax are prorated between Iowa and Arizona even though certain liabilities are not prorated under Iowa Code section 450.12.

~~EXAMPLE 1~~

~~Decedent died a resident of the state of Arizona, July 1, 1980, survived by five children, who share the entire estate equally. The gross estate consists of the following assets:~~

~~360-acre Iowa farm~~	~~$720,000~~	~~Iowa Portion of Gross Estate:~~	
		~~Farm~~	~~$720,000~~
~~Grain stored in Iowa~~	~~50,000~~	~~Grain~~	~~$50,000~~
~~Arizona Residence~~	~~$75,000~~	~~Total~~	~~$770,000~~
~~Intangible personal property (situs in Arizona)~~	~~$35,000~~		
~~Total Gross Estate~~	~~$880,000~~		
~~Less debts and expenses, except federal estate tax~~	~~$80,000~~		
~~Adjusted gross estate~~	~~$800,000~~		
~~Ratio Iowa gross estate to total gross estate~~		~~$770,000 / $880,000~~	~~=.875~~
~~Tax Computation~~			
~~Gross federal estate tax~~	~~$267,800.00~~		
~~Less: Unified credit for 1980~~	~~42,500.00~~		
~~Less: Maximum credit for state death taxes paid~~	~~22,800.00~~		
~~Net federal estate tax~~	~~$202,500.00~~		
~~Iowa inheritance tax due (for 5 children)~~			~~$14,015.63~~
~~Iowa share of credit for state death tax pd. 770,000/880,000 = .875 x 22,800 =~~			~~$19,950.00~~
~~Iowa estate tax due (19,950.00 – 14,015.63) =~~			~~5,934.37~~

~~EXAMPLE 2~~

~~Same facts as in Example 1, only the decedent is survived by three children who share the estate equally. No Iowa estate tax is due, because the inheritance tax owed by the three children is in excess of the Iowa estate tax:~~

~~Iowa inheritance tax due (for three children)~~	~~$22,271.88~~
~~Iowa share of credit for state death taxes paid (770,000/880,000 = .875 x 22,800) =~~	~~19,950.00~~
~~Iowa estate tax due (19,950.00 – 22,271.88) =~~	~~-0-~~

EXAMPLE 1.

Decedent died a resident of Arizona on July 3, 1997. The estate was bequeathed in full to tax-exempt children.

Total gross estate:	
Iowa real estate	*$750,000*
Other property	*450,000*
Total gross estate:	*1,200,000*
Less debts and expenses (except federal estate tax)	*(300,000)*
Net adjusted gross estate =	*900,000*

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Federal tax computation:	
Gross federal estate tax =	*306,800*
Less 1997 unified credit	*(192,800)*
Less credit for state death tax paid	*(27,600)*
Net federal estate tax due =	*86,400*
Iowa estate tax computation:	
Inheritance tax =	*-0-*
Iowa estate tax proration:	
Iowa gross $750,000	
Total gross $1,200,000 = 62.50%	
Iowa portion of federal credit for state death tax paid: 27,600 × 62.50%	
Iowa estate tax =	*$17,250*

EXAMPLE 2.

Decedent died a resident of Arizona on July 3, 1997, with the same property as set forth in Example 1. The estate consisted of four separate $100,000 bequests to non-exempt individuals with the rest of the estate going to charity.

Iowa portion of each bequest: $100,000 × 62.50% =	*62,500*
Tax on each bequest =	*$6,500*
Total Iowa inheritance tax due: $6,500 × 4 =	*$26,000*
Total estate tax due	*-0-*
Iowa tax due =	*$26,000*

The Iowa real property is part of the residual estate from which bequests are paid. See Estate of Dennis M. Billingsley, Emmet County District Court, Case No. 13394 (July 15, 1982).

87.3(6) No change.

87.3(7) Return and payment due date. For estates of decedents dying prior to July 1, 1986, the return shall be filed with the department and the tax due paid within 12 months after the decedent's death, unless an extension of time has been granted by the department, in which case, the return shall be filed and the tax paid within the time prescribed by the extension of time. For estates of decedents dying on or after July 1, 1986, the return must be filed and the tax due paid on or before the last day of the ninth month after the death of the decedent, unless an extension of time has been granted, in which case, the return must be filed and the tax due paid within the time prescribed by the extension of time. See 701—paragraph 86.2(~~10~~ *6*)"a" for the due date when the last day of the ninth month following death falls on a Saturday, Sunday, or legal holiday.

87.3(8) Extension of time. The extension of time form for inheritance tax provided for in 701—subrule 86.2(~~14~~ *9*) shall be the extension of time form for the Iowa estate tax. *If an extension of time based on hardship is requested, evidence of such hardship is to be provided with the filing of the extension request.* Unless the extension of time specifically states to the contrary, an extension of time to file the final inheritance tax return, and pay the tax due, shall also be an extension of time for the same period, to pay the Iowa estate tax. Provided, however, in no event shall the extension be for a period of time greater than the period of time allowed for claiming the credit for state death taxes paid under 26 U.S.C. Section 2011 of the Internal Revenue Code. Provided, further, if the federal estate tax liability is paid prior to the expiration of an extension of time to pay the Iowa estate tax, the tax shall be due and payable at the time the federal estate tax is paid regardless of the extension of time period. The application for an extension of time to file the return and pay the tax must be filed with the department prior to the time the return is required to be filed and the tax paid.

87.3(13) Interest—during an extension of time. During the period of an extension of time, any unpaid tax shall draw interest at the rate set forth in rule 701—10.2(421). Payments made during an extension of time shall first be credited to *penalty,* interest and the balance, if any, to the tax due. *Estate tax is still due for estates that have deferred Iowa inheritance tax.* Any outstanding tax obligation remaining after the expiration of an extension of time shall be deemed delinquent and shall be subject to penalty and draw interest at the rate set forth in rule 701—10.2(421). No discount is allowed for early payment of the tax due.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 421.27, 450.63, 451.2, 451.5, 451.6, 451.8, ~~and~~ 451.12, *and 1997 Iowa Acts, chapter 60, sections 1 and 2.*

ITEM 18. Amend rule 701—88.1(450A) as follows:

701—88.1(450A) Administration.

88.1(1) Definitions. The following definitions cover and supplement the definitions contained in Iowa Code section 450A.1.

"Administrator" means the administrator of the ~~audit and~~ compliance division of the department of revenue and finance.

"~~Audit and compliance~~ *Compliance* division" is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

"Department" means the department of revenue and finance.

"Director" means the director of revenue and finance.

"Direct skip" means the same as the term is defined in Section 2612(c) of the Internal Revenue Code.

"Tax" means the generation skipping transfer tax imposed by Iowa Code chapter 450A.

"Taxable distribution" means the same as the term is defined in Section 2612(b) of the Internal Revenue Code.

"Taxable termination" means the same as the term is defined in Section 2612(a) of the Internal Revenue Code.

"Taxpayer" means the transferee of the property subject to the generation skipping transfer in case of a taxable distribution or the trustee and the transferee in case of a taxable termination.

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"Transferor," "trust," "trustee," and "interest" mean the same as those respective terms are defined in Section 2652 of the Internal Revenue Code.

88.1(2) Delegation of authority. The director delegates to the administrator of the ~~audit and~~ compliance division, subject always to the supervision and review by the director, the authority to administer the generation skipping transfer tax. This delegated authority specifically includes, but is not limited to: the determination of the correct generation skipping transfer tax liability; making assessments against the taxpayer for additional tax due; authorizing refunds of excessive tax paid; executing releases of the tax lien; ~~the determination of reasonable cause for failure to file and timely pay the tax due;~~ and granting extensions of time to file the return and pay the tax due. The administrator of the ~~audit and~~ compliance division may delegate the examination and audit of the tax returns to such supervisors, examiners, agents and ~~clerks~~ *any employees or representatives* of the ~~division~~ *department* as the administrator may designate.

This rule is intended to implement Iowa Code sections 421.2 and 421.4 and chapter 450A.

ITEM 19. Amend subrule 88.2(2) as follows:

88.2(2) Information not confidential. Copies of wills, *release of real estate liens,* probate inventories, trust instruments, deeds and other documents which are filed for public record are not deemed confidential by the department.

ITEM 20. Amend subrules 88.3(4) to 88.3(6), 88.3(9), 88.3(10), and 88.3(12) to 88.3(16) as follows:

88.3(4) Duty of the taxpayer. It is the duty of the taxpayer to file the return prescribed by subrule 88.3(5) and pay the tax due within the time prescribed by law (taking into consideration any extension of time to file and pay). A copy of the federal generation skipping transfer tax return must be submitted to the department at the time the Iowa return is filed. The taxpayer shall keep books, records and accounts as are reasonably necessary to substantiate the amount of the federal tax and value of the property included in a generation skipping transfer subject to tax, and upon request the taxpayer shall furnish information to the department as may be reasonably necessary to enable the department to determine the correct tax due. It is the duty of the taxpayer to claim the maximum amount of the federal credit allowable on the federal generation skipping transfer tax return, subject to the limitation in subrule 88.3(2).

If there is a change in the amount of the maximum federal credit allowable, or the amount allowable under subrule 88.3(2), against the federal tax on a generation skipping transfer (such as a result of a federal audit or in the amount and value of the property included in a generation skipping transfer), the taxpayer has the duty to promptly report the change to the department on an amended return, and pay the tax, or additional tax due, together with any penalty and interest. See Iowa Code section 450A.11.

Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner or beneficiary.

88.3(5) Form *and due date* of the return. The form of the return for reporting the generation skipping tax to the department shall be in such form as may be prescribed by the director. It shall provide for such schedules of property subject to tax, deductible expenses, losses, and tax computation tables to conform as nearly as possible to the form of the federal generation skipping transfer tax return. *The return must be filed with the department and the tax due paid on or before the last day of the ninth month following the death of the individual whose death is the event causing the imposition of the federal generation skipping transfer tax. If an extension of time has been granted, the return must be filed and any tax, penalty, and interest due must be paid on or before the expiration of the extension of time.*

88.3(6) Liability for the tax. The transferee of property in a generation skipping transfer subject to tax is personally liable for the tax to the extent of the value of the property received determined under *26 U.S.C.* Section 2624 ~~of the Internal Revenue Code~~. In addition, the trustee and transferee of property in a taxable termination are personally liable for the tax attributable to such termination to the extent of the value of the property under their control. Value for the purpose of determining the extent of the liability of a transferee or trustee is determined at the time of the distribution or termination ~~as the case may be~~. Neither the individual's estate whose death is the event imposing the tax, nor its personal representative, is liable for the tax imposed (unless the personal representative is also the transferee or trustee of the property subject to tax).

88.3(9) Tangible and intangible property—time of classification. The classification of property as tangible or intangible is determined by the law of the state of the transferor's or trustee's residence. For the purpose of determining whether an Iowa generation skipping transfer tax is due, the classification of the property as tangible or intangible shall be made at the time of the death of the individual causing the generation skipping transfer. The classification of the property in a taxable transfer at the time of the original grantor's death is not determinative of whether the transferred property will be subject to tax upon the individual's death which caused the imposition of the tax. This rule is illustrated by the following two examples:

EXAMPLE 1. A executed a will in ~~1988~~ *1996* devising an Iowa farm in trust to pay the income to his son, B, for life, and upon B's death the trust is to terminate and the corpus paid to B's children, C and D, in equal shares. If upon B's death the Iowa farm is still part of the trust assets, the value of the farm is subject to the Iowa generation skipping transfer tax regardless of the state of residence of the transferor. However, if during B's lifetime the farm is sold and the proceeds placed in the trust, the trust assets are subject to the Iowa generation skipping transfer tax only if the property had a situs in Iowa at the time of death, because at B's death the trust assets are classified as intangible personal property.

EXAMPLE 2. No change.

NOTE: In the two examples it is assumed the generation skipping transfers are in excess of the ~~$1,000,000~~ *$1 million* exemption.

88.3(10) Computation of the tax.

a. In general. The Iowa generation skipping tax is the maximum credit allowed by *26 U.S.C.* Section 2604 ~~of the Internal Revenue Code~~ against the amount of the federal generation skipping transfer tax. The maximum federal credit is 5 percent of the federal tax imposed on the transfer. In this respect, it differs from the federal credit for state death taxes paid under *26 U.S.C.* Section 2011 ~~of the Internal Revenue Code~~ which is a graduated percentage of the value of the property included in the federal adjusted taxable estate. As a result, the valuation of the property included in a generation skipping transfer is only relevant for computing the Iowa generation skipping transfer tax when it is used as the basis for prorating the federal generation skipping transfer tax, when the property subject to the generation skipping transfer tax has a situs in more than one state.

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b. Computation of the tax—situs in more than one state. When part of the property included in a generation skipping transfer which is eligible for the credit for state generation skipping transfer tax has situs in Iowa and part in another state or states, the maximum federal credit which is allowed under *26 U.S.C.* Section 2604 ~~of the Internal Revenue Code~~ must be prorated among the states where the property has a situs. In this event, the Iowa generation skipping transfer tax is computed by multiplying the federal tax on the entire transfer by the 5 percent maximum federal credit allowable. This amount is then multiplied by a fraction of which the value of the Iowa property is the numerator and the value of the total generation skipping transfer is the denominator. The resulting amount is the Iowa generation skipping transfer tax. The fact *that* other states where part of the property has a situs do not have a generation skipping transfer tax, or the state tax is a lesser percentage than the maximum federal credit allowable (5 percent), is not relevant to the computation of the Iowa tax.

This subrule can be illustrated by the following:

EXAMPLE: A generation skipping transfer occurs in an Illinois trust in ~~1988~~ *1996* by reason of the death of A. The property in the generation skipping transfer consists of $650,000 in stocks and bonds and an Iowa farm worth $240,000, for a total generation skipping transfer of $890,000. Assuming the lifetime exemption does not apply, the federal generation skipping transfer tax is 55 percent of $890,000, or $489,500. The maximum federal credit allowable is 5 percent of $489,500, or $24,475. The Iowa portion of the maximum federal credit is:

$$\text{Iowa prop.} \quad \frac{\$240{,}000}{\$890{,}000} \times \$24{,}475 = \$6{,}600 \quad \text{which is the Iowa tax.}$$

Total prop.

In this example, the result would not change if Illinois did not have a generation skipping transfer tax or if its tax were a smaller percentage than the maximum 5 percent credit allowed by the federal statute.

~~88.3(12) Return and due date. The return must be filed with the department and the tax due paid on or before the last day of the ninth month following the death of the individual whose death is the event causing the imposition of the federal generation skipping transfer tax. If an extension of time has been granted, the return must be filed and any tax, and interest due must be paid on or before the expiration of the extension of time.~~

88.3(~~13~~ *12*) Extension of time. ~~For good cause,~~ *In the case of hardship, which is a factual determination made on a case-by-case basis,* the director may grant an extension of time to file the return and pay the tax due for a period not to exceed ten years after the death of the individual whose death is the event causing the imposition of the federal generation skipping transfer tax. Provided, however, in no event shall the extension be for a period of time greater than the period of time allowed for claiming the credit allowed for state generation skipping transfer tax paid, allowable under *26 U.S.C.* Section 2662 ~~of the Internal Revenue Code~~. If the federal generation skipping transfer tax liability is paid prior to the expiration of an extension of time to pay the Iowa generation skipping transfer tax, the tax shall be due and payable at the time the federal generation skipping transfer tax is paid regardless of the extension of time period. The application for an extension of time to file the return and pay the tax due shall be in a form as the director may prescribe and must be filed with the department prior to the time the return is required to be filed and the tax due paid.

~~88.3(14) Renumbered as 701—10.96(450A), IAB 1/23/91.~~

~~88.3(15) Renumbered as 701—10.97(422), IAB 1/23/91.~~

~~88.3(16)~~ *88.3(13)* Discount. No discount is allowed for early payment of the tax due.

ITEM 21. Amend rule 701—89.1(422) as follows:

701—89.1(422) Administration.

89.1(1) Definitions. The following definitions cover 701—Chapter 89 and are in addition to the definitions contained in Iowa Code section 422.4.

"Administrator" means the administrator of the ~~audit and~~ compliance division of the department of revenue and finance *or* ~~and~~ the personal representative of an intestate estate.

"~~Audit and compliance~~ *Compliance* division" is the organizational unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws.

"Department" means the department of revenue and finance.

"Director" means the director of revenue and finance.

"Gross income" includes any and all income prior to any deductions as set forth on the Iowa fiduciary return of income.

"Personal representative" means the executor, administrator or trustee of a decedent's estate.

"Tax" means the income tax imposed on estates and trusts under Iowa Code section 422.6.

"Taxable income" is the income of the fiduciary and also includes distributions to beneficiaries as set forth on the Iowa fiduciary return of income.

"Taxpayer" means the executor, administrator or other personal representative of a decedent's estate required to file a return for the estate and the decedent under Iowa Code sections 422.14 and 422.23. "Taxpayer" also means the trustee of a trust subject to tax under 26 U.S.C. Section 641 and required to file a return under 26 U.S.C. Section 6012(b), as well as the trustee of the ~~bankrupt~~ *bankruptcy* estate of an individual under Chapter 7 or 11 of Title 11 of the United States Code.

89.1(2) Delegation of authority. The director delegates to the administrator of the ~~audit and~~ compliance division, subject always to the supervision and review of the director, the authority to administer the fiduciary income tax. This authority specifically includes, but is not limited to: determining the correct fiduciary income tax liability; making tax liability assessments; issuing refunds; releasing tax liens; filing tax liability claims in probated estates and releasing the claims upon payment of the tax; ~~determining reasonable cause for failure to file and make timely tax payment; granting extensions of time to file the return and pay the tax due;~~ and issuing the certificate of acquittance authorized by Iowa Code section 422.27. The administrator of the ~~audit and~~ compliance division may delegate the examination and audit of tax returns to the supervisors, ~~examiners,~~ agents, and ~~clerks of the division~~ *employees and representatives of the department.*

ITEM 22. Amend rule 701—89.2(422) as follows:

Amend subrule **89.2(3)**, paragraphs **"a"** and **"b,"** and adopt **new** paragraph **"e"** as follows:

a. Estates of Iowa decedents. A copy of the ~~preliminary~~ inheritance tax ~~report~~ *return* and probate inventory required by Iowa Code section 633.361 and 701—subrule 86.2(2) (relating to inheritance tax) and a copy of the decedent's will in testate estates shall be filed with the first fiduciary return of

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income, unless previously filed with the department for inheritance tax purposes.

b. Nonresident decedents—ancillary administration. If ancillary administration has been opened for the estate of a nonresident decedent, a copy of the ~~preliminary~~ inheritance tax ~~report~~ *return* and probate inventory and a copy of the decedent's will in testate estates shall be filed with the department, subject to the same conditions and requirements in estates of resident decedents. If ancillary administration has not been opened for a nonresident decedent with Iowa taxable income, a copy of the inventory filed in the primary estate, or the portion of the inventory listing the property generating the Iowa income and the decedent's will in testate estates, must be filed with the department with the first fiduciary return of income.

e. Safe deposit box. Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner or beneficiary.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 422.25, 422.27, 422.28, ~~and~~ 422.73 *and 1997 Iowa Acts, chapter 60, sections 1 and 2.*

ITEM 23. Amend subrules 89.4(4), 89.4(6), and 89.4(8) as follows:

89.4(4) Accounting period—tax year. The initial fiduciary return may reflect either a calendar or fiscal year accounting period, without the department's prior approval. If a fiscal year is elected, it may end on the last day of any month, except December, but in no case shall the fiscal year adopted be for a period longer than the last day of the month preceding the decedent's death or the month the trust was created. The accounting period for the purpose of the tax imposed by Iowa Code section 422.6 must be the same accounting period that is adopted for federal income tax purposes. This limitation is equally applicable to estates of resident and nonresident decedents and trusts with a situs within and without Iowa. If the taxpayer has not adopted a taxable year prior to the time the return is due to be filed and the tax paid ~~(not including any extension of time to file and pay)~~, the taxable year is a calendar year until authorization is granted to change to a fiscal year. See 26 U.S.C. Sections 441 to 443, federal regulations Sections 1.441-1(g)(3) and 1.442.2.

The permissible taxable years are illustrated by the following examples:

EXAMPLE 1. Decedent died July 4, ~~1980~~ *1990*. The taxable year for the estate commences the day after the decedent's death (July 5, ~~1980~~ *1990*) and will end December 31, ~~1980~~ *1990*, if a calendar year is adopted as the taxable year. If a fiscal year is adopted, it can end on July 31, ~~1980~~ *1990*, or the last day of any future month (except December 31, ~~1980~~ *1990*), but no later than June 30, ~~1981~~ *1991*, subject to the condition that it is selected prior to the time the return and payment are originally due.

EXAMPLE 2. Grantor creates an irrevocable trust on July 27, ~~1979~~ *1989*. On July 1, ~~1980~~ *1990*, the trustee filed the initial fiduciary return of income, adopting at that time a taxable year ending November 30, ~~1979~~ *1989*. Since the return was due March 17, ~~1980~~ *1990* (March 15 was a Saturday) for federal income tax purposes and March 31, ~~1980~~ *1990*, for Iowa income tax purposes, it is delinquent and a fiscal year accounting period is disallowed and the trust taxable year is the calendar year.

89.4(6) Minimum filing requirements.

a. No change.

b. Exception to the general rule. A final fiduciary return of income must be filed for the taxable year in which an estate or trust is closed, regardless of the amount of gross income, if an income tax certificate of acquittance is requested. The final fiduciary return of income constitutes an application for an income tax certificate of acquittance pursuant to Iowa Code sections 422.27, 633.477 and 633.479. *For a certificate of acquittance to be received, the appropriate box on the final fiduciary return must be checked to request the certificate.*

89.4(8) Return due date. The fiduciary return must be filed with the department and the tax due paid in full on or before the last day of the fourth month following the end of the taxable year ~~or the last day of the period granted by the department on an extension of time~~. *Payment of 90 percent of the tax due with the filing of a return will grant a taxpayer a six-month automatic extension of time to pay the remaining tax due.* If the due date falls on a Saturday, Sunday or *legal* holiday, the due date is the next day which is not a Saturday, Sunday or *legal* holiday *as defined in Iowa Code section 4.1*. Returns not timely filed *with* ~~and~~ *90 percent of the* tax ~~not~~ timely paid are ~~delinquent and~~ subject to penalty as provided in rule 89.6(422).

ITEM 24. Amend subrule **89.4(9)**, paragraphs "**a**" to "**e**," as follows:

a. Income of the estate or trust. A taxpayer must timely file a fiduciary return if the minimum filing requirements specified in subrule 89.4(6) are met and ~~to~~ *must* pay *90 percent of* the tax due~~, if any, in full~~. *Receipt of the return with 90 percent of the tax due paid will result in an automatic six-month extension of time to pay the remaining tax due.* The department is not required to file a claim for taxes in the estate proceedings and have the claim allowed before the tax is paid. In re Estate of Oelwein, 217 Iowa 1137, 1141, 251 N.W. 694 (1933); Findley v. Taylor, 97 Iowa 420, 66 N.W. 744 (1896). The personal representative of an estate must pay the tax on income from property in the personal representative's possession, prior to applying the income to estate obligations. See Iowa Code section 633.352.

b. Decedent's final individual income tax return. The executor, administrator, or other personal representative of the decedent's estate must file an individual income tax return for the decedent for the year of the decedent's death if the gross income attributable to the decedent for the part of the taxable year ending with death equals or exceeds the minimum filing requirements. See 701—subrules 39.1(1) to 39.1(3) and 39.1(5) for the minimum filing requirements for individual income tax. If the surviving spouse of a decedent has not remarried during the balance of the taxable year and has the same taxable year as the decedent, the personal representative of the decedent's estate may file a joint return with the surviving spouse for the taxable year of death. In the event of such an election, the joint return must include the surviving spouse's income for the entire taxable year and the decedent's income for the portion of the taxable year ending with death. Income attributable to property owned by the decedent and the decedent's rights to income received after the day of the decedent's death are income of the decedent's estate or the persons succeeding to the property or rights to income~~, as the case may be~~. See Iowa Code sections 633.350 to 633.353 for the circumstances under which the estate is charged with the income from the decedent's property or the decedent's rights to income. Income from property held by the decedent and others in joint tenancy received after the de-

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cedent's death is charged to the surviving joint tenants, not to the decedent's estate.

The final return for a decedent may be filed at any time after the decedent's death, but in no event later than the last day of the fourth month following the end of the decedent's normal taxable year ~~or the last day of the period granted by the department in an extension of time~~. The final income tax return of the decedent, if the minimum filing requirements are met, must be filed prior to the time an income tax certificate of acquittance is requested, even though this may require the early filing of the return. Therefore, filing a joint return with the surviving spouse is precluded if the decedent's final return is required to be filed prior to the end of the normal taxable year.

c. Decedent's prior year returns. The personal representative of the decedent's estate is not limited to filing the decedent's final return and paying the tax due~~, if any~~. In addition, the personal representative has the duty to file a return, if none was filed, and to pay any additional income tax owed by the decedent that may become due by reason of an audit of the decedent's income or prior year returns. The personal representative's duty to pay the tax, or additional tax, is limited to the probate property subject to the jurisdiction of the court. The probate property must be applied to the payment of the decedent's tax liability according to the order for paying debts and charges specified in Iowa Code section 633.425 ~~(probate)~~.

d. Withholding agent—general rule. The personal representative of a decedent's estate and the trustee of a trust shall withhold Iowa income tax from a distribution of Iowa taxable income to beneficiaries who are nonresidents of Iowa. This applies to both Iowa and non-Iowa situs estates and trusts. See Iowa Code subsection 422.16(12) and 701—subrule 46.4(2), item "5," for the duty to withhold. The amount of income tax to be withheld shall be computed *either based on 5 percent of the taxable Iowa income distributed or* according to tax tables provided by the department. See 701—subrule 46.3~~(1)~~ *(3)* for the required withholding form and return to be filed with the department.

e. Exception to the general rule. If a nonresident beneficiary of an estate or trust who is to receive a distribution of Iowa taxable income files with the department a nonresident declaration of estimated tax and pays the estimated tax on the income declared in full, 89.4(9)"d" does not apply to the amount of the income declared. A certificate of release from the duty to withhold will be issued to the withholding agent upon request. See Iowa Code sections 422.16(12) and 422.17 and 701—subrule 46.4(3) relating to the release certificate. *In addition, an estimated payment of withholding can occur if a distribution is being made to a taxable beneficiary. An estimated payment of withholding should be based on 5 percent of the taxable Iowa income. It is the department's policy to allow estimated payments of withholding to be paid directly to the department.*

ITEM 25. Amend subrules 89.5(1), 89.5(2), and 89.5(4) as follows:

89.5(1) Automatic extension of time to file.

~~a. For tax years beginning before January 1, 1986. An automatic two-month extension of time to file the fiduciary income tax return and to pay the tax due will be granted by the department, if the application for the extension is filed prior to the due date of the return. See subrule 89.4(8) for what constitutes timely filing.~~

~~b~~ *a.* For tax years beginning on or after January 1, 1986. An automatic two-month extension of time to file the fiduciary income tax return will be granted by the department if the requirements set out in subparagraphs (1) and (2) are met.

(1) Filing the extension application on or before the due date of the return. See subrule 89.4(8) for what constitutes timely filing.

(2) Payment of at least 90 percent of the tax by the due date. At least 90 percent of the tax required to be shown due must have been paid on or before the due date of the return. To determine whether or not 90 percent of the tax was "paid" on or before the due date, the aggregate amounts of tax credits applicable to the return plus the tax payments which were made on or before the due date are divided by the tax required to be shown due on the return. If the aggregate of the tax credits and the tax payments is equal to or greater than 90 percent of the tax required to be shown due, the taxpayer will have met the "90 percent" test and no penalty will be assessed.

If the time for filing is extended, interest as provided by law, from the date the return originally was required to be filed to the date of actual payment of the tax, is to be computed on the unpaid tax. See rule 701—10.2(421) for the statutory rate of interest commencing on or after January 1, 1982.

~~c~~ *b.* For tax years beginning on or after January 1, 1991. See 701—subrule 39.2(4).

89.5(2) Additional extension of time to file *beyond the automatic extension.*

~~a. For tax years beginning before January 1, 1986. For good cause, the department may grant an additional extension of time not to exceed four months to file the fiduciary return and pay the tax, provided an application for additional time is filed prior to the expiration of the automatic extension of time.~~

~~b.~~ For tax years beginning on or after January 1, 1986. ~~For good cause, the~~ *The* department may grant an additional extension of time to file the fiduciary return, not to exceed four months, provided an application for additional time is filed prior to the expiration of the automatic extension of time.

89.5(4) Form of application and place of filing. The application for an extension of time to file the fiduciary income tax return must be made on forms prescribed by the director. The application must be filed with the department prior to the date the return is due, directed to the ~~Audit and~~ Compliance Division, *Examination* ~~Individual~~ Section, P.O. Box 10456, Des Moines, Iowa 50306.

ITEM 26. Amend subrules 89.7(2) and 89.7(3) as follows:

89.7(2) Interest on refunds *and*

~~a. Tax~~ *tax* paid prior to due date. For the purpose of determining the time interest begins to accrue, all income tax withheld, estimated tax paid and other tax paid prior to the due date shall be deemed to be paid on the last day the return is required to be filed disregarding any extensions of time to file the return and pay the tax.

~~b. Tax paid prior to April 30, 1980. Rescinded IAB 10/13/93, effective 11/17/93.~~

~~c. Tax paid on or after April 30, 1980, but prior to April 30, 1981. Rescinded IAB 10/13/93, effective 11/17/93.~~

~~d. Tax paid on or after April 30, 1981 but prior to January 1, 1982. Rescinded IAB 10/13/93, effective 11/17/93.~~

~~e. Tax paid on or after January 1, 1982. Rescinded IAB 10/13/93, effective 11/17/93.~~

89.7(3) Interest on a net operating loss carryback.~~—~~

~~a. The 60-day period—years ending no later than June 30, 1980. Rescinded IAB 10/13/93, effective 11/17/93.~~

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~~b. The 30-day period prior to April 30, 1981. Rescinded IAB 10/13/93, effective 11/17/93.~~

~~c. The~~ *the* second calendar month period—on or after April 30, 1981. For net operating losses occurring in any of the taxable years ending on or after April 30, 1981, interest accrues on excess tax paid in a prior year, if the loss is carried back to such year, only after the close of the taxable year in which the loss occurs or on the first day of the second calendar month following the date the tax to be refunded was paid, whichever time is later.

~~d. Tax deficiency in carryback year—interest due for periods prior to January 1, 1982. Rescinded IAB 10/13/93, effective 11/17/93. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.~~

ITEM 27. Amend subrule 89.8(1) as follows:

89.8(1) Application of the Internal Revenue Code. Iowa Code section 422.4(~~15~~ *16*) provides that taxable income of estates and trusts for Iowa income tax purposes is the same as taxable income for federal income tax purposes, subject to certain adjustments specified in Iowa Code sections 422.7 and 422.9. Therefore, the Internal Revenue Code is also Iowa law insofar as it relates to what constitutes gross income, allowable deductions and distributions, subject to the adjustments specified above. See First National Bank of Ottumwa v. Bair, 252 N.W.2d 723 (Iowa 1977).

For purposes of a distribution deduction under this chapter, an estate or trust shall receive a distribution deduction only for income taxable to Iowa. For example, municipal interest will be included in the distribution deduction because it is taxable to Iowa. U.S. government interest would not be included because it is not taxable to Iowa.

Income of a preneed funeral trust will be treated as a grantor's trust and an Iowa election to treat such a trust as a qualified funeral trust as provided in IRC 685 pursuant to the Taxpayer Relief Act of 1997 will not be recognized for the purposes of Iowa income.

ITEM 28. Amend subrule **89.8**(7), paragraphs "**a**," "**c**," "**i**," "**j**," "**o**," and "**t**," as follows:

a. In general. 26 U.S.C. Section 641(b) provides that the taxable income of an estate or trust shall be computed in the same manner as the taxable income of an individual, except as modified in subchapter J of the Internal Revenue Code. The gross income of an individual and, therefore, the gross income of an estate or trust, is not given a definitive meaning in 26 U.S.C. Section ~~61~~ *641*. Subrule 89.8(7), paragraphs "d" to "n," describe the most common kinds of income of an estate or trust. However, those paragraphs are not intended to identify all types of taxable income.

c. The estate's first return—special considerations. Death terminates the decedent's taxable year. Income received the day of the decedent's death is to be reported on the decedent's final individual return. See 26 U.S.C. 443(a)(2); federal regulation Section 1.443-1(a)(1).

The taxable year of a decedent's estate begins the day after the decedent's death. Income received after the decedent's death is either chargeable to the decedent's estate or to the person succeeding to the property producing the income~~, as the case may be~~. See 89.8(5)"a" and 89.8(5)"b." Income the decedent had a right to receive prior to death, but did not receive before death, is not the decedent's income, but is income in respect of a decedent and is chargeable either to the decedent's estate when received or to the person succeeding to the right to income~~, as the case may be~~. See 26 U.S.C. Section 691(a) and applicable federal regulations on what constitutes income in respect of a decedent. Trade or business expenses, interest, taxes and expenses for the production of income owing by the decedent at death, but unpaid, and the allowance for depletion on income not received at death, are not deductible on the decedent's final return. These are deductible by the estate or the person succeeding to the property when paid~~, as the case may be~~. Medical expenses incurred by the decedent, but unpaid at death, are not deductible by the estate. These are deductible on the decedent's individual return for the year the expenses were incurred, if paid within one year after the decedent's death and if the medical expense is not claimed as a deduction for federal estate tax purposes under 26 U.S.C. Section 2053. See 26 U.S.C. Section 213(d) and federal regulations thereunder relating to deductible medical expense of a decedent. Funeral expense is not a deductible item for income tax purposes, although it is a deductible expense for federal estate tax and Iowa inheritance tax purposes. See 701—86.6(2)"g" and 86.6(3)"b." Unused ordinary and capital losses remaining after the decedent's income tax liability for the year of death has been determined are not carried forward to the decedent's estate. The unused losses terminate with death, except to the extent they may be used by the decedent's surviving spouse. See Rev. Ruling 74-175, 1 CB 52 (1974). The estate of a decedent is a different taxpayer than the decedent.

i. Basis for gain or loss—the stepped-up basis. Property acquired from a decedent receives a new basis for determining gain or loss when the property is sold or exchanged. This rule does not apply to property which is classified as income in respect of a decedent and certain other property designated in 26 U.S.C. Section 1014(b) and (c) and the federal regulations thereunder. The basis of property acquired from a decedent is either: (1) its fair market value at the time of death or the alternative value when it has been elected for federal estate tax purposes under 26 U.S.C. Section 2032, or (2) its special use value when the property has been valued for federal estate tax purposes under 26 U.S.C. Section 2032A. The decedent's basis in the property is not relevant. ~~Property is considered to have been acquired from a decedent when it would be includable in the decedent's gross estate for federal estate tax purposes. The fact the gross estate is not sufficient to require the filing of a federal estate tax return is not controlling. The property acquires the new basis if it would be includable in the decedent's gross estate, had the gross estate been of a sufficient amount to require the filing of a federal estate tax return. See federal regulation section 1.1014-2(b)(2). The new or "stepped-up" basis, as it is commonly called, is illustrated by the following example:~~

If an estate files a federal estate tax return, then the basis is governed by the federal estate tax value determination. However, if an estate does not file a federal estate tax return, then Iowa inheritance tax valuation governs the basis for the property that is acquired.

EXAMPLE 1. Decedent A died July 1, ~~1980~~ *1995*, owning a 160-acre Iowa farm which the decedent purchased in 1955 for $200 per acre, or $32,000. At the time of A's death, the farm had a fair market value of ~~$1,500~~ *$2,000* per acre, or ~~$240,000~~ *$320,000*. In 1965, A and surviving spouse B purchased a residence for $35,000 in joint tenancy. Surviving spouse B, a school teacher, contributed one-half of the purchase price of the residence; therefore, one-half of the residence is excluded from A's gross estate. At the time of A's death, the residence had a fair market value of ~~$50,000~~ *$100,000*. Surviving spouse B received the entire estate and did not elect the alternative or special use valuation.

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B's basis for gain or loss in the farm and residence is computed as follows:

Asset	Fair Market Value at Death	New Basis for Gain or Loss	
160-acre farm	~~$240,000~~ *320,000*		~~$240,000~~ *320,000*
Residence	~~50,000~~ *100,000*	½ new basis	~~25,000~~ *50,000*
		½ old basis	17,500
			~~$42,500~~ *67,500*

Since the entire farm was acquired from A, its basis is 100 percent of the fair market value at death. Only one-half of the residence was acquired from A~~,~~ *;* therefore, only one-half of the residence receives a new basis on A's death.

j. No new basis—income in respect of a decedent. Property or rights to income, classified as income in respect of a decedent under 26 U.S.C. Section 691, ~~does~~ *do* not receive a new basis upon the decedent's death. It is a special exception to the stepped-up basis rule. See 26 U.S.C. Section 1014(c) and federal regulation section 1.1014-1(c).

Examples of income in respect of a decedent ~~are~~ *include*, but *are* not limited to, the following:

1. to 5. No change.

6. Crop share rent if the decedent was a nonparticipating landlord on a cash basis. This also includes growing crops, which are to be valued at the time of the decedent's death *or alternate valuation date*.

The basis for gain or loss for property classified as income in respect of a decedent is the decedent's basis in the property at the time of death.

o. Recognition of gain—installment sale contracts after October 19, 1980. Effective for estates of decedents dying after October 19, 1980, Section 3 of Public Law 96-471 (Installment Sales Revision Act of 1980) provides for the recognition of the remaining gain on installment sales contracts when the debtor inherits the obligation and thereby causes a merger of the asset with the liability. ~~Therefore, the~~ *The* rule after October 19, 1980, is ~~this: If~~ *if*, as a result of the death of the holder of an installment sale obligation (usually the seller), the installment sale obligation is transferred to the debtor (usually the purchaser); or, if the installment *sale* obligation is canceled either as a result of the holder's death~~,~~ or by the personal representative of the holder's estate, the remaining gain from the installment sale contract not previously reported is recognized by the holder's estate, as if the remaining balance due had been immediately paid in full. The merger of the asset with the debt is treated as a taxable transfer by the estate of the holder (seller) of the obligation and is income in respect of a decedent realized by the holder's estate.

If the obligation was held by a person other than the seller, such as a trust, the cancellation of the obligation will be treated by that person as a taxable transfer immediately after the seller's death. In the absence of some act of canceling the obligation, such as by distribution or notation which results in cancellation under Iowa Code chapter 554 (Uniform Commercial Code), the disposition is considered to occur no later than the time the period of administration of the estate is ended. See Senate Committee Report to P.L. 96-471.

For gain recognition purposes, if the seller and the debtor were related parties, the value of the installment contract is considered to be not less than full face value, regardless of its value for Iowa inheritance tax or federal estate tax purposes. A related party includes, *but is not limited to,* the spouse, child (including an adopted child), grandchild, or parent of the seller; an estate in which the seller is a beneficiary; a partnership in which the seller is a partner; a corporation in which the seller owns 50 percent or more of the stock; and a trust where the seller is a beneficiary or is treated as the owner.

If the debtor inherits the obligation to pay or another share of the estate, the personal representative of the holder's estate must set off the contract of sale to the debtor when satisfying the debtor's share of the estate if the debtor's share of estate equals or exceeds the face value of the contract. In this case, the entire contract is canceled and all of the unreported gain is income in respect of a decedent to the estate. If the debtor's share of the estate is less than the face value of the contract of sale, the contract of sale is canceled only to the extent of the debtor's share of the estate and only a like percentage of the unreported gain is considered income in respect of a decedent received immediately by the estate. See Iowa Code section 633.471 for the right of retainer and setoff. In re Estate of Ferris, 234 Iowa 960, 14 N.W.2d 889 (1944).

t. Adjustments to federal taxable income. Iowa Code ~~subsection~~ *section* 422.4(1), provides that the Iowa taxable income of estates and trusts is federal taxable income, without the deduction for the personal exemption, subject to the specific adjustments ~~specified~~ *set forth* in Iowa Code section 422.7 and the modifications relating to federal and state income tax specified in Iowa Code section 422.9. The modifications have these results:

1. to 5. No change.

6. The federal exemption ~~allowable~~ *allowed to* estates and trusts under 26 U.S.C. Section 642(b), that is, $600 for an estate, $300 for simple trust and $100 for a complex trust, is not deductible for Iowa income tax purposes.

7. No change.

8. Interest and dividends from securities of a state and its political subdivisions and from foreign securities are included in Iowa taxable income in the year received, regardless of whether it is exempt from federal income tax. However, see ~~rules~~ 701—40.3(422) and 89.8(7)"e" for the exemption for interest on Iowa board of regents bonds.

9. See 89.8(7)"m" for the includability of the gain, excluded by 26 U.S.C. Section 641(c), in the Iowa taxable income of a trust.

~~10. See rule 701—40.8(422) for determining the gain or loss on a sale or exchange of property acquired prior to January 1, 1934.~~

~~11~~ *10.* See 701—paragraph 86.5(11)"b" for the inheritance tax exemption for the portion of an employee's pension or retirement plan subject to Iowa income tax.

ITEM 29. Amend subrule **89.8(8)**, paragraphs **"h"** and **"j,"** as follows:

h. The net operating loss deduction. Subject to the modifications specified in federal regulation Section 1.642(d)-1, an estate or trust is allowed a deduction for net operating loss which is computed in the same manner as the net operating loss deduction allowable to individual taxpayers. The ~~modifications~~ *modification* especially applicable to estates and trusts ~~are~~ *is*: ~~(1) the deduction for distribution to beneficiaries is disregarded, and (2) the~~ *The* charitable deduction allowable under 26 U.S.C. Section 642(C) is disregarded. See federal regulation Section 1.642(d)-1.

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The rule that nonbusiness deductions are only taken into account to the extent of nonbusiness income applies equally to estates and trusts and individual taxpayers. Attorney fees and the fees of the trustee or personal representative ~~as such~~, without a showing that these administrative expenses were incurred in carrying on the decedent's or grantor's trade or business, are a nonbusiness deduction. Refling v. Commissioner, 47 F.2d 895 (8th CA 1930). Therefore, any excess fees over income are not available for a carryback to a prior taxable year or a carryforward to a future taxable year. Mary C. Westphal, 37 T.C. 340 (1961). However, see 89.8(9)"a" for the special rule on excess deductions in the year the estate or trust terminates. Net operating losses are available ~~only~~ to the estate or trust and ~~cannot~~ *can* be ~~distributed~~ *carried back for distribution* to a beneficiary, with the exception that any unused loss must be distributed to the beneficiaries in the year the estate or trust terminates.

Estates and trusts with a situs outside Iowa are allowed a deduction only for a net operating loss attributable to a trade or business activity carried on in the state of Iowa. In the event the trade or business activity giving rise to the loss is carried on both in Iowa and another state, the net operating loss deduction for Iowa income tax purposes must be prorated on the ratio of the Iowa gross receipts from the trade or business to the total gross receipts from the trade or business. See 701—subrule 40.~~17~~ *18*(2) for the computation of the net operating loss deduction of a nonresident decedent.

j. The distribution deduction. Estates and trusts are allowed to deduct the amounts of income required to be distributed currently and also other amounts properly paid, credited or required to be distributed to the extent of the distributable net income for the year. For income tax purposes, an estate of a decedent is treated as a complex trust, because normally the personal representative of an estate has the discretion whether or not to distribute current income. Therefore, most distributions of income from a decedent's estate fall under the category of "other amounts properly paid, credited or required to be distributed." However, see Colthurst v. Colthurst, 265 N.W.2d 590 (Iowa 1978) for circumstances when the personal representative of an estate is required to distribute current income during the period of administration to a life tenant (the surviving spouse in this case).

The distribution deduction allowed is limited to the distributable net income of the estate or trust for the taxable year. *If amounts in excess of distributable net income are distributed to a beneficiary of a decedent's estate, the excess does not constitute taxable income to the beneficiary. Distributions made to a beneficiary of a complex trust in excess of the distributable net income for the taxable year may or may not be includable in the beneficiary's taxable income depending on whether the excess distribution is governed by the throwback distribution rules under 26 U.S.C. Sections 665 through 668.*

Estates and trusts with tax years beginning on or after August 5, 1997, may elect to treat distributions made within 65 days of the end of the tax year as having been made in the tax year of the estate or trust. If amounts in excess of distributable net income are distributed to a beneficiary of a decedent's estate, the excess does not constitute taxable income to the beneficiary. Distributions made to a beneficiary of a complex trust in excess of the distributable net income for the taxable year may or may not be includable in the beneficiary's taxable income depending on whether the excess distribution is governed by the throwback distribution rules under 26 U.S.C. Sections 665 through 668. Effective for distributions made by domestic trusts in tax years beginning after August 5, 1997, there is a repeal of the throwback rules found in 26 U.S.C. Sections 665 through 668. However, the repeal of the throwback rules does not apply to trusts created before March 1, 1984, foreign trusts, or domestic trusts that were once treated as foreign trusts, except as provided by federal regulations.

Income distributed to a beneficiary of an estate or trust retains the same character in the hands of the beneficiary as it had in the estate or trust, with the exception of unused capital loss distributed on closure to a corporation, in which case the loss is treated as a short-term loss, regardless of its character in the estate or trust. See federal regulation Section 1.642(h)-1(g). In addition, unless the will or trust instrument specifically provides otherwise, a distribution to beneficiaries is considered to be a proportionate distribution of the different kinds of income composing the distributable net income of the estate or trust. See 26 U.S.C. Section 662.2(b) and federal regulation Section 1.662(b)-1. The same character and proportionate distribution rule is illustrated by the following:

EXAMPLE:

Decedent A, a resident of Iowa, died February 15, ~~1980~~ *1997*. Under the terms of the will, all the decedent's property was devised in equal shares to beneficiary B, a resident of Phoenix, Arizona, and beneficiary C, a resident of Cedar Rapids, Iowa. The estate adopted a calendar year as its taxable year. For calendar year ~~1980~~ *1997*, the estate had distributable net income of $50,000, which is composed of:

Interest income	$10,000
Dividend income	5,000
Net Iowa farm income	35,000
Total	$50,000

On December 20, ~~1980~~ *1997*, the estate distributed $12,500 to beneficiary B, and $12,500 to beneficiary C. Beneficiaries B and C have received a distribution for ~~1980~~ *1997* as follows:

Beneficiary B		Beneficiary C	
Interest income	$2,500	Interest income	$2,500
Dividends	1,250	Dividends	1,250
Farm income	8,750	Farm income	8,750
Total	$12,500	Total	$12,500

The estate is entitled to a deduction of $25,000 against gross income in ~~1980~~ *1997* for the distribution to beneficiaries B and C and owes Iowa income tax on the $25,000 income retained in the estate. Since the interest income of the estate is 20 percent of the distributable net income, 20 percent of the distribution to beneficiaries B and C is considered interest income. Likewise, 10 percent of the estate's distributable net income is dividends and 70 percent farm income. The distribution to B and C consists of a corresponding percentage of dividends and farm income. Beneficiary C, a resident of Iowa, must report the entire distribution of $12,500 on a ~~1980~~ *1997* Iowa individual income tax return. Beneficiary B, a resident of Arizona, is only required to report the farm income portion of the distribution ($8,750) on a ~~1980~~ *1997* nonresident individual income tax return, because dividends and interest are income from intangible personal property and were not derived from a business, trade, profession or occupation carried on within Iowa by the nonresident. See 701—subrule 40.~~15~~ *16*(5).

ITEM 30. Amend subrule 89.8(9) as follows:

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89.8(9) The final return—special considerations.

a. General rule. In the year of closure all income received by the estate or trust is considered "other amounts properly paid or credited or required to be distributed" and must be distributed to the beneficiaries according to the terms of the governing instrument. Rev. Ruling 58-423, 2 C.B. 151 (1958). Dividends and capital gains received during the year of closure must be distributed without being diminished by the net capital gain deduction or by the dividend exclusion. See federal regulation Section 1.643(a)-3(d). 26 U.S.C. Section 642(h) provides for an exception to the general rule that net operating and capital losses are only available to the taxpayer incurring the loss. Therefore, in the year of closure, any capital loss and net operating loss carryover that remains unused by the estate or trust is passed through the estate or trust and is allowed as a deduction to the beneficiaries succeeding to the property *and may be applied by carrying back the losses, but such losses cannot be carried forward.* See federal regulation Section 1.642(h)-1.

If the estate or trust in the year of termination has incurred deductions in excess of gross income which do not qualify for treatment as a net operating or capital loss, such as administration expenses, the excess deductions are passed through the estate or trust and are available to the beneficiaries succeeding to the property. They are available only for the year the estate or trust terminates and only as an itemized deduction in the case of an individual beneficiary. See Revenue Ruling 58-191 1 C.B. 149 (1958). Excess deductions also include any unused net operating loss carryover, if the year ~~of~~ the estate or trust terminates is the last carryforward year for the net operating loss. See federal regulation Section 1-642(h)-2(b).

b. Exception to the general rule. If in the year of termination an Iowa ancillary estate makes the required distribution of its income to the primary estate which is not being terminated, instead of to the beneficiaries of the estate, it is proper in the year of closure to treat the income as if it were accumulated by the Iowa ancillary estate. Permitting Iowa income tax to be paid on the income in this special case, in effect, allows the distribution to the primary estate to be made on a tax-paid basis. This exception to the general rule relieves the primary estate from the obligation of filing a second fiduciary return, which it would be required to do except for this special rule. ~~The special rule prevents duplication of effort.~~

ITEM 31. Amend subrule 89.8(10) as follows:

89.8(10) Computation of the tax due.

a. In general. The tax due on the taxable income of an estate or trust is computed by using the same tax rate schedule used for computing the individual income tax liability. The provisions of *the* Iowa Code ~~section 422.5,~~ relating to the maximum net income of an individual ~~($5,000 for 1980)~~ before a tax liability is incurred~~, has~~ *have* no application to the tax liability of an estate or trust. The taxable income of a short taxable year is not required to be annualized for the purpose of computing the tax liability. The tax due cannot be paid in installments. It must be paid in full within the time prescribed by law~~, considering any extensions allowed~~.

b. Alternative minimum tax. Special rules for estates and trusts. The sum of the items of tax preference determined under *26 U.S.C.* Section 57 ~~of the Internal Revenue Code~~ shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each under the provisions of federal income tax regulation Section 1.58-3. The minimum taxable income exemption of $17,500 allowable to an estate or trust shall be reduced to an amount which bears the same ratio to $17,500 that the sum of the items of tax preference apportioned to the estate or trust bears to the full sum of the items of tax preference before apportionment. See federal income tax regulation Section 1.58-1(d). See rule 701—39.6(422) for the computation of the Iowa alternative minimum tax.

ITEM 32. Amend subrule 89.8(11) as follows:

89.8(11) Credits against the tax.

a. The personal exemption credit. The estate of a decedent and a trust, whether simple or complex, are allowed the same credit against the tax as the credit allowed an individual taxpayer, that is ~~$17 for 1980,~~ *currently $40.* The personal exemption credit is not prorated for short taxable years. The federal exemption allowed estates and trusts under 26 U.S.C. Section 642(b), in lieu of the personal exemption for individuals, has no application to Iowa income tax.

b. Credit for tax paid to another state or foreign country. Iowa Code section 422.8 grants Iowa situs trusts and estates of Iowa resident decedents, which have income derived from sources in another state or foreign country, a credit against the Iowa tax for the income tax paid to the state or foreign country where the income was derived. To be eligible for the credit, the income must have been includable for income tax purposes both in Iowa and the other state or foreign country. The credit allowable against the Iowa tax is limited to the lesser of: (1) the tax paid to the other state or foreign country on the income, or (2) the Iowa income tax paid on the foreign source income. The Iowa income tax paid on the foreign source income is computed by multiplying the Iowa computed tax, less the personal exemption credit, by a fraction of which the foreign source income included in the Iowa gross income is the numerator and the total Iowa gross income is the denominator. The resulting amount is the Iowa tax paid on foreign source income. Any tax paid to another state or foreign country in excess of the Iowa credit allowable is not refundable. Foreign situs trusts and estates of foreign decedents are not allowed a credit against the Iowa tax for the income tax paid another state or foreign country on Iowa source income. This rule is illustrated by the following example:

Decedent A died a resident of Webster City, Iowa, on February 15, ~~1980~~ *1997.* A at the time of death owned income-producing property both in Iowa and the state of Missouri. For the short taxable year ending December 31, ~~1980~~ *1997,* A's estate had the following income and expenses:

Interest	$ 5,000
Dividends	7,500
Iowa farm income	20,000
Missouri farm income	10,000
Iowa gross income	$42,500
Less allowable deductions	8,000
Iowa taxable income	$34,500
Iowa computed tax	$2,587.87
Less personal credit	~~17.00~~ *40.00*
Tax subject to credit for foreign taxes paid	~~2,570.87~~ *$2,547.87*
Less credit for tax paid Missouri	413.00
Iowa tax due	~~2,157.87~~ *$2,134.87*

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

A's estate paid $413.00 income tax to the state of Missouri on the $10,000 Missouri farm income.

The Iowa tax on the foreign source income is ~~604.91~~ *$604.20* computed as follows:

$$\frac{\text{Foreign income included in gross income } \$10{,}000}{\text{Total Iowa gross income } \$42{,}500} \times \text{~~2,570.87~~*} \; \textit{\$2,547.87} = \text{~~604.91~~} \; \textit{\$604.20}$$

*~~$2,570.87~~ *$2,547.87* is the Iowa computed tax less the ~~$17.00~~ *40.00* personal credit.

The allowable credit for taxes paid the state of Missouri is $413.00, because it is less than the Iowa tax paid on the Missouri income. If the Missouri tax paid had been greater than the Iowa tax on the Missouri income, the allowable credit would have been the Iowa tax on the Missouri income.

See 701—subrule 42.~~3~~ *4*(3) for the computation of the credit allowed Iowa resident individuals for income tax paid to another state or foreign country.

c. Motor vehicle fuel tax credit. An estate or trust incurring Iowa motor vehicle fuel tax expense attributable to nonhighway uses may, in lieu of obtaining an Iowa motor vehicle fuel ~~permit~~ *refund*, claim as a credit against its Iowa income tax liability, the Iowa motor vehicle fuel taxes paid during the taxable year.

A copy of the Iowa motor vehicle fuel tax credit Form IA 4136 must be submitted with the fiduciary return of income to substantiate the claim for credit. Any credit in excess of the income tax due shall be refunded to the estate or trust, subject to the right of offset against other state taxes owing.

ITEM 33. Amend subrules 89.10(1) to 89.10(4) as follows:

89.10(1) In general. Iowa Code section 422.27 requires the income tax obligation of an estate or trust to be paid prior to approval of the final report by the court. Iowa Code section 422.27 refers only to the report of the executor, administrator or trustee. ~~Therefore, other fiduciaries, such as a conservator or guardian, are not within the scope of the statute and are not required to obtain the director's certificate of acquittance.~~ In addition, the statute makes reference only to a trustee's final report that is approved by a court. A trust that does not report to and is not subject to the supervision of a court is not required to obtain a certificate of acquittance. However, the statute's reference to a trustee who must report to the court would also include, but is not limited to, a referee in partition and the trustee of the estate of an individual bankrupt under Chapter 7 or 11 of Title 11 of the United States Code. What constitutes a trust is a matter of the trust law of the state of situs.

89.10(2) The application for certificate of acquittance. The final fiduciary return of income serves as an application for an income tax certificate of acquittance. *For a certificate of acquittance to be received, the appropriate box on the final fiduciary return must be checked to request the certificate.*

89.10(3) Requirements for a certificate of acquittance. The issuance of an income tax certificate of acquittance is dependent upon full payment of the income tax liability of the estate or trust for the period of administration. This includes the obligation to withhold income tax on distributions to nonresident beneficiaries. In the case of an estate, the income tax liability of the decedent for both prior years and the year of death must be paid to the extent of the probate property subject to the jurisdiction of the court. The probate property must be applied to the payment of the decedent's income tax liability according to the order of payment of an estate's debts and charges specified in Iowa Code section 633.425 ~~(probate code)~~. If the probate property of the estate is insufficient to pay the decedent's income tax obligation in full, the department, in lieu of a certificate of acquittance, shall issue a certificate stating that the probate property is insufficient to pay the decedent's income tax liability and that the department does not object to the closure of the estate. In the event the decedent's income tax obligation is not paid in full, the closure of the decedent's estate does not release any other person who is liable to pay the decedent's income tax obligation.

89.10(4) The extent of the certificate. An income tax certificate of acquittance is a statement of the department certifying that all income taxes due from the estate or trust have been paid in full to the extent of the income and deductions reported to the department. The certificate fulfills the statutory requirements of Iowa Code section 422.27 and the Iowa income tax portion of the requirements of Iowa Code sections 633.477 and 633.479 ~~(probate code)~~. Providing all other closure requirements are met, the certificate permits the closure of the estate or trust by the court. However, the certificate of acquittance is not a release of liability for any income tax or additional tax that may become due, such as the result of an audit by the Internal Revenue Service or because of additional income not reported. See 701—subrule 38.2(1) for the limitations on the period of time to conduct income tax audits.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

April 1, 1998 — April 30, 1998	7.50%
May 1, 1998 — May 31, 1998	7.75%
June 1, 1998 — June 30, 1998	7.75%
July 1, 1998 — July 31, 1998	7.75%
August 1, 1998 — August 31, 1998	7.50%
September 1, 1998 — September 30, 1998	7.50%
October 1, 1998 — October 31, 1998	7.25%
November 1, 1998 — November 30, 1998	6.75%
December 1, 1998 — December 31, 1998	6.50%
January 1, 1999 — January 31, 1999	6.75%
February 1, 1999 — February 28, 1999	6.75%
March 1, 1999 — March 31, 1999	6.75%
April 1, 1999 — April 30, 1999	7.00%
May 1, 1999 — May 31, 1999	7.25%

ARC 8966A

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby adopts amendments to Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

This amendment clarifies the rule for obtaining a two-year conditional license.

Notice of Intended Action was published in the February 10, 1999, issue of the Iowa Administrative Bulletin as **ARC 8644A**. A public hearing on the proposed amendment was held on March 2, 1999. Two persons attended the hearing in support of the rule. One letter of support was received.

There have been no changes from the Notice of Intended Action.

This amendment will become effective August 31, 1999.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is adopted.

Amend rule 282—14.16(272) as follows:

282—14.16(272) Requirements for a two-year conditional license. A conditional license valid for two years may be issued to an individual under the following conditions:

If a person is the holder of a valid license and is the holder of one or more endorsements, but is seeking to obtain some other endorsement, a two-year conditional license may be issued if requested by an employer and the individual seeking this endorsement has completed at least two-thirds of the *content* requirements *or one-half of the content requirements in a state-designated shortage area,* leading to completion of all requirements for that endorsement.

If teaching experience is a requirement of the endorsement sought, a maximum of one year of teaching experience may be earned within the term of the conditional license by teaching a minimum of one hour per day for a minimum of 160 days per year in a classroom for which the applicant holds the proper endorsement. For the superintendent's endorsement, all experience requirements must have been met prior to applying for the conditional license.

A school district administrator may file a written request with the board for an exception to the minimum content requirements on the basis of documented need and benefit to the instructional program. The board will review the request and provide a written decision either approving or denying the request.

This license is not renewable.

[Filed 4/16/99, effective 8/31/99]
[Published 5/5/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/99.

ARC 8965A

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby adopts amendments to Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," and Chapter 15, "Requirements for Special Education Endorsements," Iowa Administrative Code.

The amendments remove the expiration dates for the identified endorsements.

Notice of Intended Action was published in the February 10, 1999, issue of the Iowa Administrative Bulletin as **ARC 8690A**. A public hearing on the proposed amendments was held on March 2, 1999. Two persons who opposed the rule changes presented testimony at the hearing. Four letters of support were received.

There have been no changes from the Notice of Intended Action.

These amendments will become effective August 31, 1999.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are adopted.

Amend subrules 14.20(3), 14.20(12), and 15.2(9) as follows:

14.20(3) Teacher—prekindergarten-kindergarten.

a. Authorization. The holder of this endorsement is authorized to teach at the prekindergarten-kindergarten level.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See 14.19(3).

(4) Content:

1. Human growth and development: infancy and early childhood, unless completed as part of the professional education core. See 14.19(3).

2. Curriculum development and methodology for young children.

3. Child-family-school-community relationships (community agencies).

4. Guidance of young children three to six years of age.

5. Organization of prekindergarten-kindergarten programs.

6. Child and family nutrition.

7. Language development and learning.

8. Kindergarten: programs and curriculum development.

~~NOTE: The issuance of this endorsement will terminate on August 31, 2000. However, the holders of this endorsement will continue to be authorized to perform the services inherent in the endorsement, and they will retain the endorsement on their licenses.~~

14.20(12) Teacher—prekindergarten through grade three.

a. Authorization. The holder of this endorsement is authorized to teach children from birth through grade three.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

(3) Completion of the professional education core. See 14.19(3).

(4) Content:

1. Child growth and development with emphasis on cognitive, language, physical, social, and emotional development, both typical and atypical, for infants and toddlers, preprimary, and primary school children (grades one through three), unless combined as part of the professional education core. See 14.19(3) of the licensure rules for the professional core.

2. Historical, philosophical, and social foundations of early childhood education.

3. Developmentally appropriate curriculum with emphasis on integrated multicultural and nonsexist content including language, mathematics, science, social studies, health, safety, nutrition, visual and expressive arts, social skills, higher-thinking skills, and developmentally appropriate methodology, including adaptations for individual needs, for infants and toddlers, preprimary, and primary school children.

4. Characteristics of play and creativity, and their contributions to the cognitive, language, physical, social and emotional development and learning of infants and toddlers, preprimary, and primary school children.

5. Classroom organization and individual interactions to create positive learning environments for infants and toddlers, preprimary, and primary school children based on child development theory emphasizing guidance techniques.

6. Observation and application of developmentally appropriate assessments for infants and toddlers, preprimary, and primary school children recognizing, referring, and making adaptations for children who are at risk or who have exceptional educational needs and talents.

7. Home-school-community relationships and interactions designed to promote and support parent, family and community involvement, and interagency collaboration.

8. Family systems, cultural diversity, and factors which place families at risk.

9. Child and family health and nutrition.

10. Advocacy, legislation, and public policy as they affect children and families.

11. Administration of child care programs to include staff and program development and supervision and evaluation of support staff.

12. Pre-student teaching field experience with three age levels in infant and toddler, preprimary and primary programs, with no less than 100 clock hours, and in different settings, such as rural and urban, socioeconomic status, cultural diversity, program types, and program sponsorship.

(5) Student teaching experiences with two different age levels, one before kindergarten and one from kindergarten through grade three.

~~NOTE: The issuance of this endorsement will terminate on August 31, 2000. However, the holders of this endorsement will continue to be authorized to perform the services inherent in the endorsement, and they will retain the endorsement on their licenses.~~

15.2(9) Early childhood—special education.

a. A course of a general survey nature in the area of exceptional children.

b. Coursework specifically focused on special education children from conception to age three which should include:

(1) Development.

(2) Screening, assessment, and evaluation.

(3) Service delivery models.

(4) Curriculum, including behavior management.

(5) Working with adult learners.

(6) Pre-student teaching field experience in home instruction programs.

c. Coursework specifically focused on special education children from age three to six which should include:

(1) Development.

(2) Screening, assessment, and evaluation.

(3) Service delivery models.

(4) Curriculum, including behavior and classroom management.

(5) Pre-student teaching field experience to include severely or multiply handicapped.

d. A course which focuses on specific strategies for working with adult learners and family systems.

e. A course specific to communication development and information on alternative communication systems for special education children.

f. A course specific to methods and materials for working with young children with severe/profound or multiple disabilities to include medical issues, exercises in problem solving specific to adaptations of materials, equipment and programs, and utilization of human resources.

g. A course which focuses on working with others which explores in depth the myriad of related service agencies at the federal, state, and local levels which may be needed to appropriately serve young children and their families who may be categorized as medically fragile, disadvantaged, handicapped, in need of respite services, or from single-parent families.

h. A course in cardiopulmonary resuscitation and first-aid training.

i. Adequate preparation in methods and techniques for working with the medically fragile and technologically dependent children.

j. A student teaching experience in an early childhood special education program.

~~NOTE: The issuance of this endorsement will terminate on August 31, 2000. However, the holders of this endorsement will continue to be authorized to perform the services inherent in the endorsement, and they will retain the endorsement on their licenses.~~

[Filed 4/16/99, effective 8/31/99]
[Published 5/5/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/99.

ARC 8967A

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby adopts an amendment to Chapter 14, "Issuance of Practitioner's Licenses and Endorsement," Iowa Administrative Code.

The amendment adds provisions for an all social sciences endorsement. This endorsement will be in addition to all the regular social sciences endorsements currently offered.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 16, 1998, as **ARC 8575A**. A public hearing was held on January 14, 1999. No

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

one appeared at the hearing. Two letters of support were received. A minor correction was suggested to clarify the amendment.

The amendment has been changed from that filed under Notice of Intended Action, to indicate that a total of 51 hours, rather than 48, is required, and to clarify that a part of those hours must contain 9 semester hours each of American and world history, in addition to the other requirements listed.

The Board of Educational Examiners adopted this amendment on April 9, 1999.

The amendment will become effective on July 1, 2000.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is adopted.

Amend subrule **14.21(18)** by adopting **new** paragraph **"k"** as follows:

k. All social sciences. 7-12. Effective July 1, 2000, completion of 51 semester hours in the social sciences to include 9 semester hours in each of American and world history, 9 semester hours in government, 6 semester hours in sociology, 6 semester hours in psychology other than educational psychology, 6 semester hours in geography, and 6 semester hours in economics.

[Filed 4/16/99, effective 7/1/00]
[Published 5/5/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/99.

ARC 8939A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 2, "Petitions for Rule Making," and adopts Chapter 2, "Agency Procedure for Rule Making and Petitions for Rule Making," Iowa Administrative Code.

This new chapter will govern agency procedures for rule making and will reflect a change in the chapter title. This chapter adopts the Uniform Rules on Agency Procedure which were amended to comply with 1998 Iowa Acts, chapter 1202.

Notice of Intended Action was published on March 10, 1999, in the Iowa Administrative Bulletin as **ARC 8737A**. A public hearing was held on March 31, 1999, and no written or oral comments were received. The following revisions were made to the Notice of Intended Action. The title of the chapter was changed to read "Agency Procedure for Rule Making and Petitions for Rule Making." Two new rules, 2.18(17A) and 2.19(17A), formerly 2.1(17A) and 2.3(17A), were added to incorporate the process of petitioning for rule making into the chapter.

These rules are intended to implement Iowa Code section 256.7(3) and Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

This chapter will become effective June 9, 1999.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 2] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 8737A**, IAB 3/10/99.

[Filed 4/13/99, effective 6/9/99]
[Published 5/5/99]

[For replacement pages for IAC, see IAC Supplement 5/5/99.]

ARC 8940A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 3, "Declaratory Rulings," and adopts Chapter 3, "Declaratory Orders," Iowa Administrative Code.

This new chapter will govern agency procedures for declaratory orders. This new chapter adopts the Uniform Rules on Agency Procedure which were amended to comply with 1998 Iowa Acts, chapter 1202.

A public hearing was held on March 31, 1999, and no comments were received. The adopted chapter is identical to the Notice of Intended Action published on March 10, 1999, in the Iowa Administrative Bulletin as **ARC 8736A**.

These rules will become effective June 9, 1999.

These rules are intended to implement Iowa Code section 256.7(3) and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 3] is being omitted. These rules are identical to those published under Notice as **ARC 8736A**, IAB 3/10/99.

[Filed 4/13/99, effective 6/9/99]
[Published 5/5/99]

[For replacement pages for IAC, see IAC Supplement 5/5/99.]

ARC 8941A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 4, "Agency Procedure for Rule Making," Iowa Administrative Code.

This chapter will be replaced by a new Chapter 2, in which all procedures for rule making will be combined into one chapter.

Since this process did not affect the public, no public hearing was held. Written comments were accepted until March 31, 1999, and none were received. The amendment is identical to the Notice of Intended Action published on March 10, 1999, in the Iowa Administrative Bulletin as **ARC 8738A**.

This amendment is intended to implement Iowa Code section 256.7(3) and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

This amendment will become effective June 9, 1999.

EDUCATION DEPARTMENT[281](cont'd)

The following amendment is adopted.

Rescind and reserve **281—Chapter 4.**

[Filed 4/13/99, effective 6/9/99]
[Published 5/5/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/99.

ARC 8942A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby adopts amendments to Chapter 6, "Appeal Procedures," Iowa Administrative Code.

The proposed amendments reflect the changes required by the amendments to the Uniform Rules on Agency Procedure in 1998 Iowa Acts, chapter 1202.

A public hearing was held on March 31, 1999, and no written or oral comments were received. The final adopted amendments are identical to the Notice of Intended Action published on March 10, 1999, in the Iowa Administrative Bulletin as **ARC 8735A.**

These amendments will become effective June 9, 1999.

These amendments are intended to implement Iowa Code section 290.1 and Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Ch 6] is being omitted. These amendments are identical to those published under Notice as **ARC 8735A,** IAB 3/10/99.

[Filed 4/13/99, effective 6/9/99]
[Published 5/5/99]

[For replacement pages for IAC, see IAC Supplement 5/5/99.]

ARC 8954A

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board amends Chapter 1, "Administration," and Chapter 2, "Minimum Standards for Property Surveys," rescinds Chapter 4, "Discipline and Professional Conduct of Licensees," Iowa Administrative Code, and adopts a new Chapter 4 with the same title.

The amendments to Chapter 1 change the definition of "practice of engineering" to reflect the definition found in Iowa Code section 542B.2 and clarify the education and work experience requirements to become licensed as a professional engineer, as well as incorporate changes required by Iowa Code chapter 17A as amended by 1998 Iowa Acts chapter 1202.

The amendment to Chapter 2 clarifies procedures a surveyor must perform when surveying a plat for assessmen and taxation purposes.

Chapter 4 is rescinded and replaced by a new chapte which implements changes to the Uniform Rules on Agency Procedure required by amendments to the Iowa Administrative Procedure Act in 1998 Iowa Acts, chapter 1202.

Notice of Intended Action was published March 10, 1999 as **ARC 8761A.**

There are no changes from the Notice of Intended Action

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 120 and Iowa Code chapters 252J, 272C, and 542B.

These amendments will become effective June 9, 1999.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Chs 1, 2, 4] is being omitted. These amendments are identical to those published under Notice as **ARC 8761A,** IAB 3/10/99.

[Filed 4/15/99, effective 6/9/99]
[Published 5/5/99]

[For replacement pages for IAC, see IAC Supplement 5/5/99.]

ARC 8947A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby amends Chapter 7, "Appeals and Hearings," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments April 14, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on February 24, 1999, as **ARC 8702A.**

These amendments revise the Department's policy governing contested case proceedings to conform to changes made to the Iowa Administrative Procedure Act, Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202. Definitions have been added and specific procedures amended to reflect those changes as follows:

1. Iowa Code references have been updated.
2. Procedures for decisions when a party fails to appear or participate in a hearing have been expanded.
3. Provisions regarding ex parte communication have been expanded for clarification.
4. Provisions for stays of agency action have been added to the section regarding judicial review.
5. New language is incorporated regarding contested cases in which there is no factual dispute.
6. Provisions are added for emergency adjudicative proceedings.

These changes are consistent with the Uniform Rules on Agency Procedure.

The following revisions were made to the Notice of Intended Action:

HUMAN SERVICES DEPARTMENT[441](cont'd)

Subrule 7.13(4) was rewritten and new subrules 7.13(5) and 7.13(6) were added to provide more specific procedures after a party defaults. In the Notice of Intended Action the Department invited comments on default procedures but received none.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

These amendments shall become effective July 1, 1999.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 7** by adopting the following **new Preamble**:

PREAMBLE

This chapter applies to contested case proceedings conducted by or on the behalf of the department.

ITEM 2. Amend **441—Chapter 7** by changing the parenthetical implementation statute "217" to "17A" wherever it appears.

ITEM 3. Amend rule **441—7.1(17A)** by adopting the following **new** definition in alphabetical order:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

ITEM 4. Amend rule 441—7.3(17A) as follows:

441—7.3(17A) The administrative law judge. Appeal hearings shall be conducted by an administrative law judge appointed by the department of inspections and appeals pursuant to ~~Iowa Code section 17A.11~~ *1998 Iowa Acts, chapter 1202, section 3.* The administrative law judge shall not be connected in any way with the previous actions or decisions on which the appeal is made. Nor shall the administrative law judge be subject to the authority, direction, or discretion of any person who has prosecuted or advocated in connection with that case, the specific controversy underlying that case, or pending factually related contested case or controversy, involving the same parties.

ITEM 5. Amend rule 441—7.13(17A) as follows:

Rescind subrule 7.13(4) and adopt the following **new** subrule in lieu thereof:

7.13(4) Default. If a party to the appeal fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a proposed decision on the merits in the absence of the defaulting party.

a. Where appropriate and not contrary to law, any party may move for a default decision or for a hearing and a proposed decision on the merits in the absence of a defaulting party.

b. A default decision or a proposed decision on the merits in the absence of the defaulting party may award any relief against the defaulting party consistent with the relief requested prior to the default, but the relief awarded against the defaulting party may not exceed the requested relief prior to the default.

c. Proceedings after a default decision are specified in subrule 7.13(5).

d. Proceedings after a hearing and a proposed decision on the merits in the absence of a defaulting party are specified in subrule 7.13(6).

Adopt the following **new** subrules 7.13(5) and 7.13(6):

7.13(5) Proceedings after default decision.

a. Default decisions become final agency action unless a motion to vacate the decision is filed within the time allowed for an appeal of a proposed decision by subrule 7.16(5).

b. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate at the contested case proceeding and must be filed with the Department of Human Services Appeals Section, Fifth Floor, Hoover State Office Building, Des Moines, Iowa 50319-0114. The department of human services appeals section shall be responsible for serving all parties with the motion to vacate. All parties to the appeal shall have ten days from service by the department to respond to the motion to vacate. If the department responds to any party's motion to vacate, all parties shall be allowed another ten days to respond to the department. The department of human services appeals section shall certify the motion to vacate to the department of inspections and appeals for the presiding officer to review the motion, hold any additional proceedings, as appropriate, and determine if good cause exists for the default.

c. Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party.

d. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

e. Upon determining whether good cause exists, the presiding officer shall issue a proposed decision on the motion to vacate, which shall be subject to review by the director pursuant to rule 441—7.16(17A).

f. Upon a final decision granting a motion to vacate, the contested case hearing shall proceed accordingly, after proper service of notice to all parties. The situation shall be treated as the filing of a new appeal for purposes of calculating time limits, with the filing date being the date the decision granting the motion to vacate became final.

g. Upon a final decision denying a motion to vacate, the default decision becomes final agency action.

7.13(6) Proceedings after hearing and proposed decision on the merits in the absence of a defaulting party.

a. Proposed decisions on the merits after a party has failed to appear or participate in a contested case become final agency action unless:

(1) A motion to vacate the proposed decision is filed by the defaulting party based on good cause for the failure to appear or participate, within the time allowed for an appeal of a proposed decision by subrule 7.16(5); or

(2) Any party requests review on the merits by the director pursuant to rule 441—7.16(17A).

b. If a motion to vacate and a request for review on the merits are both made in a timely manner after a proposed decision on the merits in the absence of a defaulting party, the review by the director on the merits of the appeal shall be stayed pending the outcome of the motion to vacate.

c. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate at the contested case proceeding and must be filed with the Department of Human Services Appeals Section, Fifth Floor, Hoover State office Building, Des Moines, Iowa 50319-0114. The department of human services appeals section shall be responsible for serving all parties with the motion to vacate. All parties to the appeal shall have ten days from service by the department to respond to the motion to vacate. If the department responds to any party's motion to vacate, all parties shall be allowed another ten days to respond to the department. The department of human services appeals section shall certify

the motion to vacate to the department of inspections and appeals for the presiding officer to review the motion, hold any additional proceedings, as appropriate, and determine if good cause exists for the default.

d. Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party.

e. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

f. Upon determining whether good cause exists, the presiding officer shall issue a proposed decision on the motion to vacate, which shall be subject to review by the director pursuant to rule 441—7.16(17A).

g. Upon a final decision granting a motion to vacate, a new contested case hearing shall be held after proper service of notice to all parties. The situation shall be treated as the filing of a new appeal for purposes of calculating time limits, with the filing date being the date the decision granting the motion to vacate became final.

h. Upon a final decision denying a motion to vacate, the proposed decision on the merits in the absence of a defaulting party becomes final unless there is request for review on the merits by the director made pursuant to paragraph 7.13(6)"a" or "j."

i. Any review on the merits by the director requested pursuant to paragraph 7.13(6)"a" and stayed pursuant to paragraph 7.13(6)"b" pending a decision on a motion to vacate shall be conducted upon a final decision denying the motion to vacate.

j. Upon a final decision denying a motion to vacate a proposed decision issued in the absence of a defaulting party, any party to the contested case proceeding may request a review on the merits by the director pursuant to rule 441—7.16(17A), treating the date that the denial of the motion to vacate became final as the date of the proposed decision.

ITEM 6. Rescind rule 441—7.18(17A) and adopt the following new rule in lieu thereof:

441—7.18(17A) Ex parte communication.

7.18(1) Prohibited communication. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record. For purposes of this rule, the term "personally investigating" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

7.18(2) Commencement of prohibition. Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

7.18(3) When communication is ex parte. Written, oral, or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

7.18(4) Avoidance of ex parte communication. To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Written communications shall be provided to all parties to the appeal.

7.18(5) Communications not prohibited. Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

7.18(6) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified from the case. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be disclosed. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of communication.

7.18(7) Disclosure of prior receipt of information through ex parte communication. Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

7.18(8) Imposition of sanctions. The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule, including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by department personnel shall be reported to the department for possible sanctions, including censure, suspension, dismissal, or other disciplinary action.

ITEM 7. Amend rule 441—7.20(17A) as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—7.20(17A) Right of judicial review *and stays of agency action.*

7.20(1) Right of judicial review. If a director's review is requested, the final decision shall advise the appellant of the right to judicial review by the district court. When the appellant is dissatisfied with the final decision, and appeals the decision to the district court, the department shall furnish copies of the documents or supporting papers which the appellant and legal representative may need in order to perfect the appeal to district court, including a written transcript of the hearing. *An appeal of the final decision to district court does not itself stay execution or enforcement of an agency action.*

7.20(2) Stays of agency action.

a. Any party to a contested case proceeding may petition the director for a stay or other temporary remedies pending judicial review, of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

b. In determining whether to grant a stay pending judicial review, the director shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

c. A stay may be vacated by the director pending judicial review upon application of the department or any other party.

ITEM 8. Amend 441—Chapter 7 by adopting the following **new** rules:

441—7.23(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs, and oral argument should be submitted to the presiding officer for approval as soon as practicable.

441—7.24(17A) Emergency adjudicative proceedings.

7.24(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the United States Constitution and the Iowa Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 as amended by 1998 Iowa Acts, chapter 1202, section 20(3), to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

a. Whether there has been sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information.

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing.

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare.

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare.

e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

7.24(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger and the department's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by using one or more of the following procedures:

(1) Personal delivery.

(2) Certified mail, return receipt requested, to the last address on file with the department.

(3) Certified mail to the last address on file with the department.

(4) First-class mail to the last address on file with the department.

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that department orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

7.24(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

7.24(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger. Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

ITEM 9. Rescind the implementation clauses following rules **441—7.5(17A)**, **441—7.7(17A)**, **441—7.14(17A)**, **441—7.16(17A)**, and **441—7.21(17A)** and adopt the following **new** implementation clause following 441—Chapter 7:

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 4/15/99, effective 7/1/99]
[Published 5/5/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/99.

ARC 8932A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 225C.6, the Department of Human Services hereby rescinds Chapter 23, "Mental Illness, Mental Retardation, Developmental Disabilities, and Brain Injury Community Services," Chapter 26, "County Maintenance of Effort Calculations and Re-

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porting," Chapter 31, "Reimbursement to Counties for Local Cost of Inpatient Mental Health Treatment," Chapter 32, "State Community Mental Health and Mental Retardation Services Fund and Special Needs Grants," Chapter 35, "Supplemental Expense Payment," and Chapter 37, "Standards for the Care of and Services to County Care Facility Residents with Mental Illness and Mental Retardation," appearing in the Iowa Administrative Code.

The Mental Health and Developmental Disabilities Commission adopted this amendment on April 6, 1999. Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin on February 24, 1999, as ARC 8713A.

This amendment rescinds 441—Chapters 23, 26, 31, 32, 35, and 37 as they are no longer relevant.

Chapter 23 was adopted in 1992 to establish policy for the creation and composition of the county or multicounty mental illness, mental retardation, developmental disabilities, and brain injury (MI/MR/DD/BI) planning councils and to define the responsibility of the planning councils as mandated by 1992 Iowa Acts, chapter 1241, section 25. Planning Councils were codified at Iowa Code section 225C.18 by 1994 Iowa Acts, chapter 1170, section 19. Planning Councils are no longer required to develop a services plan to apply for state MI/MR/DD/BI funds. They are now optional on the part of counties.

Chapter 26 was adopted in 1989 to describe the process for calculating a county maintenance of effort. County maintenance of effort calculations were eliminated in state fiscal year 1993.

Chapter 31 was adopted in 1980 to implement Iowa Code section 225C.12. The purpose of the legislation was to provide some state funding for counties who were using local hospitals in lieu of a state mental health institute for mental health commitment and admissions. At that time, for mental health institutes, counties were billed 80 percent of per diem and the state paid the remaining 20 percent. Under these rules, counties who used a local hospital in lieu of a mental health institute were eligible to receive an amount equal to the 20 percent state cost. The legislature appropriated funds for this program only for three or four years and only four or five counties received payments. Funding specifically for this program was stopped when the legislature created the precursor to the MH/DD Community Services Fund. Several smaller funding streams, including this funding, were folded into the new fund. Since that time, there have been no funds appropriated specifically for this purpose and no reimbursements have been made to counties. The state has now been using other mechanisms to channel state money into the county system and it is highly unlikely state money will be channeled in this manner in the future.

Chapter 32 was adopted in 1982 to deal with special allocation and general allocation distributions. These distributions have not been made since 1993. All funds have now been rolled into the community services funds.

Chapter 35 was adopted in 1995 to address county concerns brought about by the new definition for persons with mental retardation by establishing a procedure for counties to recover any excess costs incurred by the definition change. It required counties to submit information to the Department by January 1, 1996, if they had a claim. No claims were submitted and the time for submittal is now elapsed.

Chapter 37 was adopted in 1987 to establish standards for the care of and services to persons with mental illness and mental retardation who live in county care facilities. These rules were originally put in place to provide some protections when the state, to depopulate the state institutions, started to significantly increase the number of persons placed from state institutions into county care facilities and paid a per diem to the counties to cover increased costs. These rules have not been used since all county care facilities were required to be licensed by the Department of Inspections and Appeals. There are now only six county care facilities in the state and all are currently licensed by the Department of Inspections and Appeals (DIA) as ICF, ICF/MR or RCF/MR or RCF facilities. The rules under Chapter 37 are duplicative of the DIA rules and the DIA rules provide the protections for clients sought through Chapter 37.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 225C.6.

This amendment shall become effective July 1, 1999.

The following amendment is adopted.

Rescind and reserve 441—**Chapters 23, 26, 31, 32, 35,** and **37**.

[Filed 4/8/99, effective 7/1/99]
[Published 5/5/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/99.

ARC 8948A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 239B.4, the Department of Human Services hereby amends Chapter 41, "Granting Assistance," and Chapter 47, "Pilot Diversion and Self-Sufficiency Grants Programs," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments April 14, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on February 10, 1999, as ARC 8656A.

The rules in Chapter 47 define and structure the Department of Human Services Pilot Diversion Initiatives. The General Assembly in 1998 Iowa Acts, chapter 1218, section 5, subsection 3, paragraph "e," appropriated $2,700,000 to continue the pilot initiatives of providing incentives to assist families who meet income eligibility requirements for the Family Investment Program (FIP) in obtaining or retaining employment, to assist participant families in overcoming barriers to obtaining employment, and to assist families in stabilizing employment and in reducing the likelihood of the families' returning to the Family Investment Program.

There have been three pilot initiatives in operation since October of 1997 as follows:

1. The Pilot FIP-Applicant Diversion Program provides a voluntary alternative to ongoing FIP cash assistance to families by providing immediate, short-term assistance, thereby postponing or preventing the need to apply for FIP. This program is currently operating in 16 counties in the following 9 project areas: Woodbury; Pottawattamie; Linn and Jones; Story; Cass; Johnson; Des Moines; Buena Vista, Ida, Sac, and Crawford; and Appanoose, Lucas, Davis and Monroe. $750,000 of the appropriation has been allocated to this program.

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. The Family Self-Sufficiency Grants Program is available statewide for payment to families or on behalf of specific families as a part of the PROMISE JOBS program. Funding is allocated to each of the 15 PROMISE JOBS service delivery regions, based on a formula that uses the number of FIP cases in the region. Family self-sufficiency grants are authorized for removing an identified barrier to self-sufficiency for a family when it can be reasonably anticipated that the assistance will enable participant families to retain employment or obtain employment in the two full calendar months following the date of payment authorization. The grants are not to duplicate assistance available under regular PROMISE JOBS policies but are to address barriers to self-sufficiency by meeting expenses that are not approvable under regular PROMISE JOBS policies. One million dollars of the appropriation has been allocated to this program.

3. Community self-sufficiency grants are awarded to establish pilot projects to identify and remove systemic or community barriers to self-sufficiency, helping multiple PROMISE JOBS participant families to obtain or retain employment. This program is currently operating in Woodbury County. A request has gone out for other proposals. $400,000 of the appropriation has been allocated to this program.

These amendments add a fourth initiative, the Pilot Post-FIP Diversion Program to help those employed FIP families after they leave FIP to maintain employment, get better employment, and become stabilized in their new way of life. This assistance may be in the form of support services or may be cash value assistance used to meet some employment-related, short-term immediate need or barrier.

Post-FIP Diversion assistance is only available for 12 months after the effective date of FIP cancellation to families whose income does not exceed a maximum of 200 percent of the federal poverty guideline. Receipt of Post-FIP Diversion assistance having a cash value to the family shall result in a period of ineligibility for FIP for that family. County Department offices are responsible for overall project administration but they may delegate assessment and eligibility determination, authorization of support services and cash assistance, provision of services, local fiscal agent authorization to make payments or case plan management to a community entity.

In addition to adding the Pilot Post-FIP Diversion Program to the rules, these amendments make the following changes to clarify the diversion programs: definitions are added and amended; renewal criteria are added; names are changed to better identify the programs; program descriptions are clarified; certain reporting requirements are removed; and pilot project's options and requirements are specified.

Eight public hearings were held around the state. No one attended.

The following revision was made to the Notice of Intended Action:

Subrule 47.8(4), paragraph "a," was revised to clarify the additional information that should accompany the Authorization for the Department to Release Information, Form 470-2115. The fiscal agent needs the name and address of the person who will receive the payment, rather than the participant. Paragraph "a" now reads as follows:

a. The approved pilot project, in accordance with the local plan, shall notify the fiscal agent when diversion assistance payments are approved. This notification shall include a copy of the Authorization for the Department to Release Information, Form 470-2115, signed by the pilot FIP applicant diversion participant. It shall also include the payee's name, mailing address and authorized amount of payment.

These amendments are intended to implement Iowa Code section 239B.11.

These amendments shall become effective July 1, 1999.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Chs 41, 47] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8656A**, IAB 2/10/99.

[Filed 4/15/99, effective 7/1/99]
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[For replacement pages for IAC, see IAC Supplement 5/5/99.]

ARC 8949A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments April 14, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on February 10, 1999, as **ARC 8657A**.

These amendments make the following revisions to the Medically Needy program:

1. Use of the Medical Expense Verification (MEV), Form 470-1932, is eliminated. When Consultec, Medicaid's fiscal agent, implements the Medically Needy subsystem to the Medicaid Management Information System (MMIS), the MEV form will no longer be needed. Providers currently submit their claim form to verify Medicaid-covered expenses. With these changes, providers will use their claim form rather than a MEV form to verify both Medicaid-covered and non-Medicaid-covered medical expenses that the client has incurred.

When a claim form is submitted to the county office for non-Medicaid-covered expenses, the worker will add information about which certification period the expense is to be applied to before sending the claim to Consultec.

2. Medical expenses for necessary and remedial services covered by Medicaid will be entered into Consultec's MMIS Medically Needy subsystem by chronological date of submission. This is more administratively efficient than entering claims by chronological date of service.

3. Acupuncture expenses will be allowed to meet spend-down. This change is being made as the result of a petition for rule making.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective July 1, 1999.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The following amendments are adopted.

ITEM 1. Amend subrule **75.1(35)**, paragraph **"f,"** introductory paragraph, as follows:

f. Verification of medical expenses to be used in spenddown calculation. The applicant or recipient shall submit evidence of medical expenses that are for noncovered Medicaid services and for covered services incurred prior to the certification period *to the county office* on ~~the Medical Expense Verification, Form 470-1932~~ *a claim form*, which shall be completed by the medical provider. In cases where the provider is uncooperative or where returning to the provider would constitute an unreasonable requirement on the applicant or recipient, the form shall be completed by the worker. Verification of medical expenses for the applicant or recipient that are covered Medicaid services and occurred during the certification period shall be submitted by the provider to the fiscal agent on a claim form. The applicant or recipient shall inform the provider of the applicant's or recipient's spenddown obligation at the time services are rendered or at the time the applicant or recipient receives notification of a spenddown obligation. Verification of allowable expenses incurred for transportation to receive medical care as specified in rule 441—78.13(249A) shall be verified on Form 470-0394, Medical Transportation Claim.

ITEM 2. Amend subrule **75.1(35)**, paragraph **"g,"** subparagraph **(2)**, as follows:

Amend numbered paragraphs **"2"** and **"3"** as follows:

2. An average statewide monthly standard deduction for the cost of medically necessary personal care services provided in a licensed residential care facility shall be allowed as a deduction ~~from income~~ for spenddown. These personal care services include assistance with activities of daily living such as preparation of a special diet, personal hygiene and bathing, dressing, ambulation, toilet use, transferring, eating, and managing medication.

The average statewide monthly standard deduction for personal care services shall be based on the average per day rate of health care costs associated with residential care facilities participating in the state supplementary assistance program for a 30.4-day month as computed in the Unaudited Compilation of Cost and Statistical Data for Residential Care Facilities (Category: All; Type of Care: Residential; Location: All; and Type of Control: All). The average statewide standard deduction for personal care services used in the medically needy program shall be updated and effective the first day of the first month beginning two full months after the release of the Unaudited Compilation of Cost and Statistical Data for Residential Care Facilities report.

3. Medical expenses for necessary medical and remedial services that are recognized under state law but not covered by Medicaid, *chronologically by date of submission.*

Renumber numbered paragraph **"4"** as numbered paragraph **"5"** and adopt the following **new** numbered paragraph **"4"**:

4. Medical expenses for acupuncture, chronologically by date of submission.

Amend renumbered numbered paragraph **"5"** as follows:

5. Medical expenses for necessary medical and remedial services that are covered by Medicaid, *chronologically by date of submission.*

[Filed 4/15/99, effective 7/1/99]
[Published 5/5/99]

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ARC 8950A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this amendment April 14, 1999. Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin on February 10, 1999, as **ARC 8658A**.

This amendment corrects the Department's rules governing the methodology for determining the level of reimbursement for cost outlier payments to hospitals. It was brought to the Department's attention that outlier payments were not being calculated as determined by the methodology set forth in the current rule. If the current rule were followed, the reimbursement calculation for determining hospital cost outlier payments would become a manual and labor-intensive process. The cost of manually performing these calculations would far outweigh the additional reimbursement to hospitals, which is estimated to be less than $20,000 annually to all hospitals.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 249A.4.

This amendment shall become effective July 1, 1999.

The following amendment is adopted.

Amend subrule **79.1(5)**, paragraph **"f,"** subparagraph **(3)**, as follows:

(3) Cost outliers. Cases qualify as cost outliers when costs of service in a given case, *not including any add-on amounts for direct or indirect medical education or for disproportionate share costs,* exceed the cost threshold. This cost threshold is determined to be the greater of two times the statewide average DRG payment for that case or the hospital's individual DRG payment for that case plus $16,000. Costs are calculated using hospital-specific cost to charge ratios determined in the base year cost reports. Additional payment for cost outliers is 80 percent of the excess between the hospital's cost for the discharge and the cost threshold established to define cost outliers. Payment of cost outlier amounts shall be paid at 100 percent of the calculated amount and made at the time the claim is paid. Those hospitals that are notified of any outlier review initiated by the PRO must submit all requested supporting data to the PRO within 60 days of the receipt of outlier review notification, or outlier payment will be forfeited and recouped. In addition, any hospital may request a review for outlier payment by submitting documentation to the PRO within 365 days of re-

ceipt of the outlier payment. If requests are not filed within 365 days, the provider loses the right to appeal or contest that payment.

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ARC 8951A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 252B.7A(1)"d," the Department of Human Services hereby amends Chapter 98, "Support Enforcement Services," and Chapter 99, "Support Establishment and Adjustment Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments April 14, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on February 10, 1999, as ARC 8659A.

These amendments eliminate the Child Support Recovery Unit's (CSRU's) use of states' median income figures in setting a support obligation when a parent's financial information is unknown. Under these rules, CSRU will use Iowa wage rate information when the occupation is known and median income for parents on the CSRU caseload when the occupation is unknown. These amendments also make changes to the way support is calculated for a child in foster care. Numerous complicated deductions are replaced with a 30 percent flat rate deduction in setting the support amount when a parent submits financial documentation.

The Seventy-seventh General Assembly directed the Department to adopt rules for imputing income based on the earning capacity of a parent when income information is unavailable. The proposed use of occupational wage rate information or median income for parents on the CSRU caseload, as appropriate, is believed to be more reflective of the actual earning capacity of obligors on the CSRU caseload.

Other substitutions for median income were considered, e.g., basing the amount on the minimum wage, but were rejected as those methods resulted in obligations that bore little relationship to an obligor's actual ability to provide support. Support obligations calculated using minimum wage underrepresent what is already statistically known to be the estimated median income of parents on the CSRU caseload. Other options were considered for estimating the income of obligors who reside outside of Iowa, including continuing to use states' median income figures or implementing the use of states' occupational wage rate information. Those options were rejected for several reasons. First, the income of obligors who reside outside of Iowa is represented in the calculation of median income for parents on the CSRU caseload. Second, the issues related to establishing and modifying support obligations that more closely represent an obligor's earning capacity are the same whether the obligor lives in or outside of Iowa. Finally, the option of using states' occupational wage rate information was rejected due to the complexity of administering 50 different wage rate tables.

The change to a 30 percent flat rate deduction for a family with a child in foster care simplifies the current process by eliminating the documentation previously required to permit the deductions related to case permanency and financial hardship, allowing a more expedient determination of the child support obligation. It also eliminates confusion parents have regarding their eligibility for allowable deductions and permits families to receive the benefit of those deductions.

Eight public hearings were held around the state. No one attended.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 234.39 and 252B.7A(1)"d."

These amendments shall become effective July 1, 1999.

The following amendments are adopted.

ITEM 1. Amend subrule 98.104(2) as follows:

98.104(2) Payment calculation. If notice was sent to an obligor under subrule 98.103(1) during the conference held in compliance with the provisions of Iowa Code section 252J.4, CSRU shall determine if the obligor's ability to pay varies from the current support order by applying the mandatory supreme court guidelines as contained in 441—Chapter 99, Division I, with the exception of subrules 99.4(3) and 99.5(5). If further information from the obligor is necessary for the calculation, CSRU may schedule an additional conference no less than ten days in the future in order to allow the obligor to present additional information as may be necessary to calculate the amount of the payment. If, at that time, the obligor fails to provide the required information, CSRU shall issue a Certificate of Noncompliance, Form 470-3274, to applicable licensing authorities. If the obligee fails to provide the necessary information to complete the calculation, CSRU shall use whatever information is available. If no income information is available for the obligee, CSRU shall ~~use the state median income as~~ *determine* the obligee's income *in accordance with 441—subrules 99.1(2) and 99.1(4)*. This calculation is for determining the amount of payment for the license sanction process only, and does not modify the amount of support obligation contained in the underlying court order.

ITEM 2. Amend rule 441—99.1(234,252B,252H) as follows:

Rescind subrule **99.1(2)**, paragraph **"c,"** and adopt the following **new** paragraph **"c"** in lieu thereof:

c. Income as determined through occupational wage rate information published by the Iowa workforce development department or other state or federal agencies.

Further amend subrule **99.1(2)** by adopting the following **new** paragraph **"d"**:

d. The median income for parents on the CSRU caseload, calculated annually.

Amend subrule 99.1(4) as follows:

99.1(4) Use of ~~estimated state's~~ *occupational wage rate information or* median income *for parents on the CSRU caseload.* ~~The estimated state~~ *Occupational wage rate information or* median income for ~~a one-person household~~ *parents on the CSRU caseload* shall be used to determine a parent's income when the parent has failed to return a completed financial statement when requested, and when complete and accurate income information from other readily available sources ~~could not~~ *cannot* be secured. ~~The estimated annual state median income for the state where the parent resides shall be used in estimating the parent's income.~~

a. Occupation known. When the last-known occupation of a parent can be determined through a documented source including, but not limited to, Iowa workforce development or

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the National Directory of New Hires, occupational wage rate information shall be used to determine income. When the last-known occupation of a parent cannot be determined through a documented source, information may be gathered from the other parent and occupational wage rate information applied. Wage rate information shall be converted to a monthly amount in accordance with subrule 99.3(1).

b. Occupation unknown. When the occupation of a parent is unknown, the income of a parent shall be estimated using the median income amount for parents on the CSRU caseload.

ITEM 3. Amend subrule **99.3(2)** as follows:

Amend paragraph **"a"** as follows:

a. The estimated net income of a parent shall be 80 percent of the reported *income* or *the* estimated ~~state's median~~ income *as determined from occupational wage rate information or derived from the median income of parents on the CSRU caseload,* as appropriate, minus the deductions enumerated in subrules 99.2(3) to 99.2(8) when the information to calculate these deductions is readily available through automated or other sources.

Amend paragraph **"b,"** subparagraph (2), as follows:

(2) ~~Estimated state~~ *Occupational wage rate information or* median income *of parents on the CSRU caseload* ~~has been~~ *was* used to determine a parent's income.

ITEM 4. Amend rule 441—99.4(234,252B) as follows:

Amend subrule 99.4(1) as follows:

99.4(1) Selecting guidelines chart. The child support recovery unit shall use the guidelines chart only for the number of children for whom support is being sought sharing the same two legal parents.

EXCEPTION: For foster care recovery cases the guidelines chart shall be used as set forth in ~~subparagraph~~ *paragraph* 99.5(4)"c."~~(2).~~

Amend subrule **99.4**(4), paragraph **"b,"** subparagraph (2), as follows:

(2) The income of the parent whose location is unknown shall be determined by using the estimated ~~state~~ median income ~~for a one-person family~~ *for parents on the CSRU caseload* and that parent shall be considered the custodial parent in calculating child support.

ITEM 5. Amend subrule 99.5(4) as follows:

Amend the introductory paragraph as follows:

99.5(4) Foster care case. In a foster care case, the child support recovery unit may deviate from the guidelines ~~as follows:~~ *by applying a 30 percent flat rate deduction for parents who provide financial documentation. The flat rate deduction represents expenses under the case permanency plan and financial hardship allowances.*

Rescind and reserve paragraphs **"a"** and **"b."**

Amend paragraph **"c"** as follows:

c. CSRU shall calculate the support obligation of the parents of children in foster care when the parents have a legal obligation for additional dependents in the home, as follows:

~~(1)~~ The support obligation of each parent shall be calculated by allowing all deductions the parent is eligible for under the child support guidelines *as provided in rule 441—99.2(234,252B)* and by using the guidelines chart corresponding to the ~~number of children in foster care for whom support is sought.~~

~~(2) The support obligation of each parent shall be recalculated by using the guidelines chart corresponding to the~~ sum of the children in the home for whom the parent has a legal obligation and the children in foster care. ~~All deductions shall be allowed as in subparagraph (1), except that the qualified additional dependent deduction (QADD) shall be limited to dependents not residing in the home for whom the parent has a legal obligation.~~ The calculated support amount shall be divided by the total number of children in foster care and in the home to compute the support obligation of the parent for each child in foster care.

~~(3) The support obligation for children in foster care shall be deviated to the lower of the amounts calculated in subparagraphs (1) and (2).~~

[Filed 4/15/99, effective 7/1/99]
[Published 5/5/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/99.

ARC 8952A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby amends Chapter 107, "Certification of Adoption Investigators," Chapter 108, "Licensing and Regulation of Child-Placing Agencies," Chapter 113, "Licensing and Regulation of Foster Family Homes," Chapter 157, "Purchase of Adoption Services," and Chapter 200, "Adoption Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments April 14, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on February 10, 1999, as ARC 8660A.

These amendments prohibit licensure of foster parent applicants or approval of adoptive parent applicants who have specific felony convictions.

The Seventy-seventh General Assembly passed legislation to comply with the Adoption and Safe Families Act of 1997 at Iowa Code sections 237.8(2)"a" and "b" and 600.8(2)"b" to prohibit the licensure of persons with the following felony offenses:

1. Within the five-year period preceding the application date, a drug-related offense.
2. Child endangerment or neglect or abandonment of a dependent person.
3. Domestic abuse.
4. A crime against a child including, but not limited to, sexual exploitation of a minor.
5. A forcible felony.

These amendments will benefit children in foster care and those children who are available for adoption by providing placements in safe homes.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 237.8(2)"a" and "b," and 600.8(2)"b."

These amendments shall become effective July 1, 1999.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Chs 107, 108, 113, 157, 200] is being

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omitted. These amendments are identical to those published under Notice as **ARC 8660A**, IAB 2/10/99.

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[For replacement pages for IAC, see IAC Supplement 5/5/99.]

ARC 8953A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 175, "Abuse of Children," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments April 14, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on February 10, 1999, as **ARC 8661A**.

These amendments implement the following revisions to the Child Abuse Assessment Program:

- The definition of the word "harm" has been deleted and the use of the word "harm" in the definition of "Denial of critical care" has been removed to eliminate an objection by the Administrative Rules Review Committee. The word "harm" does not appear in the Iowa Code under the child protective assessment section, and the word has minimal effect on the definition of the denial of critical care.
- Policy is amended to allow the Department to notify the appropriate county attorney of all reports of child abuse. Current policy states that the county attorney is only notified of reports accepted for assessment. This policy is in conflict with Iowa Code section 232.70, subsection 4, which requires the Department to notify the county attorney of all reports of child abuse.
- Form names and numbers used to request child abuse information are updated.
- Policy is added to establish at least three Citizen Review Panels as mandated by the Child Abuse Prevention and Treatment Act of October 3, 1996. These panels are to be operational by July 1, 1999. At least one panel shall be created at the state, multicounty, and county levels.

Policy regarding the Citizen Review Panels was developed with the assistance of the Iowa Citizen Review Panel Planning Team convened by the Department using recommendations found in the Citizen Review Panels for the Child Protective Services System: Guidelines and Protocols.

The Citizen Review Panels are to identify strengths and weaknesses of the child protective service system as a whole, including community-based services and agencies. The specific objectives of the Panels are to clarify expectations for child protective services with current policy; to review consistency of practice with current policy; to analyze trends and recommend policy to address them; and to provide feedback on what is or is not working, and why, and to suggest corrective action if needed.

Each panel established shall be composed of a multidisciplinary team of volunteer members who are broadly representative of the community in which the panel is established, including members who possess knowledge and skills related to the diagnosis, assessments, and disposition of child abuse cases, and who have expertise in the prevention and treatment of child abuse. The membership of each panel shall include professionals practicing in the disciplines of medicine, nursing, public health, substance abuse, domestic violence, mental health, social work, child development, education, law, juvenile probation, law enforcement; or representatives from organizations that advocate for the protection of children.

Eight public hearings were held around the state. No one attended.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 232.68 and 232.70(4).

These amendments shall become effective July 1, 1999.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Ch 175] is being omitted. These amendments are identical to those published under Notice as **ARC 8661A**, IAB 2/10/99.

[Filed 4/15/99, effective 7/1/99]
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[For replacement pages for IAC, see IAC Supplement 5/5/99.]

ARC 8931A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 225C.46, the Department of Human Services hereby amends Chapter 184, "Family Support Subsidy Program," appearing in the Iowa Administrative Code.

The Mental Health and Developmental Disabilities Commission adopted these amendments April 6, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on February 24, 1999, as **ARC 8712A**.

The Seventy-seventh General Assembly in 1998 Iowa Acts, chapter 1218, section 27, appropriated $364,000 to continue the pilot project for the personal assistance services program. These rules establish policy for the pilot project in Muscatine, Scott, and Clinton counties. The program consists of a direct payment to adults with disabilities to be used to hire their own personal assistants.

The pilot program was designed by the Personal Assistance and Comprehensive Family Support Services Council at the direction of the legislature. The Council was convened in July of 1994 and consists of eleven members, five of whom are appointed by the Governor, three by the Majority Leader of the Senate, and three by the Speaker of the House. Iowa Code section 225C.48 requires at least three of the Governor's appointments and one of each legislative chamber's appointments to be a family member of a person with a

disability and at least five of the members to be consumers of personal services.

The Council issued a Request for Proposal to the five independent living centers existing in Iowa at the time to design the process and implement the program. The Illinois/Iowa Center for Independent Living received the award and began implementing the program in its catchment area, Muscatine, Scott, and Clinton counties, in January of 1996.

The Illinois/Iowa Center for Independent Living completed its task of designing the tools and implementation of the program and in fiscal year 1998 transferred administration of the program to the county Department offices. There are currently 47 persons on the program, 34 from Scott County, 5 from Muscatine County, and 8 from Clinton County.

Eligibility for the program is needs based and the amount of the payment is determined by an assessment of each person's needs. Persons with taxable incomes of $40,000 or less are eligible providing they meet the other eligibility requirements. Persons must have a severe and chronic disability, be at least 18 years of age, residing in their own homes or have a discharge plan to return home in the next 60 calendar days, be an Iowa resident, be ineligible for consumer-directed attendant care under the Home- and Community-Based waiver programs, access all other programs for which they might be eligible, and agree to use any funds received from the program solely for a personal attendant.

Payments under the program range from $200 to $1,000 per month, depending on the level of care needed by the person. Level of care is determined by the number of tasks with which the person requires help. Tasks are listed under the broad categories of personal care, household maintenance, and community living support. Personal care tasks are given twice the weight of household maintenance and community living tasks. Each task is also given a weight of 1, 2, or 3, depending on whether the support needed for the task is minimal, moderate, or intensive.

The total score determines the payment level the applicant is eligible to receive as follows:

Score	Level	Payment
0 - 40	Level 1	$200/month
41 - 75	Level 2	$400/month
76 - 104	Level 3	$700/month
105 +	Level 4	$1,000/month

The appropriation is allocated to the three counties based on their percentage of the total population of the three counties. If all of the funds become obligated, each county is required to maintain a waiting list. At the present time there is no one on the waiting lists. Once the waiting lists are activated, persons move off the waiting list based on the following criteria: Persons who are working or volunteering or receiving job training or schooling move off the waiting lists first, then persons at imminent risk of out-of-home placement, then based on the date of application.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 225C.46.

These amendments shall become effective July 1, 1999.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Ch 184] is being omitted. These amendments are identical to those published under Notice as **ARC 8712A**, IAB 2/24/99.

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[Published 5/5/99]

[For replacement pages for IAC, see IAC Supplement 5/5/99.]

ARC 8955A

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 502.607, the Insurance Division hereby amends Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

These rules set forth certain definitions and requirements for those who wish to become licensed as investment advisers and investment adviser representatives.

Notice of Intended Action was published in the December 16, 1998, Iowa Administrative Bulletin as **ARC 8564A**. Several comments were received. The administrator revised the proposed rules in light of those comments. Additional citations and cross references were added. Proposed rules 191—50.106(502) and 50.107(502) were not adopted at this time.

These rules will become effective on June 9, 1999.

These rules are intended to implement Iowa Code chapter 502.

The following rules are adopted.

ITEM 1. Adopt the following **new** rule 191—50.100(502):

191—50.100(502) Definition of investment adviser representative of a federal covered adviser.

50.100(1) The term "investment adviser representative" as used in Iowa Code chapter 502 and as employed by or associated with a federal covered adviser only includes a person who has a "place of business" in this state, as defined in 50.100(2)"d," and who either:

a. Is a "supervised person," as defined in 50.100(2)"c," provided the supervised person:

(1) Has clients more than 10 percent of whom are natural persons, other than "excepted persons," as defined in 50.100(2)"a," or has no more than five clients who are natural persons other than "excepted persons" as defined in 50.100(2)"a."

(2) On a regular basis solicits, meets with, or otherwise communicates with clients of a federal covered adviser, and

(3) Does not provide only "impersonal investment advice," as defined in 50.100(2)"b"; or who

b. Is not a "supervised person" as that term is defined in 50.100(2)"c," and solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered adviser.

50.100(2) For purposes of subrule 50.100(1):

a. "Excepted person" means a natural person who:

(1) Immediately after entering into the investment advisory contract with the investment adviser has at least $750,000 under management with the investment adviser;

(2) The investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net

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worth (together with assets held jointly with a spouse) of more than $1,500,000 at the time the contract is entered into;

(3) Owns not less than $5,000,000 in investments at the time the advisory contract is entered into;

(4) Is an executive officer, director, trustee, general partner or person serving in a similar capacity, of the federal covered adviser;

(5) Is an employee of the federal covered adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the federal covered adviser) and who, in connection with the employee's regular functions or duties, participates in the investment activities of such federal covered adviser, provided that such employee has been performing such functions and duties for or on behalf of the federal covered adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months; or

(6) Is not a resident of the United States.

b. "Impersonal investment advice" means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

c. "Supervised person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

d. "Place of business" means:

(1) An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients, or

(2) Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

e. "Client" means

(1) A natural person and any of the following:

1. Any minor child of the natural person;

2. Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

3. All accounts of which the natural person or the persons referred to in 50.100(2)"e," or both, are the only primary beneficiaries; and

4. All trusts of which the natural person or the person referred to in 50.100(2)"e," or both, are the only primary beneficiaries;

(2) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in 50.100(2)"e"(1)"4"), or other legal organization (any of which are referred to hereinafter as a "legal organization") that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an "owner"); and

(3) Two or more legal organizations referred to in 50.100(2)"e"(2) that have identical owners.

50.100(3) Supervised persons may rely on the definition of "client" in 50.100(2)"e" to identify clients for purposes of subrule 50.100(1), except that supervised persons need not count clients that are not residents of the United States.

This rule is intended to implement Iowa Code chapter 502.

ITEM 2. Adopt the following **new** rule 191—50.101(502):

191—50.101(502) Investment adviser disclosure statement.

50.101(1) Unless otherwise provided, an investment adviser, registered or required to be registered pursuant to Iowa Code section 502.301, shall furnish each advisory client and prospective advisory client with a written disclosure statement. The disclosure statement may be a copy of Part II of the adviser's Form ADV or written documents containing at least the information then required by Part II of Form ADV, or such other information as the administrator may require.

50.101(2) Except as provided in paragraph "c" below, an investment adviser shall deliver the written disclosure statement to an advisory client or prospective advisory client as follows:

a. Not less than 48 hours prior to entering into any investment advisory contract with the client or prospective client; or

b. At the time of entering into the contract, if the advisory client has the right to terminate the contract without penalty within five business days after entering into the contract.

c. The disclosure statement need not be delivered in connection with entering into a contract for impersonal advisory services.

50.101(3) Except as provided in paragraph "a" below, an investment adviser shall annually deliver, or offer in writing to deliver upon written request, the written disclosure statement to each of the adviser's advisory clients without charge.

a. The disclosure statement need not be delivered or offered to advisory clients receiving services solely pursuant to a contract for impersonal advisory services requiring a payment of less than $200.

b. With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of $200 or more, an offer of the type specified in this rule shall also be made at the time of entering into an advisory contract. The investment adviser shall deliver the written statement to the client within seven days of receiving a written request made pursuant to an offer required by this rule.

50.101(4) An investment adviser that renders substantially different types of advisory services to different advisory clients may omit information required by Part II of Form ADV from the statement furnished to an advisory client or prospective advisory client, if the omitted information applies only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

50.101(5) Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of Iowa Code chapter 502 or the rules thereunder or other federal or state law to disclose any information to the adviser's advisory clients or prospective advisory clients not specifically required by this rule.

50.101(6) For purposes of this rule:

a. Contract for impersonal advisory services means any contract relating solely to the provision of investment advisory services:

(1) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(2) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(3) Any combination of the foregoing services.

b. Entering into, in reference to an investment advisory contract, does not include an extension or renewal without

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material change of the contract which is in effect immediately prior to the extension or renewal.

This rule is intended to implement Iowa Code chapter 502.

ITEM 3. Adopt the following new rule 191—50.103(502):

191—50.103(502) Cash solicitation.

50.103(1) It shall constitute an act, practice, or course of conduct which operates as a fraud or deceit upon a person, as provided under Iowa Code section 502.401(3), for any investment adviser to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

a. The solicitor is not a person:

(1) Subject to an order issued by the administrator under Iowa Code section 502.304(1), or

(2) Convicted within the previous ten years of any felony or misdemeanor involving conduct described in Iowa Code section 502.304(1)"c," or

(3) Who has been found by the administrator to have engaged, or has been convicted of engaging, in any of the conduct specified in Iowa Code section 502.405, 502.304(1)"b," or 502.304(1)"j," or has materially aided in the act of violation of 502.304(1)"d," or

(4) Subject to an order, judgment, or decree described in Iowa Code section 502.304(1)"d,"or

(5) Described in the rules implementing Iowa Code chapter 502; and

b. Such cash fee is paid pursuant to a written agreement to which the adviser is a party; and

c. Such cash fee is paid to a solicitor:

(1) With respect to solicitation activities for the provision of impersonal advisory services only; or

(2) Who is:

1. A partner, officer, director or employee of such investment adviser, or

2. A partner, officer, director or employee of a person who controls, is controlled by, or is under common control with such investment adviser, provided that the status of such solicitor as a partner, officer, director or employee of such investment adviser or other person, and any affiliation between the investment adviser and any such other person, is disclosed to the client at the time of the solicitation or referral; or

(3) Other than a solicitor specified in 50.103(1)"c"(1) or 50.103(1)"c"(2) above if all of the following conditions are met:

1. The written agreement required by 50.103(1)"b":

° Describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor;

° Contains an undertaking by the solicitor to perform the solicitor's duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of Iowa Code chapter 502 and the rules promulgated thereunder, whichever is applicable;

° Requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by subrule 50.101(3) or SEC Rule 204-0, as applicable, and a separate written disclosure statement as described in subrule 50.103(2).

2. The investment adviser receives from the client, prior to, or at the time of, entering into any written or oral investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document.

3. The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

50.103(2) The separate written disclosure statement required to be furnished by the solicitor to the client pursuant to 50.103(1)"c"(3)"3" shall contain the following information:

a. The name of the solicitor;

b. The name of the investment adviser;

c. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

d. A statement that the solicitor will be compensated for the solicitor's solicitation services by the investment adviser;

e. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

f. The amount, if any, the client will be charged for the cost of obtaining the client's account in addition to the advisory fee, and the differential, if any, among clients, with respect to the amount or level of advisory fees charged by the investment adviser, if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(1) Nothing in this rule shall be deemed to relieve any person of any fiduciary duty or other obligation to which such person may be subject under any law.

(2) For the purposes of this rule:

1. "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

2. "Client" includes any prospective client.

3. "Impersonal advisory services" means investment advisory services provided solely by means of written materials or oral statements which do not purport to meet the objectives or needs of the specific client, statistical information containing no expressions of opinions as to the investment merits of particular securities, or any combination of the foregoing services.

(3) The investment adviser shall retain a copy of each written agreement required by this rule as a part of the records required to be kept under Iowa Code chapter 502 and the rules promulgated thereunder.

(4) The investment adviser shall retain a copy of each acknowledgment and solicitor disclosure document referred to in this rule as part of the records required to be kept under Iowa Code chapter 502 and the rules promulgated thereunder.

(5) An investment adviser registered in this state whose principal place of business is located outside this state shall not be subject to the record maintenance requirements of 50.103(2)"f"(3) or 50.103(2)"f"(4) if such investment adviser:

1. Is registered or licensed as an investment adviser in the state in which the adviser maintains the adviser's principal place of business;

2. Is in compliance with the applicable books and records requirements of the state in which the adviser maintains the adviser's principal place of business; and

3. The provisions of this rule would require the investment adviser to maintain books or records in addition to

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those required by the laws of the state in which the investment adviser maintains the adviser's principal place of business.

(6) As used herein, "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

This rule is intended to implement Iowa Code chapter 502.

ITEM 4. Adopt the following new rule 191—50.104(502):

191—50.104(502) Unethical business practices of investment advisers, and investment adviser representatives, or fraudulent or deceptive conduct by federal covered advisers.

50.104(1) A person who is an investment adviser, an investment adviser representative, or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of the adviser's clients. The provisions of this rule apply to federal covered advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise not permitted by the National Securities Markets Improvement Act of 1996 (NSMIA)(Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of each relationship and the circumstances of each case, an investment adviser and an investment adviser representative shall not engage in unethical business practices, and a federal covered adviser shall not engage in fraudulent or deceptive conduct, including the following:

a. Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

b. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

c. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account if the adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account."

d. Placing an order to purchase or sell a security for the account of a client without authority to do so.

e. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

f. Borrowing money or securities from a client unless the client is a member of the investment adviser's or investment adviser representative's immediate family.

g. Loaning money to a client unless the client is a member of the investment adviser's or investment adviser representative's immediate family.

h. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, or any employee of the investment adviser or investment adviser representative, or misrepresenting the nature of the advisory services being offered or the fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made.

i. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

j. Charging a client an advisory fee that is unreasonable. The following nonexclusive list of factors may be considered in determining whether a fee is unreasonable: the type(s) of services to be provided, the experience of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources.

k. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of the adviser's employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(2) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or the adviser's employees.

l. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

m. Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

n. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

o. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940.

p. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser, and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

q. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

INSURANCE DIVISION[191](cont'd)

r. Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under Iowa Code chapter 502 notwithstanding whether such adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

s. Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of Iowa Code chapter 502 or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940.

t. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative contrary to the provisions of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940.

u. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or any rule or regulation thereunder.

50.104(2) The conduct set forth in subrule 50.104(1) is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers, investment adviser representatives, and federal covered advisers to the extent permitted by the National Securities Markets Improvement Act of 1996 (NSMIA)(Pub. L. No. 104-290).

This rule is intended to implement Iowa Code chapter 502.

ITEM 5. Adopt the following new rule 191—50.105(502):

191—50.105(502) Custody of client funds or securities.

50.105(1) It is unlawful for an investment adviser to take or have custody of any securities or funds of any client unless:

a. The investment adviser notifies the administrator in writing that the investment adviser has or may have custody;

b. The securities of each client are segregated, marked to identify the particular client having the beneficial interest in those securities, and held in safekeeping in a place free from risk of destruction or other loss;

c. All client funds are deposited as follows:

(1) In one or more bank accounts containing only clients' funds;

(2) The account or accounts are maintained in the name of the investment adviser as agent or trustee for the clients; and

(3) The investment adviser maintains a separate record for each account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the accounts, and the exact amount of each client's beneficial interest in the account;

d. Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place and manner in which the funds and securities will be maintained and, subsequently, if or when there is a change in the place or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client;

e. At least once every three months, the investment adviser sends to each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of the period, and all debits, credits and transactions in the client's account during that period; and

f. At least once every calendar year, an independent certified public accountant verifies all client funds and securities by an actual examination, which shall be made at a time chosen by the accountant without prior notice to the investment adviser. A report stating that the accountant has made an examination of the client funds and securities in the custody of the investment adviser, and describing the nature and extent of the examination, shall be filed with the administrator within 30 days after each examination. The effective date of this paragraph shall be June 9, 2000.

g. For purposes of this rule, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

50.105(2) Reserved.

This rule is intended to implement Iowa Code chapter 502.

ITEM 6. Adopt the following new rule 191—50.108(502):

191—50.108(502) Record-keeping requirements for investment advisers.

50.108(1) Except as otherwise provided in subrule 50.108(12) for out-of-state investment advisers, every investment adviser registered or required to be registered under Iowa Code chapter 502 shall make and keep true, accurate and current the following books, ledgers and records:

a. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

b. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

c. A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

d. All checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser.

e. All bills or statements (or copies of all bills or statements), paid or unpaid, relating to the investment adviser's business as an investment adviser.

f. All trial balances, financial statements, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this rule, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement and a net worth computation.

g. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:

(1) Any recommendation made or proposed to be made and any advice given or proposed to be given,

INSURANCE DIVISION[191](cont'd)

(2) Any receipt, disbursement or delivery of funds or securities, or

(3) The placing or execution of any order to purchase or sell any security.

The investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser. If the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

h. A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

i. A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

j. A copy in writing of each agreement entered into by the investment adviser with a client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

k. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

l. A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities which are direct obligations of the United States.

(1) The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected.

(2) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(3) For the purposes of 50.108(1)"l," "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with the employee's duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations: any person in a control relationship to the investment adviser, any affiliated person of a controlling person and any affiliated person of an affiliated person.

(4) For the purposes of 50.108(1)"l," "control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(5) An investment adviser shall not be deemed to have violated the provisions of 50.108(1)"l" because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that the adviser instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

m. Notwithstanding the provisions of 50.108(1)"l," when the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities which are direct obligations of the United States.

(1) The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected.

(2) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(3) For the purposes of 50.108(1)"m," an investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of the adviser's most recent three fiscal years or for the period of time since organization, whichever is the lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of the adviser's total sales and revenues, and the adviser's income or loss before income taxes and extraordinary items, from such other business or businesses.

(4) For purposes of 50.108(1)"m," "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations;

and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

1. Any person in a control relationship to the investment adviser;
2. Any affiliated person of a controlling person; and
3. Any affiliated person of an affiliated person.

(5) For the purposes of 50.108(1)"m," "control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(6) An investment adviser shall not be deemed to have violated the provisions of 50.108(1)"m" because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that the adviser instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

n. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Iowa Code chapter 502 and these rules, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

o. For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

(1) Evidence of a written agreement as required by 50.103(1)"b" to which the adviser is a party related to the payment of such fee;

(2) A signed and dated acknowledgment of receipt from the client as required by 50.103(1)"c"(3)"2" that evidences the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and

(3) A copy of the solicitor's written disclosure statement as required by 50.103(1)"c"(3)"1." The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 206(4)-3 of the Investment Advisers Act of 1940.

(4) For purposes of 50.108(1)"o," the term "solicitor" shall mean any person or entity that, for compensation, acts as an agent of an investment adviser in referring potential clients.

p. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

q. A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

r. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

s. Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

t. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in 50.108(1)"l"(3), which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

50.108(2) If an investment adviser subject to subrule 50.108(1) has custody or possession of securities or funds of any client, the records required to be made and kept under subrule 50.108(1) shall include:

a. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

b. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

c. Copies of confirmations of all transactions effected by or for the account of any client.

d. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

50.108(3) Every investment adviser subject to subrule 50.108(1) who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

a. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

b. For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client.

50.108(4) Any books or records required by this rule may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

50.108(5) Every investment adviser subject to subrule 50.108(1) shall preserve the following records in the manner prescribed:

a. All books and records required to be made under the provisions of paragraphs 50.108(1)"a" to 50.108(3)"a," inclusive, except for books and records required to be made

under the provisions of 50.108(1)"k" and 50.108(1)"p," shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.

b. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

c. Books and records required to be made under the provisions of 50.108(1)"k" and 50.108(1)"p" shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media).

d. Books and records required to be made under the provisions of 50.108(1)"q" to "t," inclusive, shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

e. Notwithstanding other record preservation requirements of this rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(1) Records required to be preserved under 50.108(1)"c," "g" to "j," "n" to "o," and "q" to "s," subrule 50.108(2) and subrule 50.108(3), and

(2) The records or copies required under the provisions of 50.108(1)"k" and 50.108(1)"p," which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in 50.108(5)"c."

50.108(6) An investment adviser subject to subrule 50.108(1), before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this rule for the remainder of the period specified in this rule, and shall notify the administrator in writing on Form ADV-W of the exact address where the books and records will be maintained during the period.

50.108(7) The records required to be maintained and preserved pursuant to this rule may be immediately produced or reproduced by photographic film or, as provided in subrule 50.108(8), on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

b. Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the administrator through the administrator's examiners or other representatives may request;

c. Store separately from the original one other copy of the film or computer storage medium for the time required;

d. With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

e. With respect to records stored on photographic film, at all times have available for the administrator's examination the adviser's records, pursuant to Iowa Code section 502.303, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

50.108(8) Pursuant to subrule 50.108(7), an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

50.108(9) For purposes of this rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

50.108(10) For purposes of this rule, "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

50.108(11) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3 (1998)) and 17a-4 (17 CFR 240.17a-4 (1998)) under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this rule, shall be deemed to be made, kept, maintained and preserved in compliance with this rule.

50.108(12) Every investment adviser that is registered or required to be registered in this state and that has the adviser's principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided the investment adviser is licensed in such state and is in compliance with such state's record-keeping requirements, if any.

This rule is intended to implement Iowa Code chapter 502.

[Filed 4/16/99, effective 6/9/99]
[Published 5/5/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/99.

ARC 8943A

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 20.6, the Public Employment Relations Board hereby adopts

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

amendments to Chapter 1, "General Provisions"; Chapter 2, "General Practice and Hearing Procedures"; Chapter 7, "Impasse Procedures"; Chapter 10, "Declaratory Rulings"; and Chapter 12, "Public Records and Fair Information Practices," Iowa Administrative Code.

Item 1 makes the Agency's existing rule concerning a petition for the Agency's adoption of rules more specific by utilizing more of the relevant statute's language and by incorporating much of the language of the uniform rule.

Item 2 adds a definition of the term "contested case" which includes the concept of a "no factual dispute" contested case now included in Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

Item 3 reflects a change in the numbering of a statute cited in the rule, concerning the computation of time.

Item 4 amends the existing rule to incorporate the statutory term "contested case" and to specify that notices of contested case hearings shall include the date, as well as the time, place and nature of the hearing.

Items 5 and 6 amend existing rules concerning a party's failure to appear and prohibited ex parte communications to make the rules more specific and to reflect amendments to Iowa Code chapter 17A made by 1998 Iowa Acts, chapter 1202. The amendments are based upon the uniform rules, with some omissions and modifications to better fit the Agency.

Item 7 amends the existing rule by substituting statutory terms in place of existing language, including the term "declaratory order" utilized by 1998 Iowa Acts, chapter 1202.

Item 8 corrects citation errors in the existing rule and substitutes the term "declaratory order" utilized by 1998 Iowa Acts, chapter 1202.

Item 9 is based upon the language of the uniform rules and amends the existing chapter concerning "declaratory rulings" by substituting the terminology of 1998 Iowa Acts, chapter 1202, and by providing greater specificity concerning declaratory order proceedings in accordance with that legislation.

Item 10 amends an existing subrule so as to more closely mirror language utilized by 1998 Iowa Acts, chapter 1202.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 10, 1999, as ARC 8758A. A public hearing was held on March 30, 1999, at 11 a.m. in the Board's hearing room at 514 East Locust Street, Des Moines, Iowa. No written or verbal comments were received.

The adopted amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, Iowa Code chapter 20 and Iowa Code section 19A.14.

These amendments will become effective July 1, 1999.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Chs 1, 2, 7, 10, 12] is being omitted. These amendments are identical to those published under Notice as ARC 8758A, IAB 3/10/99.

[Filed 4/15/99, effective 7/1/99]
[Published 5/5/99]

[For replacement pages for IAC, see IAC Supplement 5/5/99.]

ARC 8957A

RACING AND GAMING COMMISSION[491]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby adopts amendments to Chapter 4, "Practice and Procedure Before the Racing and Gaming Commission," Chapter 13, "Occupational and Vendor Licensing," and Chapter 26, "Rules of the Games," Iowa Administrative Code.

Item 1 allows the gaming board to designate the length and dates of suspensions.

Item 2 defines the weight allowances for apprentice jockeys.

Item 3 allows the winner of a progressive jackpot, in lieu of periodic payments, to select a discounted single cash payment.

Item 4 provides for a method to calculate the present value of any United States Treasury or Iowa state debt instruments.

These adopted amendments are identical to those published under Notice of Intended Action in the February 10, 1999, Iowa Administrative Bulletin as ARC 8653A. The amendments to subrule 26.17(7) in Items 3 and 4 were simultaneously Adopted and Filed Emergency as ARC 8652A.

A public hearing was held on March 2, 1999. No comments were received.

These amendments will become effective June 9, 1999, at which time the Adopted and Filed Emergency amendments for Items 3 and 4 are hereby rescinded.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are adopted.

ITEM 1. Amend rule 491—4.4(99D,99F) by adopting the following new subrule:

4.4(5) Designate the length of suspensions and the dates for which all suspensions will be served.

ITEM 2. Rescind subrule **13.25(2)**, paragraph **"d,"** and adopt in lieu thereof the following new paragraph:

d. An apprentice jockey may claim the following weight allowance in all overnight races except stakes and handicaps: ten-pound allowances beginning with the first mount and continuing until the apprentice has ridden five winners; a seven-pound allowance until the apprentice has ridden an additional 25 winners; and, if an apprentice has ridden a total of 40 winners prior to the end of a period of one year from the date of the apprentice's fifth winner, the apprentice jockey shall have an allowance of five pounds until one year from the date of the fifth winning mount. If after one year from the date of the fifth winning mount the apprentice jockey has not ridden 40 winners, the applicable weight allowance shall continue for one more year from the date of the fifth winning mount, or until the fortieth winner, whichever comes first. In no event may a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted under this paragraph "d." A contracted apprentice may claim an allowance of three pounds for an additional one year when riding horses owned or trained by the original contract employer.

The commission may extend the weight allowance of an apprentice jockey when, in the discretion of the commission, an apprentice jockey is unable to continue riding due to physical disablement or illness, military service, attendance

in an institution of secondary or higher education, restriction on racing or any other valid reason. In order to qualify for an extension, an apprentice jockey shall have been rendered unable to ride for a period of not less than seven consecutive days during the period in which the apprentice was entitled to an apprentice weight allowance. Under exceptional circumstances, total days lost collectively will be given consideration. The commission currently licensing the apprentice jockey shall have the authority to grant an extension to an eligible applicant, but only after the apprentice has produced documentation verifying time lost as defined by this paragraph "d." An apprentice may petition one of the jurisdictions in which the apprentice is licensed and riding for an extension of the time for claiming apprentice weight allowances, and the apprentice shall be bound by the decision of the jurisdiction so petitioned.

ITEM 3. Rescind subrule **26.17(7)**, paragraph **"n,"** subparagraph **(6)**, and adopt in lieu thereof the following **new** subparagraph:

(6) For multilink system jackpots disbursed in periodic payments, any United States Treasury or Iowa state debt instruments shall be purchased within 90 days following notice of the win of the multilink system jackpot, and a copy of such debt instruments will be provided to the commission office within 30 days of purchase. Any United States Treasury or Iowa state debt instrument shall have a surrender value at maturity, excluding any interest paid before the maturity date, equal to or greater than the value of the corresponding periodic jackpot payment, and shall have a maturity date prior to the date the periodic jackpot payment is required to be made.

ITEM 4. Amend subrule **26.17(7)** by adopting **new** paragraph **"o"** as follows:

o. For multilink system jackpots disbursed in periodic payments, subsequent to the date of the win, a winner may be offered the option to receive, in lieu of periodic payments, a discounted single cash payment in the form of a "qualified prize option," as that term is defined in Section 451(h) of the Internal Revenue Code. For purposes of calculating the single cash payment, the trust administrator shall obtain quotes for the purchase of U.S. Government Treasury Securities at least three times per month. The quote selected by the trust administrator shall be used to calculate the single cash payment for all qualified prizes that occur subsequent to the date of the selected quote, until a new quote becomes effective.

[Filed 4/16/99, effective 6/9/99]
[Published 5/5/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/99.

ARC 8938A

SOIL CONSERVATION DIVISION[27]

Adopted and Filed

Pursuant to the authority of Iowa Code section 161A.4(1), the Division of Soil Conservation hereby amends Chapter 12, "Water Protection Practices—Water Protection Fund," Iowa Administrative Code.

These amendments change the method of recalling and reallocating unobligated funds previously allocated to soil and water conservation districts under the Resource Enhancement and Protection (REAP) Practices Program. Two additional practices for wetlands and stream bank stabilization are also being added to the list of eligible practices.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 10, 1999, as **ARC 8759A**.

One change from the Notice is a minor wording clarification in subrule 12.72(7).

These amendments are intended to implement Iowa Code chapters 161A and 161C.

These amendments will become effective on June 15, 1999.

The following amendments are adopted.

ITEM 1. Rescind rule 27—12.51(161C) and adopt the following **new** rule in lieu thereof:

27—12.51(161C) Allocation to soil and water conservation districts.

12.51(1) Original allocation. July 1 of each year, funds appropriated to the water protection practices account will be allocated to districts. Seventy-three and one-half percent of the funds will be divided equally among 100 soil and water conservation districts. Twenty-five percent of the funds plus any additional appropriations for reforestation will be kept in a separate account for woodland establishment and protection, and establishment of native grasses and forbs. One and one-half percent will be held in a reserve fund.

12.51(2) Recall of funds. Any funds allocated to the districts that have not been obligated in 12 months and any funds that were obligated for projects for which construction has not been started during that time period will be recalled by the division.

12.51(3) Supplemental allocations. Unobligated funds recalled by the division will be provided to the districts in a supplemental allocation. The districts shall submit their requests identifying valid applications and cost estimates for supplemental allocations to the division by October 15. The allocation to any district will be the lesser amount of:

a. The amount of remaining available funds divided by the number of districts applying for a supplemental allocation.

b. The amount requested.

12.51(4) Reallocation of recalled funds. Funds that were obligated for projects for which construction has been started but not reimbursed by the state during the 12 months following allocation will be recalled and reallocated back to the district.

12.51(5) Woodland, native grass and forbs fund. Twenty-five percent of the funds and any additional appropriations for reforestation will be allocated to districts.

a. Original allocation. Seventy-five percent of the funds distributed to this program will be allocated equally to districts at the beginning of each fiscal year.

b. Supplemental allocation. The remaining balance of the funds and any unobligated recalled funds will be provided to the districts in a supplemental allocation. The districts shall submit their requests identifying valid applications and cost estimates for supplemental allocations to the division by October 15. The allocation to any district will be the lesser amount of:

(1) The amount of remaining available funds divided by the number of districts applying for a supplemental allocation.

(2) The amount requested.

SOIL CONSERVATION DIVISION[27](cont'd)

c. Recall of funds. Any funds allocated to the districts that have not been obligated in 12 months and any funds that were obligated for projects for which construction has not been started during that time period will be recalled by the division.

d. Reallocation of recalled funds. Funds that were obligated for projects for which construction has been started but not reimbursed by the state during the 12 months following allocation will be recalled and reallocated back to the district.

e. Eligibility of soil and water conservation districts for supplemental allocation. For a district to qualify for a supplemental allocation, it must meet the following requirement: Ninety percent of the woodland, native grass and forbs funds shall be obligated to landowners.

12.51(6) Reserve funds. The division shall administer a reserve fund for the program consisting of 1.5 percent of each year's appropriated funds.

a. Purpose and use of the reserve fund. The reserve fund will be set aside and used only to fund contingencies that occur in the application of practices in the districts.

b. On June 30 each year the division will transfer the unspent reserve fund balance into the water protection practices account to be allocated to districts under subrule 12.51(1).

ITEM 2. Amend rule 27—12.72(161C) by adopting the following **new** subrules:

12.72(7) Restored or constructed wetlands in buffer systems. An area where hydric (wetland) vegetation and hydrology are established within or adjacent to a buffer system that filters pollutants from runoff or underground tile lines, or both. (Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.)

12.72(8) Bioengineering for stabilization of banks along waterways. A system designed to emphasize the use of live vegetation, natural materials, and structural practices to produce living, functioning systems to stabilize stream banks, reduce sedimentation, provide habitat, and filter pollutants. Bioengineering uses combinations of stream-side plantings or trees, other vegetation, structural practices such as modification of slopes, and installation of reinforcing materials and in-stream structures. (Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.)

ITEM 3. Amend rule 27—12.76(161C) by adopting the following **new** subrules:

12.76(8) Restored or constructed wetlands in buffer systems. Wetland Restoration, Enhancement, or Creation (Acres), USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. Interim Standard 657-1, July 1992.

12.76(9) Bioengineering for stabilization of banks along waterways. USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 580-1, September 1983 or Section IV, Code No. 391-1.

[Filed 4/13/99, effective 6/15/99]
[Published 5/5/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/99.

ARC 8934A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on April 6, 1999, adopted amendments to Chapter 10, "Administrative Rules and Declaratory Rulings," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the February 10, 1999, Iowa Administrative Bulletin as **ARC 8645A**.

The purpose of these amendments is to bring the Department's rules on administrative rule making and declaratory orders into conformance with 1998 Iowa Acts, chapter 1202, and to delete provisions that are obsolete. Chapter 1202 amended the Iowa Administrative Procedure Act.

Items 1, 10 and 11 reflect the fact that "declaratory rulings" are now termed "declaratory orders."

Items 2 and 13 update Iowa Code citations.

Item 2 also adds a definition of "written criticisms." 1998 Iowa Acts, chapter 1202, section 11, provides for a review of a rule, upon request, if a review has not been conducted for five years. One element of the review is a statement of the "Written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule tendered to the agency or granted by the agency."

Item 3 states that the Notice of Intended Action shall contain the information required by statute or rule.

Item 4 rescinds subrule 10.2(4) that is superseded by the new Iowa Code section on regulatory analysis and adopts new subrule 10.2(4) which states that a request for a regulatory analysis shall be submitted to the Department's rules coordinator.

Items 5 and 7 correct terminology.

Item 6 reflects the statutory time frame for issuing a concise statement.

Items 8 and 9 strike obsolete or repetitive provisions regarding petitions for rule making.

Item 12 rescinds subrules 10.4(3) to 10.4(6) which are superseded by the new Iowa Code section on declaratory orders. Item 12 also adopts new subrules 10.4(3) to 10.4(5). Subrule 10.4(4) reflects a statutory prohibition. Subrule 10.4(5) lists the reasons the Department may decline to issue a declaratory order. This listing is required by 1998 Iowa Acts, chapter 1202.

These amendments are identical to the ones published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 17A and 1998 Iowa Acts, chapter 1202.

These amendments will become effective July 1, 1999.

Rule-making actions:

ITEM 1. Amend the title of **761—Chapter 10** as follows:

ADMINISTRATIVE RULES AND
DECLARATORY ~~RULINGS~~ *ORDERS*

ITEM 2. Amend subrule 10.1(2) as follows:

Amend the introductory paragraph as follows:

10.1(2) Definitions. The definitions in Iowa Code section 17A.2 and the definition of "small business" in Iowa Code section ~~17A.31~~ *17A.4A* are hereby adopted. In addition:

Adopt the following **new** definition in alphabetical order:

"Written criticisms" means:

TRANSPORTATION DEPARTMENT[761](cont'd)

1. Petitions for rule making, objections filed pursuant to Iowa Code subsection 17A.4(4), and written and oral submissions received during rule making pursuant to Iowa Code paragraph 17A.4(1)"b."
2. Petitions for waiver of a rule tendered to the department or granted by the department.
3. Letters to the director criticizing or recommending changes to a rule.

ITEM 3. Amend subrule **10.2(1)** by rescinding paragraph **"c"** and adopting in lieu thereof the following **new** paragraph:

c. Any other information required by statute or rule.

ITEM 4. Amend rule 761—10.2(17A) by rescinding subrule 10.2(4) and adopting in lieu thereof the following **new** subrule:

10.2(4) Regulatory analysis. A request for issuance of a regulatory analysis shall be submitted to the department's administrative rules coordinator at the address in subrule 10.1(3).

ITEM 5. Amend subrule 10.2(6), catchwords, as follows:

10.2(6) ~~Position affirmation~~ *Concise* statement.

ITEM 6. Amend subrule **10.2(6)** by rescinding paragraphs **"b"** and **"c"** and adopting **new** paragraph **"b"** as follows:

b. A requested concise statement shall be issued either at the time of rule adoption or within 35 days after the department's administrative rules coordinator receives the request.

ITEM 7. Amend paragraph **10.3(1)"a,"** heading of the petition form, by striking the word "promulgation" and inserting in lieu thereof the word "adoption".

ITEM 8. Rescind subrules **10.3(3)** and **10.3(4)**.

ITEM 9. Amend subrule 10.3(5) as follows:

~~**10.3(5) Disposition of petitions acceptable for consideration:**~~

~~a.~~ ***10.3(3)*** ~~Upon request~~ *If requested* in the petition, the department shall schedule an informal meeting with the petitioner to discuss the petition.

~~b.~~ ***10.3(4)*** The department shall notify the petitioner of the director's or commission's determination to grant or deny the petition. If the petition is denied, the notification shall include ~~a summary of~~ the reasons for denial.

~~c. The 60-day time limit specified in Iowa Code section 17A.7 for disposition of petitions begins the day a petition acceptable for consideration is received.~~

ITEM 10. Amend rule 761—10.4(17A), catchwords, as follows:

761—10.4(17A) Declaratory ~~rulings~~ *orders*.

ITEM 11. Amend subrule **10.4(1)** by striking all occurrences of the word "ruling" and inserting in lieu thereof the word "order" and by striking all occurrences of the word "rulings" and inserting in lieu thereof the word "orders".

ITEM 12. Amend rule 761—10.4(17A) by rescinding subrules **10.4(3)** to **10.4(6)** and adopting **new** subrules 10.4(3), 10.4(4) and 10.4(5) as follows:

10.4(3) A declaratory order or a statement declining to issue a declaratory order shall be issued by the director.

10.4(4) The director shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

10.4(5) The director may decline to issue a declaratory order for any of the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the agency to issue a declaratory order.

c. The agency does not have jurisdiction over the questions presented in the petition.

d. The questions presented in the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding that may definitively resolve them.

e. The questions presented in the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The questions posed or facts presented in the petition are unclear, vague, incomplete, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a declaratory order.

g. There is no need to issue a declaratory order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

j. The petitioner requests the agency to determine whether a statute is unconstitutional on its face.

ITEM 13. Amend the implementation clause at the end of **761—Chapter 10** as follows:

These rules are intended to implement Iowa Code chapter 25B and sections 17A.1 to 17A.9, 17A.19, ~~17A.31, 17A.32, 17A.33 and~~ 307.10 *and 307.12*.

[Filed 4/8/99, effective 7/1/99]
[Published 5/5/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/99.

ARC 8935A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on April 6, 1999, adopted amendments to Chapter 13, "Contested Cases," Chapter 615, "Sanctions," and Chapter 620, "OWI and Implied Consent," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the February 10, 1999, Iowa Administrative Bulletin as **ARC 8646A**.

These amendments add a new rule to Chapter 13 and a new subrule to Chapter 620 on default decisions. The new

TRANSPORTATION DEPARTMENT[761](cont'd)

rule and new subrule implement 1998 Iowa Acts, chapter 1202, section 16. Chapter 1202 amended the Iowa Administrative Procedure Act. These amendments also change the term "administrative law judge" to "presiding officer." This reflects the terminology used in 1998 Iowa Acts, chapter 1202.

These amendments are identical to the ones published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 17A and 1998 Iowa Acts, chapter 1202.

These amendments will become effective July 1, 1999.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Chs 13, 615, 620] is being omitted. These amendments are identical to those published under Notice as **ARC 8646A**, IAB 2/10/99.

[Filed 4/8/99, effective 7/1/99]
[Published 5/5/99]

[For replacement pages for IAC, see IAC Supplement 5/5/99.]

ARC 8933A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on April 6, 1999, adopted amendments rescinding Chapter 141, "Traffic and Engineering Investigations on Secondary Roads," Chapter 180, "Federal-Aid Urban Systems," and Chapter 840, "Rail Rate Regulation," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the February 10, 1999, Iowa Administrative Bulletin as **ARC 8647A**.

Chapter 141 reflected a statutory requirement for counties to follow when they wished to change speed limits on secondary roads. 1994 Iowa Acts, chapter 1173, section 15, removed this requirement.

Chapter 180 established the requirements for the federal-aid urban systems program. The federal Intermodal Surface Transportation Efficiency Act of 1991 eliminated this program.

Chapter 840 addressed departmental regulation of rates for the intrastate transportation of freight by rail. The Interstate Commerce Commission Termination Act of 1995 eliminated Iowa's regulatory authority over intrastate freight rates. The Act gave sole jurisdiction over freight rates to the federal Surface Transportation Board.

These amendments are identical to the ones published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 307.

These amendments will become effective June 9, 1999.

Rule-making actions:

ITEM 1. Rescind and reserve **761—Chapter 141**, "Traffic and Engineering Investigations on Secondary Roads."

ITEM 2. Rescind and reserve **761—Chapter 180**, "Federal-Aid Urban Systems."

ITEM 3. Rescind and reserve **761—Chapter 840**, "Rail Rate Regulation."

[Filed 4/8/99, effective 6/9/99]
[Published 5/5/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/99.

ARC 8944A

VETERANS AFFAIRS COMMISSION[801]

Adopted and Filed

Pursuant to the authority of Iowa Code section 35A.3(2), the Commission of Veterans Affairs amends Chapter 10, "Iowa Veterans Home," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 27, 1999, as **ARC 8636A**. No public comment was received on these amendments. These amendments are identical to the amendments published under Notice of Intended Action.

The intent of the amendments is to incorporate existing procedures used by the Iowa Veterans Home to pay member Medicare deductible charges if the member does not carry coinsurance supplement, to refine computation of member support rates, and to establish medical furloughs. New rule 10.18(35D) is proposed to give the Commandant of the Iowa Veterans Home the authority to file a civil action to collect a member's or former member's support when the member or former member has failed to pay the member's support in accordance with 801 IAC 10.12(35D). This may confer a significant benefit to the public because without this rule there is no means to enforce the member's contractual agreement to pay. New rule 10.42(35D) incorporates existing procedures for the disposition of personal property and funds of a discharged or deceased member.

These amendments were adopted by the Commission of Veterans Affairs on April 7, 1999.

These amendments shall become effective June 9, 1999.

These amendments are intended to implement Iowa Code chapter 35D.

The following amendments are adopted.

ITEM 1. Amend rule **801—10.1(35D)**, definition of "Diversion," as follows:

"Diversion" means income that is transferred to a spouse ~~or dependents per court order~~ before the member support is determined.

ITEM 2. Amend paragraph **10.12(4)"a"** as follows:

a. If a member who is treated at a DVA medical center has coinsurance to supplement Medicare, ~~IVH shall pay the Medicare deductible charge~~ *this coinsurance shall be used for the DVA medical center charges.* ~~Members~~ *IVH* shall be responsible for ~~Medicare deductible~~ *all DVA medical center* charges if ~~they do~~ *the member does* not carry coinsurance supplement.

ITEM 3. Amend subrule 10.15(5), introductory paragraph, as follows:

10.15(5) Payment of support is due on the tenth of the month in which the monthly support bill is received, *or ten business days after the member's last income deposit for that month.*

VETERANS AFFAIRS COMMISSION[801](cont'd)

ITEM 4. Amend subparagraph **10.16(2)"a"(10)** as follows:

(10) An amount that is irrevocable and separately identifiable, not in excess of $7500 *principal,* for the member or spouse to meet the burial and related expenses of that person.

ITEM 5. Adopt new rule 801—10.18(35D) as follows:

801—10.18(35D) Commencement of civil action. The commandant or designee may file a civil action for money judgment against a member or discharged member or the member's legal representative for support charges when the member or discharged member fails to pay member support in accordance with 801—Chapter 10.

ITEM 6. Amend subparagraph **10.19(2)"a"**(4) as follows:

(4) Nonrecurring gifts, contributions or winnings, not to exceed ~~$50~~ *$60* in a calendar quarter.

ITEM 7. Amend subparagraph **10.19(2)"a"(5)** as follows:

(5) Interest income of less than ~~$10~~ *$20* per month from any one source.

ITEM 8. Amend paragraph **10.19(3)"e"** as follows:

e. All current court ~~orders~~ *order proceedings and guardian/conservatorship appointments* regarding financial obligations, ~~such as~~ *except* child support or alimony, shall be honored. ~~An established amount not to exceed one-half of the available income shall be paid on a monthly basis to the appropriate clerk of court.~~

ITEM 9. Amend paragraph **10.19(4)"b"** as follows:

b. All checks shall be mailed no later than the eighth day of any given month to proper recipient *or, at IVH's option, five business days after the member's last income deposit for that month.*

ITEM 10. Amend paragraph **10.36(1)"e"** as follows:

e. Medical furloughs. Furloughs spent in approved medical facilities away from IVH shall not be counted against the 59-day furlough time limit as set out in paragraph 10.14(3)"c."

Hospital furloughs shall be granted and the charges for such furloughs shall be as follows: During the first ten days of any hospital stay, the member shall pay the regular and usual assessed charge of the level of care of the bed held. Beginning on the eleventh day through the remainder of the hospitalization, the member shall not be charged. Each monthly member support bill shall reflect any adjustments related to hospitalization. Members discharged from IVH shall have the account closed ~~after~~ *before* the first of the month following the discharge.

Furloughs to other medical facilities for the purpose of treatment shall be treated as hospital furloughs.

ITEM 11. Amend paragraph **10.36(2)"e"** as follows:

e. A bed shall be held for a hospitalized member. The member's client participation shall be ~~the amount determined by the department of human services income maintenance worker~~ *an exception to department of human services' rules as the member's bed will be held free of charge after the first ten days of a hospital stay until member returns or is discharged.*

ITEM 12. Adopt new rule 801—10.42(35D) as follows:

801—10.42(35D) Disposition of personal property and funds.

10.42(1) A discharged member will remove all personal property at the time of discharge or within 30 days. Personal property not removed within 30 days after discharge shall become the property of IVH to dispose of as the commandant or designee directs. Personal property may be forwarded at the member's expense to the member's last-known address. When the member is discharged from IVH, the member's funds shall be released to the member or legal representative with a statement provided no later than the tenth day of the month following the month of discharge.

10.42(2) Following written notification to the legal representative, a deceased member's personal property remaining at IVH 30 days after written notification shall become the property of IVH to dispose of as the commandant or designee directs. If there is a known legal representative, the property may be shipped to the legal representative at the expense of the estate or legal representative.

10.42(3) Upon death of a member with personal funds deposited at IVH, IVH will convey the member's funds with a final statement to the legal representative administering the member's estate. When an estate is not opened or in cases where no executor is appointed, IVH will attempt to locate the deceased member's heirs and deliver the funds and property to the heirs within one year after date of death.

[Filed 4/15/99, effective 6/9/99]
[Published 5/5/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/99.

ARC 8945A

WORKERS' COMPENSATION DIVISION[876]

Adopted and Filed

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby amends Chapter 4, "Contested Cases"; rescinds Chapter 5, "Declaratory Rulings," and adopts a new Chapter 5, "Declaratory Orders"; and adopts Chapter 12, "Formal Review and Waiver of Rules," Iowa Administrative Code.

These amendments revise the Agency's rules governing procedures for contested cases, declaratory orders, and review and waiver of rules.

The Seventy-seventh General Assembly amended the Iowa Administrative Procedure Act in 1998 Iowa Acts, chapter 1202. A task force from the Attorney General's Office drafted amendments to the Uniform Rules on Agency Procedure to implement the amendments to the Iowa Administrative Procedure Act. The Agency's proposed amendments to its rules are based on the amendments of the Attorney General's task force, with some omissions and modifications to fit the Agency.

With these revisions, the Agency's rules will be in compliance with 1998 Iowa Acts, chapter 1202. The major changes governing contested case proceedings, declaratory rulings and the rule-making process in 1998 Iowa Acts, chapter 1202, which will become effective July 1, 1999, are as follows:

- Certain provisions relating to contested case proceedings are included. They consist of providing that a type of contested case may be a matter where there is no factual dispute under rule 4.1(85,85A,85B,86,87,17A) and making the

WORKERS' COMPENSATION DIVISION[876](cont'd)

rule consistent with 1998 Iowa Acts, chapter 1202, section 14; eliminating reference to special appearance in subrule 4.9(6) which has been abolished under the current Iowa Rules of Civil Procedure and providing that motions for summary judgment under the subrule will be governed by Iowa Rule of Civil Procedure 237; providing that requests for default in a contested case proceeding will be governed by Iowa Rules of Civil Procedure 230 to 236; clarifying how the Agency will deal with defaults which are allowed under 1998 Iowa Acts, chapter 1202, section 16; replacing the current rule on disqualification and making the rule consistent with 1998 Iowa Acts, chapter 1202, section 19.

The Administrative Rules Review Committee, the Administrative Rules Coordinator, a political subdivision, a state agency, 25 persons signing one request, or an association having not less than 25 members may request the Agency to conduct a formal review of a specified rule to determine whether the rule should be repealed or amended or a new rule adopted instead. If the Agency has not conducted such a review of the specified rule within a period of five years prior to the filing with the Agency of that written request, the Agency shall prepare within a reasonable time a written report with respect to the rule summarizing the Agency's findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the rule's effectiveness, including a summary of data supporting the conclusions reached; written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule (i.e., requests for exceptions to policy) tendered to the Agency or granted by the Agency; and alternative solutions regarding the subject matter of the criticisms and the reasons they were rejected or the changes made in the rule in response to those criticisms and the reasons for the changes. A copy of the report is sent to the Administrative Rules Review Committee and the Administrative Rules Coordinator.

- The form and manner for requesting a waiver of a rule is specified.
- The current law regarding declaratory rulings is deleted and replaced with declaratory orders. The purpose is the same, but requirements are more specific than in current law. Rules are added to provide for petitions for intervention.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 10, 1999, as **ARC 8760A**. Written comments were received on Item 5, rule 876—4.38(17A), Recusal.

The adopted amendments are identical to those published under Notice of Intended Action.

The amendments will become effective July 1, 1999.

These amendments are intended to implement Iowa Code section 86.8 and Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Chs 4, 5, 12] is being omitted. These amendments are identical to those published under Notice as **ARC 8760A**, IAB 3/10/99.

[Filed 4/15/99, effective 7/1/99]
[Published 5/5/99]

[For replacement pages for IAC, see IAC Supplement 5/5/99.]

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF DISASTER EMERGENCY

WHEREAS, On April 8, 1999 and continuing, severe storms moved across the State producing strong winds, hail, flooding, and tornadoes, causing extensive damage, and;

WHEREAS, the effects of these storms were severe wind and tornado damage, causing numerous downed trees, power lines, and disaster debris removal problems, and;

WHEREAS, assistance may be needed from State agencies for debris clearance, security, and to establish disaster debris burn sites.

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, do hereby proclaim Adams and Taylor Counties for the aforementioned reasons, in a State of Disaster Emergency. This proclamation of Disaster Emergency authorizes local and State government to render good and sufficient aid to assist this area in its time of need.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 13th day of April in the year of our Lord one thousand nine hundred and ninety-nine.

ATTEST:

SECRETARY OF STATE

GOVERNOR

IOWA ADMINISTRATIVE BULLETIN
Iowa State Printing Division
Grimes State Office Building
Des Moines, Iowa 50319