IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME XXII NUMBER 9
November 3, 1999 Pages 693 to 784

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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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Hoover State Office Building, Level A
Des Moines, IA 50319
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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).

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
11	**Friday, November 12, 1999**	**December 1, 1999**
12	**Friday, November 26, 1999**	**December 15, 1999**
13	**Friday, December 10, 1999**	**December 29, 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.

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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
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Vocational rehabilitation dispute resolution process, 10.8 IAB 10/20/99 **ARC 9428A**	Director's Conference Room 524 4th St. Des Moines, Iowa	November 9, 1999 1 p.m.
CIVIL RIGHTS COMMISSION[161]		
Discrimination in housing, 9.6, 9.10(1) IAB 10/20/99 **ARC 9435A**	Conference Room—2nd Floor 211 E. Maple Des Moines, Iowa	November 9, 1999 1 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Declaratory orders, ch 3 IAB 10/6/99 **ARC 9403A**	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	November 12, 1999 10 a.m.
Agency procedure for rule making, ch 4 IAB 10/6/99 **ARC 9404A**	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	November 12, 1999 10:30 a.m.
Renewal of licenses, 17.5, 17.7, 17.9, 17.11 IAB 10/6/99 **ARC 9406A**	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	November 16, 1999 10 a.m.
ELDER AFFAIRS DEPARTMENT[321]		
Assisted living programs, 27.2 IAB 10/20/99 **ARC 9423A**	North Conference Room—3rd Floor Clemens Bldg. 200 10th St. Des Moines, Iowa	November 9, 1999 10 a.m.
MEDICAL EXAMINERS BOARD[653]		
License fees, 11.31 IAB 11/3/99 **ARC 9448A**	Suite C 400 S.W. 8th St. Des Moines, Iowa	November 23, 1999 1 p.m.
NATURAL RESOURCE COMMISSION[571]		
State parks and recreation areas, 61.2 to 61.4 IAB 11/3/99 **ARC 9461A**	East Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	November 23, 1999 9 a.m.
PHARMACY EXAMINERS BOARD[657]		
Self-assessment of pharmacy, 6.2(1), 7.6(7), 8.16, 8.17, 15.9, 36.1(4) IAB 10/6/99 **ARC 9374A**	Board Room Suite E 400 S.W. 8th St. Des Moines, Iowa	November 19, 1999 1 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Respiratory care practitioners, 260.12 IAB 11/3/99 **ARC 9460A**	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	November 24, 1999 10 a.m. to 12 noon

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Small group homes—sprinkler systems, 5.620(7)"b" IAB 10/20/99 **ARC 9429A**	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	November 16, 1999 10 a.m.

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Railroad assistance; railroad revolving loan fund, 830.2(2), 830.3, 830.4, 830.6; ch 831 IAB 10/20/99 **ARC 9427A**	Commission Conference Room 800 Lincoln Way Ames, Iowa	November 15, 1999 10 a.m. (If requested)

TREASURER OF STATE[781]

Linked investments for tomorrow (LIFT), 4.11 IAB 11/3/99 **ARC 9449A**	Room 114 Capitol Bldg. Des Moines, Iowa	November 23, 1999 1 p.m.
Iowa educational savings plan trust, 16.2, 16.4 to 16.10, 16.12, 16.13 IAB 11/3/99 **ARC 9454A** (See also **ARC 9453A** herein)	Room 114 Capitol Bldg. Des Moines, Iowa	November 24, 1999 9 a.m.

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Restoration of agricultural lands during and after pipeline construction, ch 9 IAB 10/6/99 **ARC 9400A**	Board Hearing Room 350 Maple St. Des Moines, Iowa	November 17, 1999 10 a.m.
Payment agreements, 19.4(10), 20.4(11) IAB 10/6/99 **ARC 9399A**	Board Hearing Room 350 Maple St. Des Moines, Iowa	November 4, 1999 10 a.m.
Natural gas supply and cost review, 19.11 IAB 11/3/99 **ARC 9441A**	Board Hearing Room 350 Maple St. Des Moines, Iowa	December 7, 1999 10 a.m.

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State registrar of voters, 1.2 IAB 10/20/99 **ARC 9431A**	Office of Secretary of State Second Floor Hoover State Office Bldg. Des Moines, Iowa	November 9, 1999 1:30 p.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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- Soil Conservation Division[27]

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UNIFORM STATE LAWS COMMISSION[791]
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NOTICE.... AVAILABILITY OF PUBLIC FUNDS

AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE APPLICANTS	TYPES OF PROJECTS	APPLICATION DUE DATE
Iowa Emergency Management Division	Flood Mitigation Assistance (FMA)	Statewide for NFIP participants	Any of the following entities that have an approved multi-hazard mitigation plan. If you are in the process of completing a plan, an application may be submitted. • State and local governments • Private Non Profit (PNP) Organizations or institutions which operate a PNP facility as defined in the 44 Code of Federal Regulations (CFR), Section 206.221 (e) • Indian tribes or authorized tribal organizations, and Alaska Native villages or organizations, but not Alaska native corporations with ownership vested in private individuals may submit applications to the State POC or directly to the FEMA Regional Director • Communities on probation or suspended under 44 CFR part 60 of the NFIP are NOT eligible.	• FMA is to assist State and Local Governments in funding cost-effective actions that reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other insurable structures. • Planning Grant to Communities to assess the flood risks and identify actions to reduce that risk. Eligible projects include, but are not limited to: • Acquisition of insured structures and underlying real property in fee simple and easements restricting real property to open space uses. • Relocation of insured structures from acquired or restricted real property to non hazard-prone sites. • Demolition and removal of insured structures on acquired or restricted real property.	January 2, 2000

Application and guidance may be obtained by contacting:
Dennis Harper, State Hazard Mitigation Officer
Or
Brady Robbins, Grants Coordinating Specialist
Iowa Emergency Management Division
Des Moines, Iowa 50319-0113
(515) 281-3231

NOTICE --- AVAILABILITY OF PUBLIC FUNDS

Agency	Program	Service Delivery Area	Eligible Applicants	Services	Application Due Date	Contract Period
Public Health	Family Planning	N.A.	Iowa Department of Public Health Family Planning Agencies	OB-GYN Nurse Practitioner Training	12/01/99	1/01/2000 to 12/31/2000

Request application packet from:

Jane Borst
Bureau of Family Services
Division of Family & Community Health
Iowa Department of Public Health
Lucas State Office Building
Des Moines, Iowa 50319-0075
Telephone Number: (515) 281-4911
FAX Number: (515)242-6384

ARC 9463A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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 159.5(11), the Department of Agriculture and Land Stewardship gives Notice of Intended Action to rescind Chapter 10, "Rural Revitalization Program," Chapter 11, "Apple Grading," Chapter 15, "Pilot Lamb and Wool Management Education Project," Chapter 21, "Multiflora Rose Eradication Program for Cost Reimbursement," Chapter 70, "Contracts for Dairy Inspection Services," and Chapter 75, "Production and Sale of Eggs," Iowa Administrative Code.

The purpose of this rule making is to eliminate chapters of the Department's administrative rules that are antiquated and deal with defunct programs or subject matters that are no longer under the jurisdiction of the Department.

Any interested person may make written suggestions or comments on the proposed amendment prior to 4:30 p.m. on November 23, 1999. Such written material should be directed to Ron Rowland, Regulatory Division Director, Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. Comments can also be submitted by fax to (515)281-4282 or by E-mail to Ron.Rowland@idals.state.ia.us.

This amendment is intended to implement Iowa Code section 159.5(11).

The following amendment is proposed.

Rescind and reserve **21—Chapters 10, 11, 15, 21, 70,** and **75.**

ARC 9462A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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 160.9, the Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 22, "Apiary," Iowa Administrative Code.

These amendments are intended to extend the prohibition of honeybees from being transported into Iowa from the states of Florida, Georgia, South Carolina and North Carolina because these states are known to be infested with the small hive beetle, Aethina tumida, a recently introduced, serious pest of honeybee colonies. The current prohibition expires on February 18, 2000. These amendments would also extend the prohibition to bees imported into Iowa from New Jersey, Ohio, Pennsylvania and specified counties of Minnesota. The amended rule would remain effective until February 18, 2001, unless further extended by administrative rule. The amendments also establish an inspection requirement for the sale of honeybee colonies, beeswax comb and used beekeeping equipment. In addition, the amendments require that these items must also be apparently free of American foulbrood disease in order to be sold.

Any interested person may make written suggestions or comments on the proposed amendments by 4:30 p.m. on November 23, 1999. Such written material should be directed to Robert Cox, State Apiarist, Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319, or fax (515)281-8888 or E-mail Bob.Cox@idals.state.ia.us.

These amendments are intended to implement Iowa Code section 160.9.

The following amendments are proposed.

ITEM 1. Amend rule 21—22.10(160) as follows:

21—22.10(160) Prohibit movement of infested bees from designated states. A person shall not directly or indirectly transport or cause to be transported into the state of Iowa honeybees originating in the states of Florida, Georgia, *New Jersey,* North Carolina, *Ohio, Pennsylvania,* ~~and~~ South Carolina *and the counties of Faribault, Freeborn, Mower and Steele in Minnesota*. As used in this rule, "honeybees" shall include, but not be limited to, the following: colonies, nucs, packages, banked queens and queen battery boxes. However, the shipping of honeybee queens and attendants in individual queen cages will be allowed when accompanied by a valid certificate of health indicating that the bees are from an apiary free of small hive beetles. This rule shall remain effective until February 18, ~~2000~~ *2001*.

ITEM 2. Adopt **new** rule 21—22.11(160) as follows:

21—22.11(160) Inspection required for the sale of bees, comb, or used equipment. All honeybee colonies, beeswax comb and used beekeeping equipment offered for sale in Iowa shall meet the following requirements:

1. Be inspected for infectious bee diseases and parasites by the Iowa department of agriculture and land stewardship or another state's department of agriculture not more than 60 days prior to the sale.
2. Be apparently free of American foulbrood disease.

ARC 9443A

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 239B.4(4), the Department of Human Services proposes to amend Chapter 40, "Application for Aid," and Chapter 41, "Granting Assistance," appearing in the Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments eliminate the adult care income deduction for Family Investment Program (FIP) applicants and participants who incur costs for care of an incapacitated adult while they work.

Currently, FIP applicants and participants who work may receive an income deduction up to $175 per month for care of an incapacitated adult whose needs are included in the FIP grant. Based on case record information and informal field staff surveys, there has been little, if any, request for or use of the adult care deduction. This is in keeping with FIP caseload characteristics that historically have revealed only a small number of incapacitated adults who are included in the grant. Most often, adults who are incapacitated to the extent of requiring care during the hours that the FIP caretaker works are receiving Supplemental Security Income (SSI). Since an SSI recipient cannot simultaneously receive FIP assistance, the FIP caretaker cannot receive a deduction for care of the adult who is on SSI.

Field staff reported that there are not currently any cases receiving an income deduction for adult care and requested elimination of the deduction for policy simplification.

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 November 24, 1999.

These amendments do not provide for waivers in specific situations. However, in the rare instance that a FIP household may request assistance with care of an incapacitated adult who is on the FIP grant, the Department may consider providing assistance under the Department's general rule on exceptions at rule 441—1.8(217).

These amendments are intended to implement Iowa Code section 239B.7.

The following amendments are proposed.

ITEM 1. Amend rule **441—40.21(239B)** by rescinding the definition of "Change in work expenses."

ITEM 2. Amend subrule **40.27(4)**, paragraph **"e,"** subparagraph **(1)**, as follows:

(1) Income from all sources~~, including any change in care expenses~~.

Further amend subrule **40.27(4)**, paragraph **"f,"** by rescinding and reserving subparagraph **(2)**.

ITEM 3. Amend rule 441—41.27(239B) as follows:

Amend the introductory paragraph as follows:

441—41.27(239B) Income. All unearned and earned income, unless specifically exempted, disregarded, deducted for work expenses, or diverted as defined in these rules, shall be considered in determining initial and continuing eligibility and the amount of the family investment program grant. The determination of initial eligibility is a three-step process. Initial eligibility shall be granted only when (1) the countable gross nonexempt unearned and earned income, exclusive of the family investment program grant, received by the eligible group and available to meet the current month's needs is no more than 185 percent of the standard of need for the eligible group; (2) the countable net unearned and earned income is less than the standard of need for the eligible group; and (3) the countable net unearned and earned income, after applying allowable disregards, is less than the payment standard for the eligible group. The determination of continuing eligibility is a two-step process. Continuing eligibility shall be granted only when (1) countable gross nonexempt income, as described for initial eligibility, does not exceed 185 percent of the standard of need for the eligible group; and (2) countable net unearned and earned income is less than the payment standard for the eligible group. The amount of the family investment program grant shall be determined by subtracting countable net income from the payment standard for the eligible group. Child support assigned to the department in accordance with subrule 41.22(7) and retained by the department as described in subparagraph 41.27(1)"h"(2) shall be considered as exempt income for the purpose of determining continuing eligibility, including child support as specified in ~~paragraphs 41.22(7)"b" and~~ *paragraph* 41.27(7)"q." ~~Expenses for care of disabled adults, deductions,~~ *Deductions* and diversions shall be allowed when verification is provided. The county office shall return all verification to the applicant or recipient.

Amend subrule **41.27(2)** by rescinding and reserving paragraph **"b."**

Further amend subrule **41.27(2)**, paragraph **"c,"** as follows:

c. After deducting the allowable work ~~expenses~~ *expense* as defined in 41.27(2)"a" ~~and "b,"~~ and income diversions as defined in subrules 41.27(4) and 41.27(8), 50 percent of the total of the remaining monthly nonexempt earned income, earned as an employee or the net profit from self-employment, of each individual whose income must be considered is deducted in determining eligibility and the amount of the assistance grant. The 50 percent work incentive deduction is not time limited. Initial eligibility is determined without the application of the 50 percent work incentive deduction as described at 41.27(9)"a"(2) and (3).

Amend subrule **41.27(6)**, paragraph **"ab,"** as follows:

ab. Deposits into an individual development account (IDA) when determining eligibility and benefit amount. The amount of the deposit is exempt as income and shall be used in the 185 percent eligibility test. The deposit shall be deducted from nonexempt earned and unearned income that the client receives in the same budget month in which the deposit is made. To allow a deduction, verification of the deposit shall be provided by the end of the report month or the extended filing date, whichever is later. The client shall be allowed a deduction only when the deposit is made from the client's money. The earned income deductions in 41.27(2)"a," ~~"b,"~~ and "c" shall be applied to nonexempt earnings from employment or net profit from self-employment that remain after deducting the amount deposited into the account. Allowable deductions shall be applied to any nonexempt unearned income that remains after deducting the amount of the deposit. If the client has both nonexempt earned and unearned income, the amount deposited into the IDA account shall first be deducted from the client's nonexempt unearned income. Deposits shall not be deducted from earned or unearned income that is exempt.

Amend subrule **41.27(8)**, paragraph **"a,"** subparagraph **(1)**, as follows:

(1) Treatment of income when the parent is a citizen or an alien other than those described in 41.23(4)"a"(3). A parent who is living in the home with the eligible child(ren) but whose needs are excluded from the eligible group is eligible for the 20 percent earned income deduction, ~~care expenses for an incapacitated adult in the eligible group,~~ the 50 percent work incentive deduction described at 41.27(2)"a," ~~"b,"~~ and "c," and diversions described at 41.27(4), and shall be permitted to retain that part of the parent's income to meet the parent's needs as determined by the difference between the needs of the eligible group with the parent included and the needs of the eligible group with the parent excluded except

HUMAN SERVICES DEPARTMENT[441](cont'd)

as described at 41.27(11). All remaining nonexempt income shall be applied against the needs of the eligible group.

Amend subrule **41.27(9)**, paragraph **"a,"** subparagraph (7), as follows:

(7) ~~Work expense for care, as defined in 41.27(2)"b," shall be the allowable care expense expected to be billed or otherwise expected to become due during the budget month.~~ The 20 percent earned income deduction for each wage earner, as defined in 41.27(2)"a," and the 50 percent work incentive deduction as defined in 41.27(2)"c," shall be allowed.

Further amend subrule **41.27(9)**, paragraph **"b,"** subparagraph (4), as follows:

(4) ~~Work expense for care, as defined in 41.27(2)"b," shall be the allowable care expense expected to be billed or which otherwise became due in the budget month.~~ The 20 percent earned income deduction for each wage earner, as defined in 41.27(2)"a," and the 50 percent work incentive deduction as defined in 41.27(2)"c," shall be allowed.

Further amend subrule **41.27(9)**, paragraph **"d,"** as follows:

d. The third digit to the right of the decimal point in any computation of income~~,~~ *and* hours of employment ~~and work expenses for care, as defined in 41.27(2)"b,"~~ shall be dropped. This includes the calculation of the amount of a truancy sanction as defined in paragraph 41.25(8)"g" or a child support sanction as defined in paragraph 41.22(6)"f."

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code ~~chapter 239B and 1997 Iowa Acts, House File 715, section 3, subsection 5~~ *section 239B.7*.

ARC 9444A

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 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

This amendment clarifies that the value of a life estate or remainder interest is determined by using the age of the life estate holder or other person whose life controls the life estate. The current rule provides that, in the absence of other evidence, the value of a life estate or remainder interest in property shall be determined using the age of the individual who owns the life estate or remainder interest. This is incorrect in that the value of a life estate or remainder interest depends on the age of the life estate holder (or the age of the original life estate holder, whose life still controls, if the life estate has been transferred) not the age of the remainder person. The current rule has been applied by the Department using the age of the life estate holder.

This amendment does not provide for waiver in specified situations because it is always correct to determine the value of a life estate or remainder interest using the age of the life estate holder or other person whose life controls the life estate.

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 November 24, 1999.

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

The following amendment is proposed.

Amend subrule **75.13(2)**, fourth unnumbered paragraph, as follows:

Valuation of life estates and remainder interests. In the absence of other evidence, the value of a life estate or remainder interest in property shall be determined using the following table by multiplying the fair market value of the entire underlying property (including all life estates and all remainder interests) by the life estate or remainder interest decimal corresponding to the age of the ~~individual who owns the life estate or remainder interest~~ *life estate holder or other person whose life controls the life estate.*

ARC 9448A

MEDICAL EXAMINERS BOARD[653]

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 147.76, 147.80 and 272C.3, the Board of Medical Examiners gives Notice of Intended Action to amend Chapter 11, "Licensure Requirements," Iowa Administrative Code.

These amendments revise the license fees to provide the revenue needed to operate the Board of Medical Examiners as required by statute. The revision raises the fees to renew an active license by $125, to issue a temporary license by $50, to renew a temporary license by $25, and to issue a special license by $25. Currently, the Board charges inactive physicians $200 per biennial period to remain inactive; this amendment would charge a one-time fee of $325 to become inactive and no continuing fee to remain in that status.

Subrule 11.31(4) provides additional fee revisions needed to provide the revenue necessary to operate the Board of Medical Examiners as required by statute.

- The verification and certification of examination fees are being increased to offset the increased cost of labor involved in the procedures and the costs to maintain the computers and programs that store the data. Likewise, the certification of examination fees requires long-term storage of the examination score records in the agency. The subscription deadline for unlimited verifications is being removed; the subscriptions are handled on an annual basis whenever that falls.
- New fees are being established for mailing lists because the Board has not previously sold lists and labels directly. Prior to the Board's change to an on-site database, the Iowa Department of Public Health sold the lists and labels directly to customers. Beginning in late October 1999 the

MEDICAL EXAMINERS BOARD[653](cont'd)

Board will manage its own data from an on-site local area network.

• The Board has not previously charged for returned checks; however, it receives several per year.

• The Board has not previously charged for copies of its administrative rules or the various laws related to medicine and surgery, osteopathic medicine and surgery, and osteopathy. The Board has been receiving an increasing number of requests and must offset the expense involved in duplication and keeping the copies current. The relevant rules involve nearly 100 pages and the statutes at least 35 pages.

These amendments are intended to implement Iowa Code sections 147.10, 147.25, 147.76 and 147.80.

Interested parties may make written comments on the proposed amendments on or before November 23, 1999. Written comments should be mailed or faxed to Ann Mowery, Ph.D., Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686; telephone (515)242-6039 or fax (515)242-5908.

There will be a public hearing on November 23, 1999, at 1 p.m. at the above address, at which time persons may present their views either orally or in writing.

The following amendments are proposed.

Amend rule 653—11.31(147) to read as follows:

653—11.31(147) Fees. The following fees shall be collected by the board and shall not be refunded except by board action in unusual instances such as documented illness of the applicant, death of the applicant, inability of the applicant to comply with the rules of the board, or withdrawal of the application provided such withdrawal is received in writing by the cancellation date specified by the board. Examination fees shall be nontransferable from one examination to another. Refunds of examination fees shall be subject to a nonrefundable administrative fee of $75 per application. The administrative fee shall be deducted by the board or its designated testing service prior to actual refund.

11.31(1) and **11.31(2)** No change.

11.31(3) For a renewal of ~~a~~ *an active* license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, ~~$200~~ *$325* per biennial period or a prorated portion thereof for a period of less than two years as determined by the board to facilitate biennial renewal according to month and year of birth.

11.31(4) Upon written request, the board may provide the following information about the status of licensees or examinees for the designated fees:

a. Written verification that a licensee in this state is licensed.

(1) For a certified statement verifying licensure including the board seal or a letter of good standing, ~~$25~~ *$40*;

(2) For verification of licensure status not requiring certified statements or letters of up to ten licensees, $15.

(3) For an unlimited number of verifications of licensure status in a 12-month period, an annual subscription fee of $2,000. ~~After June 30, 1994, the annual subscription fee shall be submitted prior to July 31.~~

b. Written certification of scores of an examination given by the board in this state as permitted under Iowa Code section 147.21 and 653 IAC 1.13(2)"f" and "g."

(1) For a certified statement of grades attained by examination, ~~$35~~ *$45*.

(2) For a certified statement of grades attained by examination including examination history or other additional documentation, ~~$45~~ *$55*.

c. Documentation of public board actions subsequent to 653—subrule 1.3(7).

(1) For a certified copy of original documents affecting the licensure status of licensees including final orders and consent agreements, $35.

(2) For a copy of public documents related to board actions, rulings or procedures on licensure and disciplinary matters, $20.

d. Mailing lists.

(1) For printed mailing list of physicians, $65.

(2) For a mailing list on diskette, $40.

(3) For a mailing list in an electronic file, $35.

e. Returned checks. For a check returned for any reason, $25. If a license had been issued by the board office based on a check which is later returned by the bank, the board shall request payment by certified check or money order. If the fees are not paid within two weeks of notification by certified mail of the returned check, the licensee shall be subject to disciplinary action for noncompliance with board rules.

f. Copies of the Iowa Code chapters that pertain to the practice of medicine, $10.

g. Copies of the Medical Examiners Board[653] rules in the Iowa Administrative Code, $10.

11.31(5) to **11.31(7)** No change.

11.31(8) For a temporary license, ~~$150~~ *$200*.

11.31(9) For renewal of a temporary license, ~~$175~~ *$200*.

11.31(10) *For a license to be placed on inactive status, $325.*

11.31(11) and **11.31(12)** No change.

11.31(13) For a special license to practice medicine and surgery or osteopathic medicine and surgery, an annual fee of ~~$175~~ *$200*.

11.31(14) and **11.31(15)** No change.

ARC 9461A

NATURAL RESOURCE COMMISSION[571]

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 subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

These amendments accomplish the following:

1. Define the term "yurt."
2. Delete the old cabins at Backbone State Park from the list of cabins available to rent.
3. Increase the rental fee for cabins at some state parks.
4. Set fees and the reservation policy for renting yurts.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 23, 1999. Such written materials should be directed to the Parks, Recreation and Preserves Division, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons

NATURAL RESOURCE COMMISSION[571](cont'd)

who wish to convey their views orally should contact the Division at (515)281-3449 or TDD (515)242-5967 or at the Division offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on November 23, 1999, at 9 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building at which time persons may present their views either 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 Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 461A.3, 461A.42, 461A.49, 461A.51, and 461A.57.

The following amendments are proposed.

ITEM 1. Amend **571—61.2(461A)** by adding the following **new** definition in alphabetical order:

"Yurt" means a one-room circular fabric structure built on a platform which is available for rental on a daily or weekly basis.

ITEM 2. Amend subrule 61.3(2) as follows:

61.3(2) Cabin rental. This fee does not include tax.

	Per Day (Minimum two nights)	Per Week
Backbone State Park, Delaware County (renovated cabins)	$50	$300
~~Backbone State Park, Delaware County (old cabins)~~	~~40.00~~	~~200~~
Backbone State Park, Delaware County (new cabins)	~~60.00~~ *85*	~~375~~ *510*
Dolliver State Park, Webster County	~~22.00~~ *35*	~~120~~ *210*
Green Valley State Park, Union County	~~20.00~~ *35*	~~120~~ *210*
Lacey-Keosauqua, Van Buren County	30	175
Lake Darling State Recreation Area, Washington County	~~20.00~~ *30*	~~120~~ *175*
Lake of Three Fires State Park, Taylor County	22	120
Lake Wapello, Davis County (except Cabin No. 13)	30	175
Lake Wapello, Davis County, Cabin No. 13	35	200
Palisades-Kepler, Linn County	30	175
Pine Lake State Park, Hardin County		
Sleeping area cabins (four-person occupancy limit)	40	200
One-bedroom cabins	~~50.00~~ *55*	~~300~~ *330*
Pleasant Creek Recreation Area, Linn County	~~20.00~~ *30*	~~120~~ *175*
Springbrook State Recreation Area, Guthrie County	22	120
Wilson Island Recreation Area, Pottawattamie County (#1)	18	110
Extra cots, where available	1	

ITEM 3. Adopt **new** subrule 61.3(3) as follows and renumber subrules **61.3(3)** to **61.3(7)** as **61.3(4)** to **61.3(8)**.

61.3(3) Yurt rental. This fee does not include tax.

	Per Day (Minimum two nights)	Per Week
McIntosh Woods State Park, Cerro Gordo County	$30	$175

ITEM 4. Amend subrule 61.4(2), introductory paragraph, as follows:

61.4(2) Lodge, cabin, *yurt,* open shelter, group camp and designated organized youth camp site reservations and rental.

ITEM 5. Amend subrule **61.4(2)**, paragraph **"b,"** as follows:

b. Telephone and walk-in reservations will not be accepted until the first business day following November 1 of each year for the heated cabins and the first business day after January 1 of each year for all other cabins, *yurts,* group camps, open and enclosed shelters, designated organized youth camp sites, or lodges.

ITEM 6. Amend subrule **61.4(2)**, paragraph **"f,"** as follows:

f. Except as provided in 61.4(2)"m" and "n," cabin and group camp reservations must be for a minimum of one week (Saturday p.m. to Saturday a.m.). Reservations for more than a two-week stay will not be accepted *for any facility.* These facilities, if not reserved, may be rented for a minimum of two nights on a walk-in, first-come, first-served basis. No walk-in rentals will be permitted after 6 p.m. of the first night of the rental period.

ITEM 7. Amend subrule **61.4(2)**, paragraph **"g,"** as follows:

g. Persons renting cabins, *yurts* or group camp facilities must check in at or after 4 p.m. on Saturday. Check-out time is 11 a.m. or earlier on Saturday.

ITEM 8. Amend subrule **61.4(2)**, paragraph **"h,"** as follows:

h. Except by arrangement for late arrival with the park ranger, no cabin, *yurt* or group camp reservation will be held past 6 p.m. on the first night of the reservation period if the person reserving the facility does not appear. When late arrival arrangements have been made, the person must appear prior to the park closing time established by Iowa Code section 461A.46 and Iowa Administrative Code subrule 61.5(3) or access will not be permitted to the facility until 8 a.m. the following day. Arrangements must be made with the park ranger if next-day arrival is to be later than 9 a.m.

ITEM 9. Amend subrule **61.4(2)**, paragraph **"k,"** as follows:

k. The number of persons occupying rental cabins is limited to six in cabins which contain one bedroom or less

NATURAL RESOURCE COMMISSION[571](cont'd)

and eight in cabins with two bedrooms. Occupancy of the sleeping area cabins located at Pine Lake State Park and Wilson Island State Recreation Area is limited to four persons. *Occupancy of the yurts is limited to four persons.*

ITEM 10. Amend subrule **61.4(2)**, paragraph **"n,"** as follows:

n. The sleeping room cabin at Wilson Island State Recreation Area, ~~and~~ the cabin and group camp at Dolliver, the cabins at Pleasant Creek, *the yurts at McIntosh Woods* and the group camp at Springbrook State Recreation Area may be reserved for a minimum of two days throughout the rental season.

ITEM 11. Amend subrule **61.4(5)**, paragraph **"a,"** subparagraph **(1)**, as follows:

(1) All cabin, *yurt* and group camp reservation requests must be accompanied by a reservation deposit equivalent to one day of the daily rate for that rental unit as provided in 61.3(2) and 61.3(4) (no sales tax shall be included). The deposit shall be required for each rental unit and rental period requested. The reservation deposit will be applied toward the total rental fee when the rental fee is due. Reservations made by telephone will be tentatively scheduled and held for seven working days. If written confirmation and reservation deposit are not received by the end of the seventh working day, the reservation will be canceled.

ITEM 12. Amend subrule **61.4(5)**, paragraph **"b,"** subparagraph **(1)**, as follows:

(1) Upon arrival for the cabin *or yurt* rental period, a damage deposit in the amount of $50 and the remainder of the applicable rental fee, including all sales tax, shall be paid in full. This damage deposit shall be paid by use of a separate financial instrument (e.g., check, money order, or cash) from the rental fee.

ITEM 13. Amend subrule **61.4(5)**, paragraph **"b,"** subparagraph **(7)**, numbered paragraph **"1,"** as follows:

1. Inclement weather prohibits arrival at or entrance to the state park cabin, *yurt,* group camp, open or enclosed shelter or lodge area.

ARC 9460A

PROFESSIONAL LICENSURE DIVISION[645]

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 147.76, the Board of Respiratory Care Examiners hereby gives Notice of Intended Action to amend Chapter 260, "Respiratory Care Practitioners," Iowa Administrative Code.

These amendments clarify and define the term "direct and immediate supervision of a respiratory care student or graduate practitioner."

These amendments do not provide for waiver because "direct and immediate supervision" of students and graduate practitioners is a statutory requirement and these amendments cannot waive that requirement.

Any interested person may make written comment on the proposed amendments not later than November 24, 1999, addressed to Marge Bledsoe, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

A public hearing will be held on November 24, 1999, from 10 a.m. to 12 noon in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa. 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 proposed amendments. The Board requests submission of a written copy of all oral comments presented at the hearing. The Board has determined that these amendments will have no impact on small business within the meaning of Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202, section 10].

These amendments are intended to implement Iowa Code chapter 152B.

The following amendments are proposed.

ITEM 1. Amend subrule 260.12(2) as follows:

260.12(2) A graduate of an approved respiratory care training program employed in an organized health care system may render services as defined in Iowa Code sections 152B.2 and 152B.3 under the ~~direction~~ *direct* and immediate supervision of a respiratory care practitioner for one year. The graduate shall be identified as a "respiratory care practitioner-license applicant."

ITEM 2. Adopt the following **new** subrule 260.12(3) as follows:

260.12(3) Direct and immediate supervision of a respiratory care student or graduate practitioner means that the licensed respiratory practitioner shall:

1. Be continuously on site and present in the department or facility where the student or graduate is performing care;
2. Be immediately available to assist the person being supervised in the care being performed; and
3. Be responsible for care provided by students and graduates.

ARC 9456A

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 section 421.14, the Department of Revenue and Finance hereby proposes an amendment to Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Iowa Administrative Code.

Iowa Code section 421.7 requires the Director of Revenue and Finance to determine the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes arising under Iowa Code Title X shall be 10 percent for the calendar year 2000. The interest rate is 2 percent above the average prime rate charged by banks on short-term business loans as published in the Federal Re-

serve Bulletin for the 12-month period ending September 30, 1999. For the past 12 months the average prime rate was 8 percent.

The 10 percent annual rate is equivalent to an interest rate of 0.8 percent per month on all outstanding taxes. The rate will be applied to all taxes owing or becoming payable on or after January 1, 2000. Under Iowa law, each fraction of a month is considered a whole month when interest is computed. When required to pay interest on a taxpayer's refund, the Department will also pay interest at the 10 percent rate on refunds owing or becoming payable on or after January 1, 2000.

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

There are no waiver provisions reflected in this rule because the Department lacks the statutory authority to grant waivers where rules are mainly an interpretation of statutes.

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202, section 10]. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202, section 10] if a written request is filed by delivery or by mailing postmarked no later than December 5, 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 Administrative Rules Coordinator, at least 25 persons signing that request who qualify as a small business, or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 3, 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 November 28, 1999.

This amendment is intended to implement Iowa Code chapter 422.

The following amendment is proposed.

Amend rule 701—10.2(421) by adopting the following **new** subrule:

10.2(19) Calendar year 2000. The interest rate upon all unpaid taxes which are due as of January 1, 2000, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2000. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2000. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2000.

ARC 9455A

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 421.17(19) and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," Chapter 33, "Receipts Subject to Use Tax Depending on Method of Transaction," Chapter 81, "Administration," Chapter 82, "Cigarette Tax," and Chapter 83, "Tobacco Tax," Iowa Administrative Code.

Item 1 strikes the $50 per day/offense penalty for cigarette tax violations and proposes a three-tiered penalty that begins with a $200 penalty for first violations and increases to $1,000 for third and subsequent violations. Item 1 also provides a penalty for the possession of unstamped cigarettes which varies with the number of unstamped cigarettes possessed and ranges from a minimum of $200 to a maximum of $3,000.

Items 2, 9, 13, 16, and 22 simply change the implementation clauses.

Items 3 and 4 provide that sales of tangible personal property and enumerated services are exempt from sales tax and purchases of tangible personal property are exempt from use tax only if sold or used on their own reservation to or by Indians of their own tribe.

Item 5 deletes the requirement that the Department sell cigarette stamps in unbroken books of 1,000.

Item 6 provides that the two-year statute of limitations does not apply if a false or fraudulent report or return is made with the intent to evade tax, if a report or return is not filed, or if a person is in possession of unstamped cigarettes. It also provides that the two-year statute of limitations may be extended upon agreement between the taxpayer and the Department.

Item 7 directs common carriers to maintain the same records for tobacco products shipped into Iowa as are maintained for cigarettes.

Item 8 requires any taxpayer subject to the provisions of Iowa Code chapter 453A to maintain records.

Item 10 adds the word "report" to clarify that the Department can audit the records of any taxpayer subject to the provisions of Iowa Code chapter 453A.

Item 11 adds the words "or returns" to provide that the confidential information rule applies to tobacco products as well as cigarettes.

Item 12 requires that a manufacturer affix stamps to cigarettes prior to their shipment into the state unless the cigarettes are shipped to an Iowa permitted distributor or distributor's agent.

Item 14 requires that the cigarette tax be added to the selling price each time a package of cigarettes is sold so that the consumer bears the burden of the tax.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

Items 15 and 24 clarify that cigarettes and tobacco products are exempt from tax only if sold on their own reservation to Indians of their own tribe. Also, the changes provide that Indians are subject to permit requirements.

Item 17 requires any person in possession of unstamped cigarettes to pay the tax directly to the Department, and title to the stamps passes to the purchaser at the time the Department delivers the stamps to the carrier.

Item 18 deletes references to the sale of meter settings as they are no longer used to show that the tax has been paid on cigarette packages.

Item 19 deletes an obsolete provision that states when distributors and manufacturers can begin receiving a discount for stamps purchased.

Items 20 and 21 require manufacturers and other persons involved in the sale or purchase of cigarettes to file reports containing information as requested by the director.

Item 23 replaces the words "report" and "reports" with the words "return" and "returns" as this is the appropriate terminology when reference is made to tobacco products.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

There are no waiver provisions reflected in these rules because the Department lacks the statutory authority to grant waivers where rules are mainly an interpretation of statutes.

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.4A [1998 Iowa Acts, chapter 1202, section 10]. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202, section 10] if a written request is filed by delivery or by mailing postmarked no later than December 5, 1999, to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10456, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 3, 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 convey their views orally 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 November 28, 1999.

These amendments are intended to implement Iowa Code chapter 453A as amended by 1999 Iowa Acts, Senate File 136.

The following amendments are proposed.

ITEM 1. Amend subrule 10.76(1) to read as follows:

10.76(1) Cigarettes. The following is a list of offenses which subject the violator to a penalty:

1. The failure of a permit holder to maintain proper records;
2. The sale of taxable cigarettes without a permit;
3. The filing of a late, false or incomplete report with the intent to evade tax by a cigarette distributor, distributing agent or wholesaler;
4. Acting as a distributing agent without a valid permit; and
5. A violation of any provision of Iowa Code chapter 453A or these rules.

~~Each day a violation continues constitutes a separate offense. The penalty for each separate offense is $50.~~ *Penalties for these offenses are as follows:*

- *A $200 penalty for the first violation.*
- *A $500 penalty for a second violation within two years of the first violation.*
- *A $1,000 penalty for a third or subsequent violation within two years of the first violation.*

Penalties for possession of unstamped cigarettes are as follows:

- *A $200 penalty for the first violation if a person is in possession of more than 40 but not more than 400 unstamped cigarettes.*
- *A $500 penalty for the first violation if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes.*
- *A $1,000 penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes.*
- *For a second violation within two years of the first violation, the penalty is $400 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; $1,000 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and $2,000 if a person is in possession of more than 2,000 unstamped cigarettes.*
- *For a third or subsequent violation within two years of the first violation, the penalty is $600 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; $1,500 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and $3,000 if a person is in possession of more than 2,000 unstamped cigarettes.*

a. to c. No change.

See rule 701—10.5(421) for statutory exceptions to penalty for taxes due and payable on or after January 1, 1987. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.

ITEM 2. Amend rule **701—10.76(453A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 453A.28, 453A.31 and 453A.46 *as amended by 1999 Iowa Acts, Senate File 136.*

ITEM 3. Amend subrules 18.30(2) to 18.30(4) as follows:

18.30(2) Retail sales tax—tangible personal property. Retail sales of tangible personal property made on a recognized settlement or reservation to ~~American~~ Indians *who are members of the tribe located on that settlement or reservation,* where delivery occurs on the reservation, are exempt from tax *(Bryan v. Itasca County, 426 U.S. 373, 376-77 (1976); Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463, 475-81 (1976)).* Retail sales of tangible personal property made on a recognized settlement or reservation to Indians where delivery occurs off the reservation are subject to tax. Retail sales of tangible personal property made to non-Indians on a recognized settlement or reservation are subject to tax regardless of where the delivery occurs. Sales

made to non-Indians are taxable even though the seller may be a member of a recognized settlement or reservation.

18.30(3) Retail sales tax—services. Sales of enumerated taxable services and sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to ~~American~~ Indians *who are members of the tribe located on the recognized settlement or reservation* where delivery of the service occurs ~~on a recognized settlement or reservation~~ are exempt from tax *(Bryan v. Itasca County, 426 U.S. 373, 376-77 (1976); Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463, 475-81 (1976))*. Sales of enumerated taxable services or sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Indians where delivery of the services occurs off a recognized settlement or reservation are subject to tax.

18.30(4) Off-reservation purchases. Purchases made by ~~American~~ Indians off a recognized settlement or reservation are subject to tax if delivery occurs off the reservation. Purchases made by Indians off a recognized settlement or reservation are not subject to tax if delivery is made on the reservation *to Indians who are members of the tribe located on that reservation.*

ITEM 4. Amend subrules 33.5(2) and 33.5(3) to read as follows:

33.5(2) Use tax. Out-of-state purchases made by ~~American~~ Indians which are purchased for use on a recognized settlement or reservation where delivery occurs on a recognized settlement or reservation *to Indians who are members of the tribe located on that settlement or reservation* are exempt from tax. Out-of-state purchases made by Indians where delivery occurs off a recognized settlement or reservation are subject to tax even though purchased for use on a recognized settlement or reservation.

33.5(3) Use tax—vehicles subject to registration. Vehicles subject to registration with county treasurers are exempt from use tax if delivery of the vehicle is made on a recognized settlement or reservation *to Indians who are members of the tribe located on that settlement or reservation.* Vehicles subject to registration with county treasurers are subject to use tax if delivery of the vehicle is made off a recognized settlement or reservation.

ITEM 5. Amend rule **701—81.1(453A)**, definitions of "Stamps" and "Taxpayer" and the implementation clause, as follows:

"Stamps" means Iowa Fuson stamps, 30,000 to a roll, *and* Iowa hand stamps, ~~1,000 to a book, or other quantities~~ *of any quantity* authorized by the director, to be applied to packages of cigarettes and little cigars.

"Taxpayer" means any person required to collect or remit tax directly to the department or required to be licensed or to file any report *or return* or keep records under Iowa Code chapter 453A.

This rule is intended to implement Iowa Code chapter 453A as amended by ~~1998~~ *1999* Iowa Acts, ~~House File 2120~~ *Senate File 136.*

ITEM 6. Amend rule 701—81.3(453A) as follows:

701—81.3(453A) Examination of records. ~~After~~ *Within two years after* a return *or report* is filed *or within two years after the report or return became due, whichever is later,* the department shall examine it, determine *the amount of* cigarette or tobacco tax due, and give notice of assessment to the taxpayer. If no return *or report* has been filed, the department may determine *the amount of* tax due and give notice thereof. *The period of examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent report or return made with the intent to evade tax, or in the case of a failure to file a report or return, or if a person purchases or is in possession of unstamped cigarettes. The two-year period of limitation may be extended by a taxpayer by signing a waiver agreement form provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies and must provide that a claim for refund may be filed at any time during the period of extension.*

Whenever books and records are examined by an employee designated by the director, whether to verify a return, *report,* or claim for refund or in making an audit, ~~then~~ an assessment will be issued for any amount of tax due *or a refund made for any amount of tax overpaid.*

This rule is intended to implement Iowa Code sections 453A.15, ~~453A.26 and~~ 453A.28, *and 453A.46 as amended by 1999 Iowa Acts, Senate File 136.*

ITEM 7. Amend subrule 81.4(10), introductory paragraph, as follows:

81.4(10) Common carrier engaged in transporting cigarettes *or tobacco products* into Iowa.

ITEM 8. Adopt **new** subrule 81.4(14) as follows:

81.4(14) Other persons. The director may require any person other than those previously listed in this rule to maintain books and records as deemed necessary by the director.

ITEM 9. Amend rule **701—81.4(453A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 453A.15, *and* ~~453A.18, 453A.19, 453A.24,~~ 453A.45 *as amended by 1999 Iowa Acts, Senate File 136, and Iowa Code sections 453A.18, 453A.19, 453A.24,* and 453A.49.

ITEM 10. Amend rule 701—81.6(453A), introductory paragraph, as follows:

701—81.6(453A) Audit of records—cost, supplemental assessments and refund adjustments. The department shall have the right and duty to examine or cause to be examined the books, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a return *or report* filed or determining the tax liability of any taxpayer under Iowa Code chapter 453A.

ITEM 11. Amend rule 701—81.14(453A), introductory paragraph, as follows:

701—81.14(453A) Confidential information. The release of information contained in any reports *or returns* filed under Iowa Code chapter 453A or obtained by the department in the administration of Iowa Code chapter 453A is governed by the general provisions of Iowa Code chapter 22 since there are no specific provisions relating to confidential information contained in chapter 453A. Any request for information must be made pursuant to rule 701—6.2(17A). See rule 701—6.3(17A).

ITEM 12. Amend subrule 82.1(5) as follows:

82.1(5) Manufacturer's permit. Any manufacturer, as defined in Iowa Code section 453A.1, may obtain a manufacturer's permit from the department. A manufacturer is any person who ships cigarettes into this state from outside the state. The permit is issued without cost and is valid until revoked or canceled. The permit allows the manufacturer to purchase tax stamps ~~or meter settings~~ from the department and to affix such stamps to cigarettes outside of this state prior to their shipment into the state. *A manufacturer is re-*

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quired to affix stamps to cigarettes prior to their shipment into this state unless the cigarettes are shipped to an Iowa permitted distributor or an Iowa permitted distributor's agent.

ITEM 13. Amend rule **701—82.1(453A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 453A.13, ~~453A.16,~~ 453A.17, and 453A.23, *and Iowa Code section 453A.16 as amended by 1999 Iowa Acts, Senate File 136.*

ITEM 14. Amend subrule **82.4(2)** by adopting the following **new** unnumbered paragraph at the end of the subrule:

The tax must be added to the selling price of every package of cigarettes so that the ultimate consumer bears the burden of the tax.

ITEM 15. Amend subrule **82.4(5)**, paragraph **"b,"** as follows:

b. Sales *by or* to Indians. Sales by Indians *to other Indians of their own tribe* on federally recognized Indian reservations or settlements ~~to other Indians~~ *of which they are tribe members* are exempt from the tax *(Bryan v. Itasca County, 426 U.S. 373, 376-77 (1976); Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463, 475-81 (1976))*. The Indians ~~also~~ are ~~not~~ subject to the permit requirements of Iowa Code chapter 453A. ~~However,~~ Indians who have purchased or obtained cigarettes from an Indian reservation source and come within the taxing jurisdiction of the state are subject to the provisions of Iowa Code sections 453A.6(2), 453A.36(1) and 453A.37.

ITEM 16. Amend rule **701—82.4(453A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 453A.6 *as amended by 1999 Iowa Acts, Senate File 136.*

ITEM 17. Amend rule 701—82.5(453A) as follows:

701—82.5(453A) Cigarette tax stamps.

82.5(1) In general. To evidence the payment of the cigarette tax, cigarette stamps ~~or meter impressions~~ must be securely affixed to the individual cigarette containers. The stamps ~~or meter settings~~ shall be provided by the director, and either sold directly to a distributor or a manufacturer holding a valid distributor's or manufacturer's permit or through authorized banks, as defined in Iowa Code section 524.103 to these same ~~licensees~~ *permittees*. The possession of unstamped cigarettes by persons not authorized to possess unstamped cigarettes shall be prima facie evidence of the nonpayment of the tax. *The penalty for possession of unstamped cigarettes is set forth in Iowa Code section 453A.31(1) as amended by 1999 Iowa Acts, Senate File 136, section 81. Any person in possession of unstamped cigarettes must pay the tax directly to the department.* If sales of cigarettes exceed the purchase of cigarette stamps by persons authorized and responsible to affix stamps, there is established a rebuttable presumption that the excess cigarettes were sold without the tax stamps affixed thereto.

82.5(2) Purchase of stamps from the department. Stamps may be purchased from the department *and from authorized banks* in ~~unbroken books of 1,000 stamps or~~ unbroken rolls of 30,000 stamps, or other quantities authorized by the director. ~~Meter settings may be purchased from the department in increments of 1,000. Stamps may be purchased from authorized banks in unbroken rolls of 30,000. Meter settings may be purchased from banks in increments of 1,000.~~ The stamps may be purchased only by persons holding an unrevoked distributor's permit or an unrevoked manufacturer's permit.

When cigarette stamps are purchased from the department, orders shall be sent directly to the department on a form prescribed by and available upon request from the department. The order must be accompanied by a remittance payable to "Treasurer of State of Iowa" in the amount of the face value of the stamps less any discount as provided in rule 701—82.7(453A). The stamps shall be sent to the purchaser through the United States Postal Service by certified mail at the department's expense. ~~To more greatly ensure the receipt of the stamps, the~~ *The* purchaser may request alternate methods of transmission, but such methods shall be at the expense of the purchaser. *Regardless of the method used to send the stamps, title transfers to the purchaser at the time the department delivers the stamps to the carrier.*

82.5(3) Purchase of stamps from authorized bank. The purchase of stamps ~~or meter settings~~ from an authorized bank must be made by the distributor or manufacturer or the distributor's or manufacturer's representative. The permittee shall furnish the bank with a requisition form prescribed by the department along with payment for the full price of the stamps less any discount as provided in rule 701—82.7(453A). The director may require such payments to be by cashier's check or certified check as to any individual distributor or manufacturer. The authorized bank shall be notified in writing by the department of any such requirement. Distributors or manufacturers who elect to purchase stamps ~~or meter settings~~ from authorized banks shall advise the department in writing of the authorized bank so elected. The distributor or manufacturer may not purchase from any other bank other than the one so selected, but may still purchase stamps ~~or meter settings~~ directly from the department. See rule 701—82.6(453A) for restrictions on authorized banks as to the sale of stamps ~~or meter settings~~. Also see rule 82.11(453A) relating to refunds.

This rule is intended to implement Iowa Code sections 453A.6, ~~453A.7,~~ 453A.8, *and* ~~453A.10, 453A.12,~~ 453A.28, *as amended by 1999 Iowa Acts, Senate File 136, and Iowa Code sections 453A.7, 453A.10, 453A.12,* and 453A.35.

ITEM 18. Amend rule 701—82.6(453A) as follows:

701—82.6(453A) Banks authorized to sell stamps ~~or meter settings~~—requirements—restrictions.

82.6(1) Authorization. The director has the discretion to allow the sale or distribution of stamps ~~or meter settings~~ through authorized banks as defined in Iowa Code section 524.103. The authorization of a bank to sell stamps ~~or meter settings~~ is not a mandatory direction, but may be utilized by the director to enhance the efficiency of the tax stamp distribution system. Some of the factors the director will consider in determining whether or not to authorize a bank to sell stamps ~~or meter settings~~ are:

a. Geographical location in relation to distributors or manufacturers requesting alternative purchase locations,

b. The anticipated volume of stamps ~~or meter settings~~ to be purchased by the requesting distributors or manufacturers,

c. Access to transportation systems, and

d. Prior experience with the bank.

82.6(2) Sale of stamps ~~or meter settings~~. An authorized bank may sell cigarette stamps ~~or meter settings~~ only to distributors or manufacturers holding valid permits who have "elected" (as per subrule 82.5(3)) to purchase stamps ~~or meter settings~~ from that bank. The department shall furnish each bank with a list of all such distributors or manufacturers

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who have so elected, and the bank shall not sell stamps ~~or meter settings~~ to persons not on the list. The bank must receive payment in full, less the discount, before selling stamps ~~or meter settings~~. See rule 82.7(453A). A bank is not authorized to accept credit memorandums from distributors or manufacturers.

82.6(3) Stamp inventory. Each bank shall keep an adequate inventory of stamps on hand to supply distributors *or manufacturers* assigned to said bank for at least six weeks. Stamps will be shipped freight prepaid to the bank from the department or from the supplier of the stamps. The supplier of the stamps shall advise the department at once by mail of a shipment to a bank and the bank shall advise the department at once by mail of the receipt of the stamps. Each bank shall store stamps in a secure vault.

82.6(4) Reports and remittances. Each bank authorized to sell stamps ~~or meter settings~~ shall forward to the department the invoices, requisitions, and remittances for stamps ~~or meter settings~~ sold on a daily basis. Each bank shall forward to the department on the first working day of each month, an inventory report which shall minimally include as to the prior month: the quantity of stamps on hand at the beginning of the month, the quantity of stamps received during the month, the quantity of stamps sold as to each distributor or manufacturer, the quantity of stamps on hand at the end of the month and the signature of the person responsible for the stamps.

82.6(5) Audit. For the purpose of auditing for the end of the fiscal year, no bank shall sell cigarette stamps ~~or meter settings~~ on the days from June 25 to June 30. With or without notice, the department or a representative designated by the department may take an inventory of stamps and audit stamp ~~and meter setting~~ sales.

Each bank must retain all records of inventory, stamp receipts, *and* stamp sales ~~and meter settings~~ for a period of two years.

82.6(6) Termination of authorization. The director may terminate the authorization of a bank to sell stamps ~~or meter settings~~ if the bank has failed to comply with the provisions of this rule or Iowa Code chapter 453A, or if the director deems it desirable for the efficient distribution of stamps. Notice of termination shall be sent to the bank by certified mail. The bank may appeal the termination determination by filing a protest pursuant to 701—Chapter 7 within 30 days of notice of termination. A bank may voluntarily terminate the sale of stamps ~~or meter settings~~ by giving the department 90 days' written notice. Upon termination, the bank must immediately return all stamps and ~~meter equipment and~~ present a final accounting, along with any remittances, to the department.

This rule is intended to implement Iowa Code sections 453A.8, 453A.12, and 453A.25.

ITEM 19. Amend rule 701—82.7(453A) as follows:

701—82.7(453A) Purchase of cigarette tax stamps—discount. Upon the purchase of cigarette tax stamps ~~or meter settings~~, the distributor or manufacturer~~, beginning July 1, 1981,~~ shall be entitled to a discount of 2 percent from the face value of the stamps ~~or meter settings~~.

This rule is intended to implement Iowa Code section 453A.8.

ITEM 20. Amend rule 701—82.9(453A), introductory paragraph, as follows:

701—82.9(453A) ~~Distributor reports~~ *Reports.* Every person licensed as a cigarette distributor *or manufacturer, or any other person as deemed necessary by the director,* must file a monthly report on or before the tenth day of the month following the month for which the report is made. The report must be complete and certified by the person responsible for filling out the report. The failure to file a report or the filing of a false or incomplete report shall subject the ~~distributor~~ *person* to a penalty ~~of $50 for each day the report remains unfiled, incomplete, or false~~ *as set forth in Iowa Code section 453A.31 as amended by 1999 Iowa Acts, Senate File 136, section 81.* (See rule 701—~~81.8~~ *10.76*(453A).) The report must be so certified or the report shall be considered incomplete. Whenever "cigarette" is used in this rule, it shall also include taxable "little cigars."

ITEM 21. Amend rule 701—82.9(453A) by adopting the following **new** subrule:

82.9(4) Manufacturers and other persons. The monthly reports for manufacturers and other persons shall contain such information as the director deems necessary.

ITEM 22. Amend rule **701—82.9(453A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 453A.15 *as amended by 1999 Iowa Acts, Senate File 136.*

ITEM 23. Amend rules **701—83.5(453A)**, **83.6(453A)**, and **83.7(453A)** by striking the words "report" and "reports" wherever they appear and inserting in lieu thereof the words "return" and "returns."

ITEM 24. Amend subrule 83.11(2) as follows:

83.11(2) Sales *by or* to Indians. Sales by Indians to other Indians *of their own tribe* on federally recognized Indian reservations or settlements *of which they are tribe members* are exempt from the tax *(Bryan v. Itasca County, 426 U.S. 373, 376-77 (1976); Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463, 475-81 (1976))*. The Indians ~~also~~ are ~~not~~ subject to the ~~permit~~ *license* requirements of Iowa Code chapter 453A. ~~However,~~ Indians who have purchased or obtained tobacco products from an Indian reservation source and come within the taxing jurisdiction of the state are subject to the provisions of Iowa Code sections 453A.43(2) and 453A.50.

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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, 422.68, and 423.23, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 11, "Administration," Chapter 13, "Permits," Chapter 15, "Determination of a Sale and Sale Price," Chapter 17, "Exempt Sales," Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," Chapter 19, "Sales and Use Tax on Construction Activities," Chapter 26, "Sales and Use Tax on Services," Chapter 31, "Receipts Subject to Use Tax," Chapter 32, "Receipts Exempt from Use Tax," Chapter 33, "Receipts Subject to Use Tax Depending

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on Method of Transaction," and Chapter 34, "Vehicles Subject to Registration," Iowa Administrative Code.

The 1999 Session of the General Assembly enacted House Files 199, 418, and 770 and Senate Files 9, 136, 231, 469, and 473 into law. Those enactments have resulted in a number of changes in the Iowa sales and use tax statutes. A variety of rules are amended to reflect those changes; several rules are also amended to remove or change obsolete language.

Item 1 concerns changes in the time limits for assessing sales or use tax and for filing a claim for refund of those taxes. Item 2 amends the appropriate rule to require a sales tax permit to be displayed only at locations from which taxable sales will be made. Item 3 sets out a procedure which allows parent and affiliated corporations to file consolidated sales tax returns. Items 4, 5, 6, and 7 amend various rules to allow the use of an exemption certificate for purposes other than resale and processing. Item 8 amends the applicable rule to extend the time allowed to appeal the Director's review of a fuel exemption certificate from 30 to 60 days. Item 9 deals with a new exclusion from the sales tax transportation exemption applicable to the transport of electricity and natural gas. Items 10 and 23 amend the applicable rules to explain an amendment to the exemption applicable to services performed on tangible personal property delivered into interstate commerce. Item 11 amends a subrule by substituting the word "retailer" for the word "seller." Item 12 adds a new rule which explains a new exemption in favor of certain sales to rural water districts. Item 13 adds a new rule exempting sales to hospices from tax. Items 14, 17, 18, 19, 20, 22, 24, 26, 28, and 29 amend various rules to incorporate into them the category of "manufactured housing." Items 15, 25 and 27 deal with the imposition of use tax only on aircraft. Item 16 explains a new exemption in favor of sales of argon and similar gases used in manufacturing. Item 21 extends the time for filing a claim for refund of tax paid by a building contractor from six months to a year after final settlement of the contract. Item 30 concerns refunds of use tax to motor vehicle manufacturers.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

There are no waiver provisions necessary for these rules, other than in regard to Item 3, because the Department lacks the statutory authority to grant waivers where rules are mainly an interpretation of statutes, and the other items involve mainly the interpretation of statutes.

Concerning Item 3, the amendments set out in the item result from a legislative grant of discretionary rule-making authority to the Department. Any person who believes that the application of the rule amended in Item 3 would result in hardship or injustice to that person may petition the Department for a waiver of the rule in the manner set out in Section II of the Governor's Executive Order 11, issued September 13, 1999.

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.4A [1998 Iowa Acts, chapter 1202, section 10]. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202, section 10] if a written request is filed by delivery or by mailing postmarked no later than December 5, 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 Administrative Rules Coordinator, at least 25 persons signing that request who qualify as a small business or by an organization of small businesses representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 3, 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 convey their views orally 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 November 28, 1999.

These amendments are intended to implement 1999 Iowa Acts, House Files 199, 418, and 770, and Senate Files 9, 136, 231, 469, and 473.

The following amendments are proposed.

ITEM 1. Amend rule 701—11.2(422,423) as follows:

701—11.2(422,423) Statute of limitations. On and after July 1, 1987, the period for the department's examination and determination of the correct amount of tax is unlimited in the following circumstances:

1. When a return has been filed, if the return was false or fraudulent and made with the intent to evade tax, or

2. If there has been a failure to file a return.

~~In all other circumstances, within five years after a return is filed, the department shall examine it, determine sales or use tax due, and give notice of assessment to the taxpayer. For agreements entered into on and after July 1, 1992, the five-year period may be extended by the taxpayer's signing a waiver on a form provided by the department.~~

11.2(1) Varying periods of limitation. In all circumstances other than those described in the introductory paragraph of this rule, the department has the following, limited amounts of time to examine a return, determine sales or use tax due, and give notice of assessment to the taxpayer:

a. For returns filed for quarterly periods beginning before January 1, 2000, five years.

b. For returns filed for quarterly periods beginning on or after January 1, 2000, and before January 1, 2001, four years.

c. For returns filed for quarterly periods beginning on or after January 1, 2001, three years.

For agreements entered into on and after July 1, 1992, the applicable period of limitation can be extended by the taxpayer's signing a waiver on a form provided by the department.

11.2(2) One-year statute of limitations. Whenever books and records are examined by an employee designated by the director of the department of revenue and finance, whether to verify a return or claim for refund or in making an audit, then an assessment must be issued within one year from the date of the completion of the examination. If not, the period for which the books and records were examined becomes closed and no assessment can be made. In no case is the one-year period of limitation an extension of or in addition to the ~~five-year period of limitation~~ *periods of limitation described in subrule 11.2(1) above.* The Maytag Company v. Iowa State Tax Commission, Equity No. 76-130-26112, Jasper County District Court, March 1, 1966.

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EXAMPLE: An employee of the department examines the books and records of the taxpayer for the period of taxpayer's returns filed on April 30, 1973, to April 30, 1977. The examination is completed on February 3, 1978. The notice of assessment must be given on or before April 30, 1978, in order to include the earliest tax return period above. If the notice of assessment is given on February 2, 1979, it is within the one-year period, but it would not be timely for purposes of the periods April 30, 1973, to December 31, 1973, although the subsequent periods beginning January 1, 1974, to April 30, 1977, could be included.

EXAMPLE: An employee of the department examines a taxpayer's books and records located in Davenport for the returns filed on April 30, 1974, to April 30, 1977. The examination is completed on February 2, 1978. However, the taxpayer's books and records for the same period located in Des Moines have not been examined. The one-year limitation period with reference to the Davenport books and records commences on February 2, 1978. However, the one-year period concerning the Des Moines books and records has not commenced.

This rule is intended to implement Iowa Code subsections 422.54(1), 422.54(2), and 422.70(1) *as amended by 1999 Iowa Acts, Senate File 469.*

ITEM 2. Amend rule 701—13.1(422) as follows:

701—13.1(422) Retail sales tax permit required. When used in this chapter or any other chapter relating to retail sales, the word "permit" shall mean "a retail sales tax permit."

A person shall not engage in any Iowa business subject to tax until the person has procured a permit except as provided in 13.5(422). There is no charge for a retail sales tax permit. If a person makes retail sales from more than one location, each location *from which taxable sales of tangible personal property or services will occur* shall be required to hold a permit. Retail sales tax permits are issued to retailers for the purpose of making retail sales of tangible personal property or taxable services. Persons shall not make application for a permit for any other purpose. For details regarding direct pay permits, see rule 701—12.3(422).

This rule is intended to implement Iowa Code section 422.53 as amended by ~~1997 Iowa Acts, House File 266~~ *1999 Iowa Acts, Senate File 473.*

ITEM 3. Amend rule 701—13.4(422) as follows:

701—13.4(422) Permit—consolidated return optional. *Two types of permit holders have the option of filing a consolidated return. The first is a permit holder with multiple locations from which taxable sales are made and the second is certain affiliated corporations.*

13.4(1) *Permit holders with multiple locations.* A permit holder procuring more than one permit may file a separate return for each permit; or, if arrangements have been made with the department, the permit holder may file one consolidated return reporting sales made at all locations for which a permit is held.

13.4(2) *Affiliated corporations. Any group consisting of a parent and its affiliates, which is entitled to file a consolidated return for federal income tax purposes and which makes retail sales of tangible personal property or taxable enumerated services, may make application to the director for permission to make deposits and file a consolidated Iowa sales tax return. An application for consolidation can be made for any tax period beginning on or after January 1, 2000.*

The application shall be in writing and shall be signed by an officer of the parent corporation. It shall contain the business name, address, federal identification number, and Iowa sales tax identification number of every corporation seeking the right to file a consolidated return. The application shall state the initial tax period for which the right to file a consolidated return is sought and shall be filed no later than 90 days prior to the beginning of that period. The application shall also contain any additional relevant information which the director may, in individual instances, require.

A parent corporation and each affiliate corporation that file a consolidated return are jointly and severally liable for all tax, penalty, and interest found due for the tax period for which a consolidated return is filed or required to be filed.

13.4(3) *Requirements common to returns filed under subrules 13.4(1) and 13.4(2).* ~~When a taxpayer makes a consolidated return, forms furnished by the department shall be required to be filed.~~ *Taxpayers shall file consolidated returns only on forms provided by the department.* All working papers used in the preparation of the information required *to complete the returns* must be available for examination by the department. *Undercollections of sales tax at one or more locations or by one or more affiliates may not be offset by overcollections at other locations or by other affiliates.*

This rule is intended to implement Iowa Code ~~sections~~ *section* 422.51 *as amended by 1999 Iowa Acts, Senate File 469,* and *Iowa Code section* 422.53.

ITEM 4. Amend rule 701—15.3(422,423), catchwords, as follows:

701—15.3(422,423) ~~Certificates of resale~~ *Exemption certificates,* direct pay permits, ~~processing, and~~ fuel used in processing, *and beer and wine wholesalers.*

ITEM 5. Amend subrule 15.3(1) as follows:

15.3(1) General provision. The gross receipts from the sale of tangible personal property ~~for the purpose of resale or processing by the purchaser~~ *to a purchaser for any exempt purpose* are not subject to tax as provided by the Iowa sales and use tax statutes. In addition, a seller of tangible personal property need not collect Iowa sales or use tax from a purchaser that possesses a valid direct pay permit issued by the department of revenue and finance. However, the following are requirements for the exemption and noncollection of tax by a seller when a direct pay permit is involved:

a. The sales tax liability for all sales of tangible personal property is upon the seller (and on and after March 13, 1986, the purchaser as well) unless the seller takes in good faith from the purchaser a valid exemption certificate stating that the purchase is for ~~resale, processing,~~ *an exempt purpose* or the tax will be remitted directly to the department by the purchaser under a valid direct pay permit issued by the department. In addition to the provisions and requirements set forth in subrule 15.3(2), to be valid an exemption certificate issued by a purchaser to a seller in good faith under a direct pay permit must include the purchaser's name, direct pay permit number, and date the direct pay permit was issued by the department. A seller who has taken a valid exemption certificate under a direct pay permit must keep records of sales made in accordance with rule 701—11.4(422,423). For more information regarding direct pay permits, see rule 701—12.3(422). Where tangible personal property or services are purchased tax-free pursuant to a valid exemption certificate which is taken in good faith by the seller, and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, or the purchaser fails to pay tax to the department under a direct pay permit

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issued by the department, the purchaser is solely liable for the taxes and must remit the taxes directly to the department.

When a processor or fabricator purchases tangible personal property exempt from the sales or use tax and subsequently withdraws the tangible personal property from inventory for its own *taxable* use or consumption, the tax shall be reported in the period when the tangible personal property was withdrawn from inventory.

b. The director is required to provide exemption certificates to assist retailers in properly accounting for nontaxable sales of tangible personal property or services to buyers for *exempt* purposes ~~of resale or for processing~~. ~~Since Iowa Code section 422.47 defines a "valid exemption certificate" as one supplied by the director, the director cannot for periods commencing on or after January 1, 1979, and ending on or before June 30, 1982, recognize an exemption certificate other than the director's own. This exemption certificate~~ *These exemption certificates* must be completed as to the information required on the form in order to be valid.

ITEM 6. Amend subrule 15.3(2), introductory paragraph, as follows:

15.3(2) ~~On and after July 1, 1982~~ *Retailer-provided exemption certificates.* ~~For periods commencing after June 30, 1982, retailers~~ *Retailers* may provide their own exemption certificates. ~~The~~ *Those* exemption certificates must contain information required by the department, including, but not limited to: the seller's name, the buyer's name and address, the buyer's nature of business (wholesaler, retailer, manufacturer, lessor, other), the reason for purchasing tax exempt (*e.g.,* resale or processing), the general description of the products purchased, and state sales tax or I.D. registration number. The certificate must be signed and dated by the buyer.

ITEM 7. Amend subrule **15.3(2)**, paragraphs **"b," "c"** and **"d,"** as follows:

b. Any person repeatedly selling the same type of property or service to the same purchaser for resale, ~~or for~~ processing, *or for any other exempt purpose* may accept a blanket certificate covering more than one transaction. A seller who accepts a blanket certificate is required periodically to inquire of the purchaser to determine if the information on the blanket certificate is accurate and complete. Such an inquiry by the seller shall be deemed evidence of good faith on the part of the seller.

c. When due to extraordinary circumstances in the nature of fire, flood, or other cases of destruction beyond the taxpayer's control, a seller does not have an exemption certificate on file, the seller may show by other evidence, such as a signed affidavit by the purchaser, that the property or service was purchased ~~for resale or for processing~~ *for an exempt purpose.*

d. The liability for the tax does not shift from the seller to the purchaser if the seller has not accepted a valid exemption certificate in good faith. If the seller has actual knowledge of information or circumstances indicating that it is unlikely that the property or services will be ~~resold or used in processing~~ *used by the purchaser in an exempt manner,* then in order to act in good faith the seller must make further inquiry to determine the facts supporting the ~~valid~~ exemption certificate. In addition, if the nature of the business of the purchaser, as shown by the ~~valid~~ exemption certificate, indicates that it is unlikely that the property or services will be ~~resold or used in processing~~ *used in an exempt manner,* then in order to act in good faith the seller must make further inquiry to determine the facts supporting the ~~valid~~ exemption certificate.

ITEM 8. Amend subrule **15.3(3)**, paragraph **"c,"** as follows:

c. A purchaser may apply to the department for review of any fuel exemption certificate. The department shall review the certificate and determine the correct amount of exemption within 12 months from the date of application. The department shall notify a purchaser of any determination that is different from the purchaser's claim of exemption. Failure to determine the correct amount of exemption within 12 months from the date of application shall constitute a determination on the department's part that the claim of exemption on the fuel certificate is correct as submitted. A determination regarding an exemption certificate is final unless the purchaser appeals to the director for a revision of the determination within ~~30~~ *60* days from the ~~postmark~~ date of the notice of determination. The director shall grant a hearing, and upon the hearing, the director shall determine the correct exemption and notify the purchaser of the decision by mail. The decision is final unless the purchaser seeks judicial review of the director's decision under Iowa Code section ~~422.45~~ *422.55* within ~~30~~ *60* days from the ~~postmark~~ date of the notice of the director's decision. The purchaser must notify the seller of any change in percentage.

ITEM 9. Amend rule 701—15.13(422,423) as follows:

701—15.13(422,423) Freight, ~~and~~ other transportation charges, ***and exclusions from the exemption applicable to these services.*** The determination of whether freight and other transportation charges shall be subject to sales or use tax is dependent upon the terms of the sale agreement.

When tangible personal property or a taxable service is sold at retail in Iowa or purchased for use in Iowa and under the terms of the sale agreement the seller is to deliver the property to the buyer or the purchaser is responsible for delivery and such delivery charges are stated and agreed to in the sale agreement or the charges are separate from the sale agreement, the gross receipts derived from the freight or transportation charges shall not be subject to tax. *As of May 20, 1999, this exemption does not apply to the service of transporting electrical energy. As of April 1, 2000, this exemption does not apply to the service of transporting natural gas.*

When freight and other transportation charges are not separately stated in the sale agreement or are not separately sold, the gross receipts from the freight or transportation charges become a part of the gross receipts from the sale of tangible personal property or a taxable service and are subject to tax. Where a sales agreement exists, the freight and other transportation charges are subject to tax unless the freight and other transportation charges are separately contracted. If the written contract contains no provisions separately itemizing such charge, tax is due on the full contract price with no deduction for transportation charge, regardless whether or not such transportation charges are itemized separately on the invoice. Clarion Ready Mixed Concrete Company v. Iowa State Tax Commission, 252 Iowa 500, 107 N.W.2d 553(1961); Schemmer v. Iowa State Tax Commission, 254 Iowa 315, 117 N.W.2d 420(1962); City of Ames v. Iowa State Tax Commission, 246 Iowa 1016, 71 N.W.2d 15(1959); Dain Mfg. Company v. Iowa State Tax Commission, 237 Iowa 531, 22 N.W.2d 786(1946).

The exclusions from this exemption relating to the transportation of natural gas and electricity are not applicable to all contracts for the delivery of these products. Below are ex-

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amples which explain some of the principal circumstances in which the transport of natural gas or electricity is or is not a service subject to tax.

EXAMPLE 1. Consumer ABC, located in Des Moines, purchases energy (electricity or gas) from supplier DEF, located in Waterloo. Ownership of the energy passes from DEF to ABC in Waterloo. ABC then contracts with utility GHI to transport the energy over GHI's network (of pipes or wires) from Waterloo to ABC's facility in Des Moines. GHI's transport of ABC's energy is not a taxable service. Gross receipts earned from transporting goods owned by another party for hire (e.g., cartage or freight hauling) have never been taxable under Iowa law (see Dain Manufacturing, above, at 22 N.W.2d p. 792), and this principle is as applicable to the transport or movement of energy as it is to the transport of any other product. Thus, the exemption and exclusion from exemption are not applicable to GHI's transport of ABC's energy because no tax is imposed, initially, on the performance of the service.

EXAMPLE 2. Consumer ABC contracts with utility DEF for the delivery of electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids. Transport of the electricity is by way of DEF's network of long distance transmission lines. The contract between ABC and DEF states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for delivery of electricity as well. Under the contract, ownership of the electricity passes to ABC in Cedar Rapids. In these circumstances, amounts which ABC pays DEF for delivery of the electricity are taxable gross receipts. The amounts are taxable, initially, as part of DEF's sales of electricity to ABC. They would ordinarily then be excluded from tax under the exemption set out in this rule; however, transportation charges for electricity are excluded from the exemption (as of April 1, 2000).

EXAMPLE 3. The circumstances in Example 2 apply here, except that DEF contracts with GHI to transport the electricity over GHI's long distance lines to ABC's plant in Cedar Rapids. DEF then, as in Example 2, bills ABC the delivery charges which their contract requires. Those charges are part of DEF's taxable gross receipts. GHI's charges to DEF are not taxable because DEF has purchased them for resale to ABC.

EXAMPLE 4. Again, ABC and DEF have contracted, as they did in Example 2, for DEF to deliver electricity from Mason City to Cedar Rapids. However, their agreement mentions only one combined price for sale and delivery of the electricity. There is no separately contracted price for transport of the electricity, in contrast to the situation in Example 2. In this case, the entire amount which ABC pays to DEF is taxable because there is no separate contract for the transport of the electricity. See Clarion Ready Mix and Schemmer, generally, above.

EXAMPLE 5. Manufacturer EFG contracts with utility DEF for the sale of natural gas with a separate contract for its delivery. The gas is to be transported from DEF's storage facility near Oceola to EFG's manufacturing plant in Fort Dodge by way of DEF's pipeline. Ownership of the gas passes from DEF to EFG in Fort Dodge. EFG uses 92 percent of the gas which is transported to its plant in processing the goods manufactured there. The receipts which EFG pays DEF for the transport of the gas are excluded from the transportation exemption, but they are not excluded from the processing exemption. Ninety-two percent of those receipts are exempt from tax because that is the percentage of gas used by EFG in processing.

This rule is intended to implement Iowa Code sections 422.43 and 423.2 *and Iowa Code section 422.45(2) as amended by 1999 Iowa Acts, Senate File 136.*

ITEM 10. Amend rule 701—17.8(422), introductory paragraph, as follows:

701—17.8(422) Sales in interstate commerce—goods transported or shipped from this state. When tangible personal property is sold within the state and the ~~seller~~ *retailer* transports it to a point outside the state or transfers it to a common carrier, or to the mails or to parcel post for shipment to a point without the state, sales tax shall not apply, provided the property is not returned to a point within the state except solely in the course of interstate commerce or transportation. *See 701—subrule 26.2(3) for a description of an exemption applicable to services performed on the above-described property on or after May 22, 1999.*

ITEM 11. Amend subrule 17.8(1) as follows:

17.8(1) Proof of transportation. The most acceptable proof of transportation outside the state shall be:

a. A waybill or bill of lading made out to the ~~seller's~~ *retailer's* order calling for transport; or

b. An insurance or registry receipt issued by the United States postal department, or a post office department's receipts; or

c. A trip sheet signed by the ~~seller's~~ *retailer's* transport agency which shows the signature and address of the person outside the state who received the transported goods.

ITEM 12. Amend 701—Chapter 17 by adopting the following **new** rule:

701—17.33(422,423) Sales of building materials, supplies and equipment to not-for-profit rural water districts. Retroactive to July 1, 1998, sales of building materials, supplies, and equipment to not-for-profit rural water districts (those organized under Iowa Code chapter 504A and as provided by Iowa Code chapter 357A), which are used by the districts for the construction of their facilities, are exempt from tax. See rule 701—19.3(422,423) for definitions of the terms "building materials," "building supplies," and "building equipment" which are applicable to this rule. Additionally, for the purposes of this rule, cranes, underground boring machines, water main pulling equipment, and similar machinery used by a rural water district for the construction of its facilities are "building equipment." This rule does not exempt rentals of building equipment from tax, but a rural water district's rentals of building equipment may be exempt from tax if the rental is on or in connection with new construction, alteration, reconstruction, remodeling, or expansion of real property or a structure. See rule 701—19.13(422,423).

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, Senate File 9.

ITEM 13. Amend 701—Chapter 17 by adopting the following **new** rule:

701—17.34(422, 423) Sales to hospices. As of July 1, 1999, gross receipts from the sale or rental of tangible personal property to or the performance of services for any freestanding nonprofit hospice facility which operates a hospice program are exempt from tax if the property or service is purchased for use in the hospice's program. A "hospice program" is any program operated by a public agency, a private organization, or a subdivision of either, which is primarily engaged in providing care to terminally ill individuals. A "freestanding hospice facility" is any hospice program housed in a building which is dedicated only to the hospice

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program and which is not attached to any other building or complex of buildings. An individual is "terminally ill" if that individual has a medical prognosis that the individual's life expectancy is six months or less if the illness runs its normal course.

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, Senate File 231.

ITEM 14. Amend rule 701—18.40(422,423) as follows:

701—18.40(422,423) Renting of rooms. The gross receipts from the renting of any and all rooms, including but not limited to sleeping rooms, banquet rooms or conference rooms in any hotel, motel, inn, public lodging house, rooming or tourist court, or in any place where sleeping accommodations are furnished to transient guests, whether with or without meals are subject to the tax. ~~On and after July 1, 1987, the~~ *The* rental of a mobile home *or of manufactured housing* which is tangible personal property is treated as room rental rather than tangible personal property rental. The renting of all rooms would be exempt from the tax if rented by the same person for a period of more than 31 consecutive days.

This rule is intended to implement Iowa Code section 422.43.

ITEM 15. Amend rule 701—18.49(422,423) as follows:

701—18.49(422,423) Aircraft sales, rental, component parts, and services exemptions *prior to, on, and after July 1, 1999.*

18.49(1) Prior to July 1, 1999, sales in Iowa of aircraft subject to registration were subject to sales tax. On and after July 1, 1999, sales of aircraft in Iowa are subject to Iowa use tax rather than Iowa sales tax. See rule 701—31.6(423). Also, on and after that date, the use tax imposed on sales of aircraft in Iowa is collected by the Iowa department of transportation at the time of the aircraft's registration. Sales of certain aircraft parts in Iowa, the performance of taxable services in Iowa on or in connection with the repair, remodeling, or maintenance of aircraft, and the rental of aircraft in Iowa remain subject to Iowa sales tax on and after July 1, 1999. See subrule 18.49(3).

~~18.49(1)~~ *18.49(2)* For the purposes of this subrule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air and is used in a scheduled interstate Federal Aviation Administration certified air carrier operation.

a. Exempt aircraft sales. As of July 1, 1988, *and up to and including June 30, 1999,* gross receipts from the sale of ~~any~~ aircraft are exempt from tax. ~~The limitations on refunds set out in paragraph "e" below are not applicable to sales of aircraft occurring under this subrule.~~

b. Exempt rental of aircraft. Effective May 1, 1995, and retroactive to July 1, 1988, the taxable rental (see 701—26.74(422,423)) of aircraft, as defined in the introductory paragraph of this subrule, is exempt from tax.

c. Exempt sale or rental of aircraft parts. Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the sale or rental of ~~any~~ tangible personal property permanently affixed to any aircraft as a component part of that aircraft are exempt from tax. The term "component parts" includes, but is not limited to, repair or replacement parts and materials.

d. Exempt performance of services. Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the rendering, furnishing, or performing of services in connection with the repair, remodeling, or maintenance of aircraft (including aircraft engines and component materials or parts) are exempt from tax.

~~e. Limitations on retroactivity. For the retroactive exemption described in paragraphs "b," "c," and "d" of this subrule, refunds of tax, interest, or penalty are applicable to transactions occurring between July 1, 1988, and June 30, 1995, and will not be paid unless a claim for refund is filed prior to October 1, 1995. For the period ending June 30, 1995, refunds are limited to $25,000 in the aggregate. If the amount of claims totals more than $25,000 in the aggregate, the department will prorate the $25,000 among all claimants in relation to the amount of a valid claim in relation to the total amount of all valid claims.~~

~~18.49(2)~~ *18.49(3)* For the purposes of this subrule only, an "aircraft" is any aircraft used in a nonscheduled interstate Federal Aviation Administration certified air carrier operation conducted under 14 CFR ch. 1, pt. 135. On and after July 1, 1998, the gross receipts from the sale or rental of tangible personal property permanently affixed or permanently attached as a component part of ~~any~~ *these* aircraft, including but not limited to repair or replacement materials or parts, are exempt from tax. Also exempt, on and after that date, are the gross receipts from the performance of any service used for aircraft repair, remodeling, or maintenance when the service is performed on an aircraft, aircraft engine, or aircraft component material or part *exempt under this subrule.* Gross receipts from the sale or rental of ~~any~~ aircraft are not exempt from tax under this subrule.

~~18.49(3)~~ *18.49(4)* For the purposes of this subrule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air. On and after July 1, 1998, *and up to and including June 30, 1999,* the gross receipts from the sale of an aircraft to an aircraft dealer who rents or leases the aircraft to another are exempt from tax if all of the following circumstances exist:

a. The aircraft is kept in the inventory of the dealer for sale at all times.

b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

As soon as an aircraft, the sale of which is exempt under this subrule, is used for any purpose other than leasing or renting, or the conditions set out in paragraphs "a," "b," and "c" are not continuously met, the dealer claiming the exemption is liable for the tax which would have been due but for the exemption set out in this subrule. Tax will be computed on the original purchase price paid by the dealer.

See rule 701—32.13(423) for a description of the manner in which transactions described in this subrule are exempted from tax on and after July 1, 1999.

This rule is intended to implement Iowa Code section 422.45, subsections 38, ~~and~~ 38A, *38B and 38C* ~~and Iowa Code Supplement section 422.45 as amended by 1998 Iowa Acts, House File 2560~~ *and Iowa Code section 423.2 as amended by 1999 Iowa Acts, House File 199.*

ITEM 16. Amend 701—Chapter 18 by adopting the following **new** rule:

701—18.60(422,423) Exempt sales of gases used in the manufacturing process. Effective May 24, 1999, but retroactive to January 1, 1991, sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases which are similar to argon. An "inert gas" is any gas which is normally chemically inactive. It will not support

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combustion and cannot be used as either a fuel or as an oxidizer. Argon, nitrogen, carbon dioxide, helium, neon, krypton, and xenon are nonexclusive examples of inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases which are not inert. These sales are exempt only if the gas is purchased by a "manufacturer," for use in "processing," as those terms are defined in subrule 18.45(1), for the period prior to July 1, 1997, and as those terms are defined in subrule 18.58(1) for the period beginning July 1, 1997.

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, House File 418.

ITEM 17. Amend subrule 19.6(1) as follows:

19.6(1) Basic concepts and general rules. A "prefabricated structure" is any structure assembled in a factory and capable of transport to the location where it will be used in the performance of a construction contract by placement on a foundation either by the buyer or a designated contractor. The term "prefabricated structure" includes a "modular home" as defined in rule 701—17.22(422,423), a mobile home whether or not sold subject to the issuance of a certificate of title, *"manufactured housing" as defined in rule 701—33.10(423),* sectionalized housing, precut housing packages, and panelized construction. With a few major exceptions (see 19.6(2) below regarding the "60 percent rule" *and rule 701—33.10(423) regarding the taxation of manufactured housing while it is real property*), the sales and use tax treatment of prefabricated structures generally follows the treatment of construction materials: Tax is due when those structures are sold to or used by owners, contractors, subcontractors, or builders. Sales of prefabricated structures which have not been erected on a foundation are considered sales of tangible personal property and thus are taxable at the time of retail sale. The usual basis for computing sales or use tax is the purchase price charged to a consumer or user by the seller of a prefabricated structure. Custom Built Homes Co. v. Kansas State Commission of Revenue and Taxation, 184 Kan. 31, 334 P.2d 808 (1959). Sales or use tax is due on the full purchase price when a prefabricated structure is delivered under a contract for sale or sold for use in Iowa. Dodgen Industries Inc. v. Iowa State Tax Commission, 160 N.W.2d 289 (Iowa 1968).

ITEM 18. Amend subrule 19.6(2), introductory paragraph, as follows:

19.6(2) Exceptions to the general rules. There are a number of exceptions to the general rules stated above in 19.6(1). Those exceptions are applicable to modular and mobile homes *and manufactured housing.* ~~and~~ *They* are explained ~~below~~ *as follows.*

ITEM 19. Amend subrule **19.6(2)**, paragraph **"b,"** as follows:

b. Mobile homes *and manufactured housing.* Iowa use tax and not Iowa sales tax is imposed on mobile homes *or manufactured housing* sold subject to the issuance of a certificate of title, and, similar to 19.6(2)"a" above, use tax is imposed only upon 60 percent of the purchase price of these mobile homes *or manufactured housing.* See rule 701—32.3(423). All mobile homes and *manufactured housing* sold in Iowa or sold outside Iowa for use in this state are sold subject to Iowa use tax, whether sold for placement within or outside a mobile home park; see Iowa Code ~~chapter~~ *chapters 423 and* 435.

ITEM 20. Amend subrule **19.6(3)**, paragraph **"d,"** first unnumbered paragraph, as follows:

What is stated in this subrule concerning sales of modular homes is generally applicable to the use tax on mobile homes *and manufactured housing.* However, one distinct difference is that mobile homes *and manufactured housing* are seldom, if ever, purchased by a dealer for any subsequent use in the performance of construction contracts. A dealer will often purchase a mobile home *or manufactured housing* for subsequent resale to a customer as tangible personal property and then will place or install the mobile home *or manufactured housing* on a site prepared by the customer. This is not the performance of a construction contract (see rule 19.7(422,423)), and the ~~mobile home~~ dealer is a retailer who installs tangible personal property and is not a construction contractor.

ITEM 21. Amend rule **701—19.12(422,423)**, first unnumbered paragraph, as follows:

In addition, under the provisions of Iowa Code section 422.45(7) or 15.331A(1), the contractor is required to provide the governmental unit, private nonprofit educational institution, or nonprofit private museum, business or supporting business in an economic development area, or a rural water district organized under Iowa Code chapter 504A with a statement before final settlement of the contract, showing the amount of sales of goods, wares, or merchandise or services rendered, furnished, or performed and used in the performance of the contract, and the amount of sales and use taxes paid on ~~said~~ *these* items. The department provides Form 35-002 for this purpose. *If final settlement occurs before May 20, 1999,* ~~The~~ *the* governmental unit, private nonprofit educational institution, nonprofit private museum, business or supporting business, or rural water district organized under Iowa Code chapter 504A has six months after *the* final settlement to file a claim for refund on Form 35-003 for sales and use taxes paid by the contractor. *If final settlement occurs on or after May 20, 1999, a period of one year after the date of final settlement is allowed for filing a claim for refund.* The failure of a contractor to remit taxes on materials, supplies, and equipment used in the performance of a construction contract does not relieve the contractor of liability even though the refund was not or cannot be claimed. See Dealers Warehouse Co. Inc. v. Department of Revenue, Jasper County District Court, 90-3910936, December 6, 1978. ~~Contracts financed by industrial bonds provided under the provisions of Iowa Code chapter 419 are eligible for the special refund provisions provided in Iowa Code section 422.45(7) when the bond issue was approved by a municipality prior to November 1, 1982, and upon completion of the project the property becomes public property or is devoted to educational uses. The refund applies only to taxes paid on goods, wares, or merchandise purchased after November 1, 1982.~~

ITEM 22. Amend subrule **19.13(2)**, paragraph **"l,"** as follows:

l. Installing *manufactured housing or* a modular or mobile home on a foundation. *However, see rule 701—33.10(423) for a description of the special treatment of taxable installation charges when the taxable sale of manufactured housing as real estate occurs.*

ITEM 23. Amend subrule 26.2(3) as follows:

26.2(3) A service which is performed ~~on tangible personal property delivered into interstate commerce or when such service is performed~~ in interstate commerce in such a manner that imposition of tax would violate the commerce clause of the United States Constitution. *Services performed on tangible personal property on or after May 20, 1999, are ex-*

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empt from tax if those services are performed on property which the retailer of the property transfers to a carrier for shipment to a point outside Iowa, places in the United States mail or parcel post directed to a point outside Iowa, or transports to a point outside Iowa by means of the retailer's own vehicles and which is not thereafter returned to a point within Iowa, except solely in the course of interstate commerce or transportation. This exemption does not apply to services performed on property if the purchaser, consumer, or the agent of either a purchaser or a consumer, other than a carrier, takes physical possession of the property in Iowa.

ITEM 24. Amend subrule **26.18(2)**, paragraph **"c,"** as follows:

c. Rental of tangible personal property and rental of fixtures. The rental of tangible personal property which shall, prior to its use by the renter under the rental contract, become a fixture shall not be subject to tax. Such a rental is the rental of real property rather than tangible personal property. In general, any tangible personal property which is connected to real property in a way that it cannot be removed without damage to itself or to the real property is a fixture~~,~~. Equitable Life Assurance Society of the United States v. Chapman, 282 N.W.*2d* 355 (Iowa 1983) and Marty v. Champlin Refining Co., 36 N.W.2d 360 (Iowa 1949). ~~Prior to July 1, 1987, the~~ *The* rental of a mobile home *or manufactured housing*, not sufficiently attached to realty to constitute a fixture, is ~~the~~ *room* rental ~~of~~ *rather than* tangible personal property *rental* and subject to tax *on that basis*~~,~~*; see* Broadway Mobile Home Sales Corp. v. State Tax Commission, 413 N.Y.S.2d 231 (N.Y. 1979). ~~For the treatment of mobile home rental on and after that date see~~ *See also* rule 701—18.40(422,423).

ITEM 25. Amend 701—Chapter 31 by adopting the following **new** rule:

701—31.6(423) Sales of aircraft subject to registration. On and after July 1, 1999, taxable sales in Iowa of aircraft subject to registration under Iowa Code section 328.20 are subject to Iowa use tax and not Iowa sales tax. This use tax is to be collected by the Iowa department of transportation at the time of the aircraft's registration. The sale of an aircraft subject to registration is not subject to local option sales tax, either that imposed by Iowa Code chapter 422B or that imposed by Iowa Code chapter 422E. For the purposes of this rule, an "aircraft" is any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air, for the purpose of transporting persons or property, or both. See rule 701—32.13(423) for exemptions applicable to aircraft subject only to use tax.

This rule is intended to implement Iowa Code section 423.2 as amended by 1999 Iowa Acts, House File 199.

ITEM 26. Amend rule 701—32.3(423) as follows:

701—32.3(423) ~~Exemption for mobile~~ *Mobile* homes *and manufactured housing.* A use tax is not to be imposed on any mobile home *or manufactured housing* if the tax has been previously imposed pursuant to Iowa Code section 423.2 and paid. In order for the exemption to be allowed, the purchaser of the mobile home *or manufactured housing* has the responsibility to provide the county treasurer with documentation verifying that the Iowa use tax was previously paid. All taxable mobile homes *or manufactured housing is* ~~are~~ subject to a use tax in an amount equal to 60 percent of the mobile home's *or manufactured housing's* purchase price (40 percent of the home's *or housing's* purchase price is exempt from use tax). In arriving at the purchase price upon which the use tax is to be computed, the trade-in allowance provided in Iowa Code section 423.1(6)"b" is a reduction in the purchase price if (1) the property traded for the mobile home *or manufactured housing* is a type of property normally sold in the regular course of business of the retailer selling the ~~mobile~~ home *or housing*, and (2) the retailer intends ultimately to sell the traded property at retail or to use the traded property in the manufacture of a like item.

EXAMPLE 1: A ~~mobile home~~ *manufactured housing* dealer receives from the factory a new ~~mobile~~ *manufactured* home that has a sales price of $20,000. The dealer sells it and takes the purchaser's old ~~mobile~~ *manufactured* home worth $5,000 in trade. The dealer keeps the traded-in ~~mobile~~ *manufactured* home as an office. The Iowa use tax is computed as follows:

Sales price	$20,000
Less trade-in	$ 5,000
Buyer's price	$15,000
Amount subject to tax ($20,000 × 60%)	$12,000
Use tax at 5%	$ 600

The trade-in allowance does not apply since the traded-in ~~mobile~~ *manufactured* home will not be ultimately sold at retail or used to manufacture a like item.

EXAMPLE 2: Same facts as given in Example 1 with the exception that the dealer lists the trade-in for sale.

Sales price	$20,000
Less trade-in	$ 5,000
Buyer's price	$15,000
Amount subject to tax ($15,000 × 60%)	$ 9,000
Use tax at 5%	$ 450

The trade-in allowance applies since the traded-in ~~mobile~~ *manufactured* home will be ultimately sold at retail.

This rule is intended to implement Iowa Code sections 423.4(11) and 423.4(12) as amended by ~~1992 Iowa Acts, chapter 1001~~ *1999 Iowa Acts, House File 770.*

ITEM 27. Amend 701—Chapter 32 by adopting the following **new** rule:

701—32.13(423) Exempt use of aircraft on and after July 1, 1999. On and after July 1, 1999, "aircraft" are subject only to use tax. See rule 701—31.6(423). As of that same date, the use of the following aircraft is exempt from tax:

32.13(1) Aircraft used in a scheduled interstate Federal Aviation Administration certified air carrier operation.

32.13(2) The use of an aircraft by an aircraft dealer who rents or leases the aircraft to another is exempt from tax if all of the following circumstances exist:

a. The aircraft is kept in the inventory of the dealer for sale at all times.

b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

As soon as an aircraft is used for any purpose other than leasing or renting, or the conditions set out in paragraphs "a," "b," and "c" are not continuously met, the dealer claiming the exemption is liable for the tax which would have been due but for the exemption set out in this subrule. Tax will be computed on the original purchase price paid by the dealer.

See rule 701—18.49(422,423) for a description of various aircraft parts and of services performed on aircraft which are exempt from sales and use tax.

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This rule is intended to implement Iowa Code section 423.4 as amended by 1999 Iowa Acts, House File 199.

ITEM 28. Amend rule 701—33.9(423) as follows:

701—33.9(423) Sales of mobile homes, *manufactured housing*, and related property and services.

33.9(1) Sales of mobile homes, *manufactured housing,* and related property and services for one package price. The following rule is applicable only to mobile homes *and manufactured housing* sold as tangible personal property rather than in the form of real property. If, at the time of the sale, a mobile home *or manufactured housing* is real property, this rule is not applicable to it. If a mobile home dealer buys a mobile home, incorporates that mobile home into real estate in the manner required by and described in Iowa Code section ~~135D.26~~ *435.26*, and then sells the mobile home to a consumer, the sale of that mobile home, the sale of any services used to transform the mobile home from tangible personal property to real property, and the sale of any tangible personal property with the mobile home (such as furniture) are governed by 701—Chapter 19 which deals with building contracts and building contractors. *Sales of manufactured housing in the form of real estate are governed by rule 701—33.10(423).*

When a customer purchases a mobile home *or manufactured housing* from a dealer it is usually the customer's wish that the dealer prepare the mobile home *or manufactured housing* so that it is ready for the customer to move into it. To render a mobile home *or manufactured housing* "ready to move into" a dealer will sell, with the ~~mobile~~ home *or housing,* certain tangible personal property and will also perform or arrange for other parties to perform various services.

With respect to any one particular mobile home *or manufactured house* which a dealer may sell, a dealer may provide any combination of the following services or provide the following services and sell the below-listed property to any person purchasing the ~~mobile~~ home *or house*:

1. Connect the electricity.
2. Connect the water.
3. Connect sewer system lines.
4. Sell and install skirting. Skirting is used to fill the space between the bottom of the mobile home *or manufactured house* and the ground. It gives the ~~mobile~~ home *or house* an appearance more like a conventional home because it covers up this space.
5. Build and install steps for a door.
6. Build a deck.
7. Do minor repair.
8. Install and sell a foundation upon which to place the mobile home *or manufactured housing.*
9. Sell furniture or appliances (e.g., air conditioners, refrigerators, and stoves) for use in the mobile home *or manufactured housing.* Install the appliance (e.g., an air conditioner) if necessary.

A dealer selling a mobile home *or manufactured housing* on a "ready-to-move-into" basis usually sells that ~~mobile~~ home *or housing* and the services and additional property necessary to render ~~it~~ *them* livable for one "package price." The dealer and customer do not bargain separately for the sale of the various articles of tangible personal property (e.g., the mobile home *or manufactured house* and appliances) or the services (e.g., electrical installation) which are part of this package price; nor is the dealer's package price broken down to indicate any of the expenses which are components of the package price either in the dealer's sales contract or on any sales invoice.

The package price of any one particular mobile home *or manufactured house* will vary depending upon how many services the dealer will provide, or how much tangible personal property the dealer will sell in addition to the ~~mobile~~ home *or house.* In many cases, a dealer will contract with a third party to perform the services promised in the dealer's contract to a customer. For example, the dealer will contract with a third party to hook up the ~~mobile~~ home *or house* purchaser's electricity, install window air conditioning or will contract with a third party to build a deck or perform minor repairs on the mobile home *or manufactured house.*

In the situation described above, the "purchase price" of a mobile home *or manufactured house* is the entire package price charged for the ~~mobile~~ home *or house*, additional personal property for use in and around the ~~mobile~~ home *or house*, and services performed to render the ~~mobile~~ home *or house* livable. The entire amount of the package price, reduced by 40 percent as explained in rule 701—32.3(423), is used to calculate the amount of use tax due resulting from the sale of the mobile home *or manufactured house.* No part of the package price is subject to Iowa sales tax; rather it is subject to Iowa use tax.

33.9(2) Sales of property and rendition of service under separate contract. If the personal property and services listed in subrule 33.9(1) are purchased under separate contract and not as part of one package price with a mobile home *or manufactured house,* either from a mobile home dealer or from another party, the price paid for those items of property or services will not be a part of the purchase price of the ~~mobile~~ home *or house.* Because the price of the property or services is not part of the "purchase price" of a ~~mobile~~ home *or house*, that price will not be reduced by 40 percent, as required under rule 701—32.3(423), in computing the use tax due upon the sale of a mobile home. Also, if sold in Iowa, the property would be subject to Iowa sales tax. The same is true of services rendered in Iowa.

If separately contracted for, the gross receipts from the following services sold are subject to Iowa sales tax under Iowa Code subsection 422.43(11):

a. Electrical hookup and air conditioning installation (electrical installation).

b. Water and sewer system hookup (plumbing).

c. Skirting installation and building and installation of steps and decks (carpentry).

d. Nearly all "minor repairs" would be taxable.

The sale, under separate contract, of skirting, steps, decks, furniture, appliances, and other tangible personal property to customers purchasing mobile homes *or manufactured housing* would be sales of tangible personal property, the gross receipts of which are subject to Iowa sales rather than use tax.

The installation of a concrete slab on which to place the mobile home *or manufactured housing* would not be a service taxable to the ~~mobile~~ home *or housing* owner since this installation involves "new construction" and the service performed upon this new construction is thus exempt from tax. The person installing the concrete slab would be treated as a construction contractor and would pay sales tax upon any tangible personal property purchased and used in the construction of the slab.

33.9(3) Dealer purchases of tangible personal property and services for resale. Regardless of whether the tangible personal property and services connected with the purchase of a mobile home *or manufactured housing* have been purchased as part of a package price or whether their purchase has been separately contracted for, a dealer's or other retailer's purchase of the tangible personal property or service for

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subsequent resale to a mobile home or *manufactured housing* purchaser is a purchase "for resale" and thus exempt from Iowa sales or use tax.

These rules are intended to implement Iowa Code sections 422.45(2), 422.45(18), 423.1(3), 423.2, 423.4(4) and *Iowa Code section* 423.4(12) *as amended by 1999 Iowa Acts, House File 770.*

ITEM 29. Amend 701—Chapter 33 by adopting the following **new** rule:

701—33.10(423) Tax imposed on the use of manufactured housing as tangible personal property and as real estate. As of July 1, 1999, tax is imposed on the use of "manufactured housing" in Iowa. On and after that date the term "manufactured housing" or "manufactured home" is intended, generally, to replace the term "mobile home" when referring to prefabricated housing which is subject only to use tax and not to sales tax even though there are some differences in the law's treatment of mobile homes and manufactured housing.

33.10(1) Definition. "Manufactured housing" is basically housing which is factory built to specifications required by federal law (42 U.S.C. § 5403) and which is required by federal law to display a seal from the United States Department of Housing and Urban Development. It may be further characterized as (1) a structure built on a permanent chassis, (2) transportable in one or more sections, and (3) designed to be used as a dwelling with or without a permanent foundation. See the definition of "manufactured home" found in 24 Code of Federal Regulations §3280.2 for additional characteristics of what is and is not "manufactured housing" for the purposes of Iowa use tax law.

33.10(2) Tax treatment of manufactured housing which is similar to the tax treatment of mobile homes:

a. Manufactured housing is subject only to Iowa use tax and not Iowa sales tax. The sale of manufactured housing in Iowa is defined by the applicable statute as a use of the housing in this state.

b. The use tax on manufactured housing is paid by the owner of the housing directly to the appropriate county treasurer. The law does not require any dealer or retailer in manufactured housing to collect use tax from a purchaser and remit the tax to any governmental body, although the law does not prevent a dealer from doing this as a courtesy to buyers.

c. Only 60 percent of the purchase price of either a mobile home or manufactured housing is subject to use tax. See rule 701—32.3(423). The use of manufactured housing previously subject to tax and upon which the tax has been paid is exempt from further tax.

d. The taxation of manufactured housing which is sold in the form of tangible personal property is similar to the taxation of mobile homes which are sold in the form of tangible personal property. See rule 701—33.9(423).

33.10(3) Taxable use of manufactured housing in the form of real estate. Unlike mobile homes, the use of which can be taxed only when the homes are in the form of tangible personal property, under certain conditions, the use of manufactured housing in the form of real estate can be subject to tax. On and after July 1, 1999, if a developer has placed a manufactured home on a foundation in a lot in Iowa and hooked up the necessary utilities and completed the necessary landscaping to convert the home from tangible personal property to realty, the sale of the manufactured home to a user is a taxable use of the home on the user's part.

EXAMPLE. Alpha and Omega Development Corp. buys land with enough space for 100 lots for manufactured housing and for the streets necessary to provide access to the lots. Alpha and Omega then buys 100 manufactured houses. It lawfully buys these houses exempt from use tax based on the assertion that they have been purchased for subsequent resale. Alpha and Omega then develops the land, installing water, sewer and electric lines, placing the manufactured homes on foundations, and otherwise taking steps to convert the homes from tangible personal property to real estate.

Alpha and Omega then sells the homes on the lots to various customers. Each purchase of a home by a customer is a taxable use of the home on that customer's part, and the customer is obligated to pay the appropriate county treasurer the amount of Iowa use tax due.

a. When tax is due on the use of manufactured housing in the form of real estate, the basis for computing the tax is the "installed purchase price" of the manufactured housing. The "installed purchase price" is the amount charged by a building contractor to a homebuyer to convert manufactured housing from tangible personal property into real estate. Use tax is due on 60 percent of the amount of the installed purchase price. See rule 701—32.3(423).

b. Included within the meaning of the term "installed purchase price" are amounts charged to a buyer of a manufactured home to build and install a foundation on which to place a home; amounts charged to hook up electric, water, gas, sewer system, and other lines for necessary utilities; amounts charged to sell and install "skirting" (see subrule 33.9(1)); amounts charged to build and install any steps for a door; and amounts separately charged for any appliances or other items which become a part of the housing after installation, e.g., dishwashers and whirlpool tubs.

c. Excluded from the meaning of the term "installed purchase price" is any amount charged for the purchase of land on which to place a manufactured house; any amount charged for landscaping in connection with the installation of a manufactured house; any amount charged to build and install any deck or similar appurtenance to a manufactured home; and any amounts charged for the sale of furniture or appliances which remain tangible personal property after installation, e.g., furniture, room air conditioners, and refrigerators. This list of inclusions and exclusions is not exclusive. Furthermore, the purchase of furniture or appliances which remain tangible personal property is subject to Iowa sales or use tax, including consumers' use tax.

d. The exemption in favor of taxable services performed on or in connection with new construction (see rule 701—19.13(422,423)) is not applicable when calculating the amount of any installed purchase price.

This rule is intended to implement Iowa Code sections 423.1, 423.2, 423.4, 423.6, and 423.7 as amended by 1999 Iowa Acts, House File 770.

ITEM 30. Amend rule 701—34.3(423) as follows:

701—34.3(423) Returned vehicles *and tax refunded by manufacturers.* When a vehicle subject to registration is sold and later returned to the seller with the entire purchase price refunded, the purchaser is entitled to a refund of the use tax paid. To obtain a refund the purchaser must be able to show that the entire purchase price was returned and provide proof that the use tax had been paid. See rule 701—30.11(423) for details on claims for refund.

If a vehicle manufacturer has refunded to any purchaser, lessee, or lessor of a vehicle any amount required to be refunded by Iowa Code chapter 322G (Lemon Law), and a por-

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tion of that refund is use tax paid by the purchaser, lessee, or lessor, then the department shall refund to the manufacturer the amount of use tax which the manufacturer has refunded to the purchaser, lessee, or lessor. The manufacturer must send the department a written request for a refund, which contains adequate proof that the tax was paid when the vehicle was purchased and that the manufacturer refunded the tax to the purchaser, lessee, or lessor who paid it.

This rule is intended to implement Iowa Code sections *322G.4(2),* 423.1, and 423.7.

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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 section 421.17 and Iowa Code chapter 28E, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 86, "Inheritance Tax," Chapter 87, "Iowa Estate Tax," and Chapter 89, "Fiduciary Income Tax," Iowa Administrative Code.

These amendments provide clarification and updates relating to death-related taxes. Item 1 amends 86.1(450) to provide greater clarity and update a reference for a definition. Items 2, 3, 4, 8, and 9 amend 86.2(2), 86.3(2), 86.3(6), 86.12(5)"b," and 87.3(4), respectively, to implement provisions of 1999 Iowa Acts, Senate File 136, regarding the filing requirements for estates when all property in the estate is held in joint tenancy with the decedent and exempt classes of beneficiaries, notice of additional tax due and changing reference from postmark to notice date, and federal audit provisions for real estate, to provide for implementation of a ten-year statutory lien period and to provide exception to 450.7 statutory lien provisions for estate tax. Item 5 amends 86.5(7)"d" to update position regarding valuation of a gift. Item 6 amends 86.6(1)"g" to correct deductible funeral expenses allowed. Item 7 amends 86.9(2)"f"(1) to implement 1999 Iowa Acts, Senate File 473. Item 10 amends 89.8(1) to correct language regarding preneed funeral trusts.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

There are no waiver provisions reflected in these rules because the Department lacks the statutory authority to grant waivers where rules are mainly an interpretation of statutes.

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.4A [1998 Iowa Acts, chapter 1202, section 10]. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202, section 10] if a written request is filed by delivery or by mailing postmarked no later than December 5, 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 Administrative Rules Coordinator, at least 25 persons signing that request who qualify as a small business, or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 3, 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 convey their views orally 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 November 28, 1999.

These amendments are intended to implement Iowa Code chapter 450 as amended by 1999 Iowa Acts, Senate Files 136 and 473.

The following amendments are proposed.

ITEM 1. Amend rule **701—86.1(450)**, definition of "Gross estate," as follows:

"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, property owned as joint tenants with right of survivorship, property transferred with a retained life use, gifts *in excess of the annual gift tax exclusion set forth in Internal Revenue Code Section 2503(b) and* 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).

ITEM 2. Amend rule **701—86.2(450)** as follows:

Amend subrule **86.2(2)** by rescinding paragraph **"d"** and adopting the following **new** paragraph in lieu thereof:

d. In addition to the special rule for surviving spouses set forth in paragraph "c" of this subrule, effective for estates of decedents dying on or after July 1, 1999, an estate that consists solely of property includable in the gross estate that is held in joint tenancy with right of survivorship and that is exclusively owned by the decedent and a lineal ascendant of the decedent, lineal descendant of the decedent, a child legally adopted in compliance with the laws of this state by the decedent or a stepchild of the decedent, or any other person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, or a combination solely consisting of such persons, is not required to file an Iowa inheritance tax return, unless such an estate has an obligation to file a federal estate tax return. Property of the estate passing 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 title of property is held by persons other than a lineal ascendant, lineal descendant, a child legally adopted in compliance with the laws of this state, or a stepchild of the

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decedent or any other person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, an inheritance tax return is required to be filed.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 421.14, 450.5, 450.6, *and* 450.9 ~~as amended by 1997 Iowa Acts, Senate File 35~~, *section* 450.22 *as amended by 1999 Iowa Acts, Senate File 136, section 46, and Iowa Code sections* 450.44, 450.46, 450.47, 450.51, 450.52, 450.53, 450.63, and 450.94.

ITEM 3. Amend subrule 86.3(2) as follows:

86.3(2) Assessments for additional tax. *The taxpayer must file an inheritance tax return on forms prescribed by the director on or before the last day of the ninth month after the death of the decedent. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department must notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice 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 last day of the following month. For estates with decedents dying on or after July 1, 1999, the date of the notice and not the postmark date is controlling.* 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 necessary to ascertain the correct tax. For interest and penalty rate information, see 701—Chapter 10.

ITEM 4. Amend rule 701—86.3(450) as follows:

Rescind subrule 86.3(6) and adopt the following **new** subrule in lieu thereof:

86.3(6) Period of limitations—federal audits.

a. Statute of limitations and federal audits in general. 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, and the department receives such a notification, 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(34) and Emmetsburg Ready Mix Co. v. Norris, 362 N.W.2d 498 (Iowa 1985) when the due date falls on a legal holiday.

b. Statute of limitations regarding federal audits involving real estate.

(1) In general. Effective for estates with decedents dying on or after July 1, 1999, in addition to the period of limitation for examination and determination, the department shall make an examination to adjust the value of real property for Iowa inheritance tax purposes to the value accepted by the Internal Revenue Service for federal estate tax purposes. The department shall have an additional six months to make an examination and adjustment for the value of the real property.

(2) Beginning of the additional six-month period. The additional six-month period for assessment and adjustment 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. Such documents must indicate the final federal determination and final audit adjustments of all real property.

(3) Adjustment required. The department must make an adjustment to the value of real property for inheritance tax purposes to the value accepted for federal estate tax purposes regardless of whether any of the following have occurred: an inheritance tax clearance has been issued; an appraisal has been obtained on the real property indicating a contrary value; there has been an acceptance of another value for real property by the department; an agreement has been entered into by the department and the personal representative for the estate and persons having an interest in the real property regarding the value of the real property.

(4) Refunds. Despite the time period for refunds set forth in Iowa Code section 450.94(3), the personal representative for the estate has six months from the day of final disposition of any real property valuation matter between the personal representative for the estate and the Internal Revenue Service to claim a refund from the department of an overpayment of tax due to the change in the valuation of real property by the Internal Revenue Service.

c. Effect of additional time periods. The additional six-month audit period set forth in "a" and "b" under this subrule 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 incorporate 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).

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 422.25, *and* 422.30, *section 450.37 as amended by 1999 Iowa Acts, Senate File 136, section 47, and Iowa Code sections* 450.53, 450.65, 450.71, 450.94, 450A.12 and 451.12.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

ITEM 5. Amend subrule **86.5(7)**, paragraph **"d,"** introductory paragraph, as follows:

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. *Date of valuation for a gift in which there was a full transfer of ownership is valued at the date in which the gift is completed. However, for a gift of an interest in property that is less than a full transfer of ownership, which includes, but is not limited to, a life estate or conditional gift, the date of valuation is the date of the death of the decedent, 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:

ITEM 6. Amend rule **701—86.6(1)**, paragraph **"g,"** introductory paragraph, as follows:

g. Funeral expenses. The deduction is limited to the expense of the decedent's funeral, *which includes, but is not limited to, flowers, cost of meals, cards and postage. Expenses that are not deductible include, but are not limited to, family travel expenses.* 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).

ITEM 7. Amend subrule **86.9(2)**, paragraph **"f,"** subparagraph (1), as follows:

(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. *For the purposes of appraisal, "real estate or real property" means the land and appurtenances, including structures affixed thereto.* 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~~ *is* 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). *Appraisals of real estate must be made in fee simple including land, all appurtenances and structures affixed to the real estate. Discounts in the value of real estate are not to be considered in the valuation of real property for the purposes of an appraisal. Such discounts in valuation are to be resolved by mutual agreement through informal procedures between the personal representative of the estate and the department. If an agreement between the personal representative of the estate and the department cannot be obtained, then the valuation placed on the property by the department may be appealed by the personal representative of the estate pursuant to the procedures set forth in rule 701—86.4(450).* 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.

ITEM 8. Amend rule 701—86.12(450) as follows:

Amend subrule **86.12(5)**, paragraph **"b,"** as follows:

b. The section 450.7 lien. ~~For estates with deaths occurring on or after July 1, 1995, a~~ *Effective May 20, 1999, a ten-year statutory lien for inheritance tax on all estates is imposed regardless of whether the decedent died prior to or subsequent to 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 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.

Amend the implementation clause as follows:

Rules 86.9(450) to 86.12(450) are intended to implement Iowa Code chapter 17A and sections *450.1 as amended by 1999 Iowa Acts, Senate File 473, section 32,* ~~450.5,~~ 450.7 *as amended by 1999 Iowa Acts, Senate File 136, section 45, 450.27 as amended by 1999 Iowa Acts, Senate File 473, section 33, and Iowa Code sections 450.5,* 450.58, 450.64, 450B.2, 450B.3, 450B.6, 633.477, and 633.479.

ITEM 9. Amend subrule **87.3(4)** by adopting the following **new** paragraph at the end thereof:

Effective for estates with decedents dying on or after July 1, 1999, all the provisions of Iowa Code chapter 450 regarding liens, determination, imposition, payment, collection of inheritance tax, computation and imposition of penalty and interest upon delinquent taxes and the confidential aspects of the tax return also apply to the administration of estate tax imposed under this chapter, except to the extent that such rules may conflict with Iowa Code chapter 451 and the rules set forth in this chapter. The exceptions of the lien provisions found in Iowa Code section 450.7 do not apply to this chapter.

ITEM 10. Amend subrule **89.8(1)** by adopting the following **new** paragraph at the end thereof:

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

For tax years ending after August 5, 1997, if the trust is a qualified preneed funeral trust as set forth in Section 685 of the Internal Revenue Code and the trustee has elected the special tax treatment under Section 685 of the Internal Revenue Code, neither the trust nor the beneficiary is subject to Iowa income tax on income accruing to the trust.

ARC 9449A

TREASURER OF STATE[781]

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 1999 Iowa Acts, House File 779, section 5, the Treasurer of State hereby gives Notice of Intended Action to amend Chapter 4, "Linked Investments for Tomorrow (LIFT)," Iowa Administrative Code.

This proposed rule establishes procedures governing the participation, forms, and use of proceeds in the Value-Added Agriculture LIFT program.

Any interested person may make written or oral suggestions or comments on this proposed rule on or before November 23, 1999. Comments should be directed to Karen Sinclair, Executive Office, State Treasurer's Office, Capitol Building, Des Moines, Iowa 50319, telephone (515) 281-7677.

Also, there will be a public hearing on November 23, 1999, at 1 p.m. in the Treasurer's Office, Room 114, Capitol Building, East 10th and Grand, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact Karen Sinclair, State Treasurer's Office, at least one day prior to the date of the public hearing.

This rule is intended to implement 1999 Iowa Acts, House File 779, section 5.

The following **new** rule is proposed.

781—4.11(78GA,HF779) LIFT—value-added agriculture linked investment loan program.

4.11(1) "Value-added agriculture" means processing agricultural commodities raised in Iowa into a more highly valued state by the addition of capital and labor inputs in which the form of the original agricultural commodity is changed or the agricultural commodity is produced for a new market.

4.11(2) "Value-added project" means specific company or business operation that qualifies for the value-added linked investment program.

4.11(3) "Agricultural commodities" means corn, soybeans, oats, hay, hogs, cattle, dairy cattle, milk, sheep, chicken, turkey and eggs.

4.11(4) The treasurer of state recognizes this program is part of a state effort to develop and promote value-added agriculture. The treasurer will give stronger consideration to projects developed in conjunction with or recommended by the department of economic development, the department of agriculture and land stewardship or any other state-sponsored value-added program.

4.11(5) The value-added project, business or farming operation, borrower, and lender must be located in Iowa.

4.11(6) The borrower must be at least 18 years of age.

4.11(7) A borrower that is currently participating or that has previously participated in any other LIFT program in the state treasurer's office is not eligible.

4.11(8) A borrower who qualifies for a value-added linked investment loan may use the loan proceeds for new debt directly related to a value-added agriculture project approved by the state treasurer's office. The borrower may not refinance debt under this program.

4.11(9) A borrower who qualifies for a value-added linked investment loan may not use the loan proceeds for financing of vehicles.

4.11(10) The maximum amount any value-added project can receive from all borrowers shall be $1,000,000. The treasurer can increase this limit at the governor's request.

4.11(11) The maximum amount that a borrower may borrow from this program is $250,000.

4.11(12) For a value-added linked investment, the initial certificate of deposit for a given borrower shall have a maturity of one year. The certificate of deposit may be renewed on an annual basis for a total term not to exceed five years.

4.11(13) A lender shall use Form 655-0217 to apply for the program and verify that the borrower qualifies for the program.

ARC 9454A

TREASURER OF STATE[781]

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 12D.2(17), the Treasurer of State hereby gives Notice of Intended Action to amend Chapter 16, "Iowa Educational Savings Plan Trust," Iowa Administrative Code.

These amendments are necessary given changes in the law in 1999 (1999 Iowa Acts, Senate File 457) that make participation in the program more consumer-friendly in regard to the mandatory use of account benefits and more consistent and easier to understand in regard to the cancellation and refund provisions. Also, these amendments lessen the application paperwork for participants since verification of the student's age will not be required upon application but upon request of the program administrator. Finally, the amendments provide for a reduction in forms from four to one when a participant seeks to cancel, amend, or use an account.

Consideration will be given to all written suggestions or comments received on the proposed amendments on or before November 24, 1999. Such written comments should be directed to Bret L. Mills, Deputy Treasurer, Room 114, State Capitol Building, Des Moines, Iowa 50319; fax (515) 281-7562. Persons who wish to convey their views by telephone should also contact Bret L. Mills, Deputy Treasurer, at (515)281-8261.

A public hearing will be held on Wednesday, November 24, 1999, at 9 a.m. in Room 114 in the State Capitol Building, Des Moines, Iowa, at which time comments may be sub-

TREASURER OF STATE[781](cont'd)

mitted either 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 plan to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Office of Treasurer of State and advise of specific needs.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9453A**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code sections 12D.3 and 12D.5 as amended by 1999 Iowa Acts, Senate File 457.

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:

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%
June 1, 1999 — June 30, 1999	7.25%
July 1, 1999 — July 31, 1999	7.50%
August 1, 1999 — August 31, 1999	8.00%
September 1, 1999 — September 30, 1999	8.00%
October 1, 1999 — October 31, 1999	8.00%
November 1, 199 — November 30, 1999	8.00%

ARC 9441A

UTILITIES DIVISION[199]

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 17A.3, 476.1, 476.2, and 476.6(15), the Utilities Board (Board) gives notice that on October 5, 1999, the Board issued an order in Docket No. RMU-99-11, In Re: Natural Gas Supply and Cost Review, "Order Commencing Rule Making," to receive public comment on the adoption of revisions to the Board's rule 199 IAC 19.11(476). The Board's current rule, 199 IAC 19.11(476), requires the Board to conduct an annual proceeding and requires each utility to file a 12-month plan and a 5-year natural gas procurement plan by November 1 of each year. In 1998 the legislature amended Iowa Code section 476.6(15) to allow the Board discretion in determining the appropriate interval between reviews of a rate-regulated utility's natural gas procurement and contracting practices. The amendment to the statute removed specific review criteria and states that the utilities must file information as the Board deems appropriate.

In this rule making, the Board proposes to amend 199 IAC 19.11(476) to state that the Board shall periodically conduct a contested case proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated utility's natural gas procurement and contracting practices. The Board will notify the utilities 90 days prior to the time the utilities will be required to file a plan. In addition, in the years in which the Board does not conduct a contested case proceeding, it may require the utilities to file some information for the Board's review. The proposed amendments to the rule remove the specific evaluation criteria from 199 IAC 19.11(4). Iowa Code section 476.6(15) no longer prescribes review criteria.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474) is applicable to these rules.

Any interested person may file a written statement of position on the proposed rules no later than November 23, 1999, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on December 7, 1999, in the Board's hearing room at the address listed above.

These amendments are intended to implement Iowa Code section 476.6(15).

The following amendments are proposed.

ITEM 1. Amend rule 199—19.11(476), catchwords, as follows:

199—19.11(476) ~~Annual~~ *Periodic* review of gas procurement practices [476.6(15)].

ITEM 2. Amend subrule 19.11(1) as follows:

19.11(1) Procurement plan. *The board shall periodically conduct a contested case proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's natural gas procurement and contracting practices. The board shall provide the utilities 90 days' notice of the requirement to file a procurement plan. In the years in which the board does not conduct a contested case proceeding, the board may require the utilities to file certain information for the board's review. In years in which the board conducts a full proceeding,* ~~A~~ *a* rate-regulated utility shall file ~~by November 1 of each year a complete,~~ *prepared direct testimony and exhibits in support of a* detailed 12-month plan and a ~~5~~ *3*-year natural gas procurement plan.~~, specific where commitments have been made, for the period commencing September 1 of the current year.~~ A utility's procurement plan shall be organized as follows and shall include:

a. An index of all documents and information filed in the plan and identification of the board files in which documents incorporated by reference are located.

b. All contracts and gas supply arrangements executed or in effect for obtaining gas and all supply arrangements planned for the future 12-month and ~~5~~ *3*-year periods.

~~c. A list and description of all other contracts or arrangements for obtaining gas reasonably available to the utility for the future plan periods which the utility did not execute.~~

UTILITIES DIVISION[199](cont'd)

~~d~~ *c.* An organizational description of the officer or division responsible for gas procurement and a summary of operating procedures and policies for procuring and evaluating gas contracts.

~~e~~ *d.* A summary of the legal and regulatory actions taken to minimize purchased gas costs.

~~f~~ *e.* All studies or investigation reports considered in gas purchase contract or arrangement decisions during the plan periods.

~~g~~ *f.* A complete list of all contracts executed ~~during the previous 12 months~~ *since the last procurement review.*

~~h~~ *g.* A list of other unbundled services available (for example, storage services if offered).

~~i~~ *h.* A description of the supply options selected and an evaluation of the reasonableness and prudence of its decisions. This evaluation should show the relationship between forecast and procurement.

ITEM 3. Rescind subrule **19.11(3)**.

ITEM 4. Amend subrule 19.11(4) as follows:

19.11(4) Evaluation of the plan. The burden shall be on the utility to prove it is taking all reasonable actions to minimize its purchased gas costs. The board will evaluate the *reasonableness and prudence of the gas* procurement plan. ~~considering:~~

~~a. Volume, cost and reliability of the major gas suppliers available to the utility.~~

~~b. The cost of alternative fuels available to the utility customers.~~

~~c. The availability of gas in storage.~~

~~d. The extent to which mix in contract terms ensures reliability.~~

~~e. The legal and regulatory actions taken by the utility to minimize the cost.~~

~~f. The gas procurement policies and practices.~~

~~g. The price paid by other utilities for comparable contracts.~~

~~h. The spot market for gas.~~

~~i. The futures market for gas.~~

ITEM 5. Amend subrule 19.11(5) as follows:

19.11(5) Disallowance of costs. The board shall disallow any purchased gas costs in excess of costs incurred under responsible and prudent policies and practices. The ~~gas portion of the base rates and the~~ PGA factor shall be adjusted prospectively to reflect the disallowance.

ARC 9445A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 65, "Administration," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this amendment on October 13, 1999. Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin on August 25, 1999, as **ARC 9277A**. This amendment is identical to that published under Notice of Intended Action.

This amendment requires food stamp households that are not subject to monthly reporting to report to the Department when there is a change of more than $100 per month in the household's total gross earned income.

Federal regulations at CFR 273.12(a)(1)(i) require that households that are not subject to monthly reporting requirements must report changes in total household gross earned income of more than $25 per month. Iowa was granted a waiver to increase this threshold to $80 and a rule was recently adopted to make this change effective November 1, 1999. (See **ARC 9233A** in the August 11, 1999, Iowa Administrative Bulletin.)

After that rule was adopted, the United States Department of Agriculture notified the states that the threshold could be increased from $80 to $100.

This amendment does not provide for waiver in specified situations because federal food stamp law does not allow for any waivers.

The Department of Human Services finds that this amendment confers a benefit on food stamp households that are not required to monthly report by lessening the reporting requirement burden for affected households. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

This amendment is intended to implement Iowa Code section 234.12.

This amendment became effective November 1, 1999.

The following amendment is adopted.

Amend rule 441—65.10(234) as follows:

441—65.10(234) Reporting changes. Households may report changes on the Change Report Form, 470-0321 or 470-0322 (Spanish). Households are supplied with this form at the time of initial certification, at the time of recertification whenever the household needs a new form, whenever a form is returned by the household, and upon request by the household.

Households which are exempt from filing a monthly report must report a change in total household gross earned income of more than ~~$80~~ *100* per month.

[Filed Emergency After Notice 10/13/99, effective 11/1/99]
[Published 11/3/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/3/99.

ARC 9447A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 156, "Payments for Foster Care and Foster Parent Training," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this amendment on October 13, 1999. Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin on August 25, 1999, as **ARC 9276A**. This amendment is identical to that published under Notice of Intended Action.

This amendment provides that the maximum monthly maintenance payment for a child in an independent living situation shall be made pursuant to the foster family care daily maintenance rate for children aged 16 and over. The daily maintenance rate shall be multiplied by 365 and divided by 12. For the current fiscal year, this will implement an increase in the maintenance payment paid to a child in independent living from $485.45 per month to $496.40 per month.

It is the Department's intent that children in independent living receive the same cost-of-living increase as children in foster care and subsidized adoption. The increase has been included in the Department's appropriation.

This amendment does not provide for waivers in specified situations because individuals may request a waiver of the maximum monthly maintenance payment under the Department's general rule on exceptions at rule 441—1.8(217).

The Department of Human Services finds that this amendment confers a benefit on children in independent living by providing them with a monthly maintenance rate increase to reduce the effects of inflation. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

This amendment is intended to implement Iowa Code section 234.35.

This amendment became effective November 1, 1999.

The following amendment is adopted.

Amend subrule 156.12(1) as follows:

156.12(1) Maintenance. When a child at least aged 16 but under the age of 20 is living in an independent living situation, ~~an amount not to exceed $485.45 per month~~ *the maximum monthly maintenance payment for the child shall be made pursuant to the basic daily maintenance rate for a child aged 16 and over in subrule 156.6(1). The maximum monthly payment shall be computed by multiplying the daily rate in subrule 156.6(1) by 365 and dividing by 12. This payment* may be paid to the child or another payee, other than a department employee, for the child's care.

[Filed Emergency After Notice 10/13/99, effective 11/1/99]
[Published 11/3/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/3/99.

ARC 9439A

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5 (17), the Iowa Finance Authority hereby rescinds Chapter 12, "Low-Income Housing Credit," and adopts a new Chapter 12, "Low-Income Housing Tax Credits," Iowa Administrative Code.

The purpose of the new chapter is to satisfy the requirements of Iowa Code section 16.52 which requires the Iowa Finance Authority (Authority) to promulgate rules and allocation procedures which will ensure the maximum use of available tax credits in order to encourage development of low-income housing in the state. Additionally, the Authority is required to promulgate rules that specify the application procedure and the allowance of low-income housing tax credits under the state housing credit ceiling. These rules are also designed to provide a fair and equitable procedure to evaluate applications submitted to the Authority for tax credit reservations. These rules are being adopted for the 1999 round of tax credit reservation awards. The Authority intends to rescind these rules after the 1999 round is completed and file a new set of rules for the 2000 round of tax credit reservations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 11, 1999, as **ARC 9271A**. Written comments were received on August 31, 1999, and on various dates thereafter. A public hearing was held on September 1, 1999, over the ICN network. Comments were received from numerous interested parties. In the preamble to the Notice of Intended Action, the public was advised that the Authority expected to significantly amend the noticed rules based on the comments received from the public. The comments can be roughly divided into three categories: (1) comments addressing mechanical or technical language changes; (2) comments relating to changes for the qualified allocation plan for 2000; (3) comments relating to changes needed to make the 1999 plan fair and equitable. Certain rules were amended to make nonsubstantive language changes, and others change only the rule number. The Authority is identifying only the substantive changes in this preamble. The references in this preamble are to the new rule or subrule numbers. Based on these comments, the following changes were made to the proposed rules:

1. The definition of "applicant " was revised to be more precise.
2. Definitions for the terms "application acceptance period" and "application round" were omitted because the terms were not used in any other part of the rule.
3. The term "combined 30 percent and 70 percent of the present value of the credit" was added to the definitions in rule 12.1(16) to clarify one of the elements of the formula used to calculate the value of the tax credit per unit.
4. The term "control" was amended to include person or affiliate thereof in the definition of control.
5. The definition of "elderly project" was omitted because it was inaccurate. The term "housing project for older persons" was substituted for "elderly project" and was defined in a manner consistent with 45 U.S.C. Section 3607(b)(2).
6. The term "evaluator" was added to the definitions in rule 12.1(16) to describe the people who will score the applications.
7. The term "forward funding" or "forward commitment" was added to the definitions in rule 12.1(16).
8. The term "FHLB" was added to the definitions in rule 12.1(16).
9. The term "general requirements" was added to the definitions in rule 12.1(16) to describe the items that are included as general requirements for construction of a project.
10. The term "HART team" was amended to make it more precise.
11. The term "housing support services" was added to the definitions in rule 12.1(16) to describe services applicants can supply to a project that the applicant proposes.
12. The term "intermediary costs" was redefined to match language in the Authority's application for the 1999 round.
13. The term "low-income housing credit allocation amount" was amended to clarify that it is the amount of credit allocated to a project.
14. The term "market study" was amended to allow for inclusion of the outline for the market study by reference.
15. The term "organized community revitalization program" was added to describe the type of plan the Authority is relying on to award points in this category.
16. The term "per capita component" was amended to correct the reference to the IRC Section 42. The section reference now reads 42(h)(3)(C)(i).
17. The term "qualified allocation plan" was amended to be more precise, to incorporate by reference Iowa Code section 16.52 and IRC Section 42 and to describe tax-exempt bond financed projects.
18. The term "qualified nonprofit project" was amended to include a reference to IRC Section 42(h).
19. The term "real estate owned (REO) projects" was amended to change the references to Freddie Mac and FHLB in the text of the rule.
20. The term "recovered credits" was amended to make it more precise.
21. The term "rental assistance" was added.
22. Paragraph "3" of the the term "rural project" was amended to clarify the description of the division of the USDA-Rural Development.
23. The term "USDA-Rural Development" was added to accurately describe the housing division of the United States Department of Agriculture.
24. The term "unallocated or unreserved credits" was amended to clarify what constitutes unallocated or unreserved credits.
25. Subrule 12.3(1) was amended to reflect language in the application that was inadvertently omitted when the Notice was submitted regarding the nonrefundable nature of the fee.
26. Subrule 12.3(3) was amended to indicate that the compliance fee is collected once and that the compliance monitoring manual is incorporated by reference.
27. Subrule 12.4(2) was amended to allow the Authority to include all amendments filed between October 2, 1998, and March 9, 1999, in applications deemed filed on October 7, 1999.
28. Subrule 12.4(3) was amended to allow the Authority to accept amendments filed after October 7, 1999, to conform to the changes in the rules. Amendments must be filed on October 18, 1999, instead of October 22, 1999, to allow the Authority more time to score the applications. Additionally, language that was originally proposed for amendments was deleted and new language governing site changes and amendments to financing and syndication information was added. Site changes will be allowed as an amendment if the

IOWA FINANCE AUTHORITY[265](cont'd)

applicant can demonstrate that the change was due to the delay caused by the contested case proceeding. The Authority is requiring all applicants to update financial and syndication information.

29. Subrule 12.4(4) was amended to provide that the Authority will not notify applicants if documents are missing from their applications.

30. Subrule 12.4(5) was amended to provide for a contact person for the application process and to ensure that the contact person will not be an evaluator. The applicant conference was held on October 13, 1999, rather than October 15, 1999. A notice of the meeting was sent to all applicants by fax.

31. Subrule 12.4(7) was amended to omit a reference to the use of ideas contained in the application.

32. Subrule 12.4(11) was amended to revise paragraph "b" and to add new paragraph "c" relating to the establishment of a waiting list to distribute unreserved or recovered credits. The creation of a waiting list is not a commitment for forward funding or a guarantee for funding in the next round of financing.

33. Subrule 12.4(14) was amended to omit the reference to the 10 percent cap and the ability to request that a developer phase a project.

34. Subrule 12.4(15) was amended to provide that the staff will provide written reports for any site visits the staff makes to the sites. The report may include photographs of the site for review by the Authority staff and board.

35. Subrule 12.4(16) has been revised to clarify contacts with evaluators and Board members. Contacts with Board members will be not allowed.

36. Subrule 12.4(17) was omitted as duplicative of language previously included in Iowa Code chapter 16.

37. Subrule 12.4(18) was added to reflect requirements necessary to submit a complete application to the Authority. The subrule provides that, if an applicant is seeking financing from another public funding source, the application for the financing must be included with the tax credit application.

38. Subrule 12.5(1) was amended to clarify the treatment for the nonprofit set-aside if it is not completely reserved for 1999.

39. Subrule 12.5(2) was amended to clarify that nonprofit organizations will compete with for-profit applicants in the event the nonprofit set-aside is exhausted.

40. Subrule 12.6(11) was amended to add residential condominiums to the type of project an applicant can propose for tax credits.

41. Subrule 12.6(13) was amended to clarify that applicants must identify whether the project is designed as housing for older persons.

42. Subrule 12.6(18) was amended to require that zoning information be current.

43. Subrule 12.6(19) was added to identify whether the site is the subject of rezoning.

44. Subrule 12.6(21) was added to provide that utilities not at the site must be identified and the actions necessary to bring utilities to the site described.

45. Subrule 12.6(23) was amended to change the word "developer" to "applicant" for consistency.

46. Subrule 12.6(26) was added to include limited liability companies in the description of applicants eligible to file applications for low-income tax credits.

47. Subrule 12.6(28) was amended to include clarifying language regarding members of the development team.

48. Subrule 12.6(29) was amended to clarify the references to the nonprofit organizations as they are described in the Internal Revenue Code.

49. Subrule 12.6(47) was amended to clarify the reference to combined present value of the credit.

50. Subrule 12.6(73) was amended to clarify the requirements for extended use agreements. The amendment directs the applicant to indicate that a project will be subject to the standard use agreement and that it is subject to early termination after the mandatory 15-year period.

51. Subrule 12.6(74) was amended to clarify the requirements for documentation that a project is located in a community that is experiencing a shortage of low-income housing, that the project combines the tax credit with financial assistance from the local community and that the project is in an official neighborhood preservation or other organized community revitalization program.

52. Subrule 12.6(78) was amended to indicate that the exhibits must be included with the application. Paragraph "5" was added to require evidence of rental assistance contracts. Paragraph "6" was amended to clarify the sentence regarding the requirement for market studies for projects with 12 or fewer units. Paragraphs "10" and "11" were amended to delete the reference for carryover agreement requirements. Paragraph "12" was added to include limited liability companies. Paragraph "13" was amended to include a reference to the articles of organization for a limited liability company. Paragraph "15" was amended to clarify the sentence. Paragraph "17" in the Notice was omitted as being duplicative. Paragraph "20" was amended to clarify the requirements of the after-tax cash flow to include the benefits of the amount of tax credit requested. Paragraph "21" in the Notice was omitted because it was duplicative of new paragraph "17." Paragraph "22" was amended to clarify the reference to applicant.

53. Subparagraph 12.7(2)"a"(3) was amended to include language for a binding agreement to purchase land.

54. Paragraph 12.7(2)"b" was amended to reflect that the zoning information must be current and that evidence supporting the zoning information must show the appropriate approvals or indicate that zoning has been requested and provide a date indicating when the zoning authority will act.

55. Paragraph 12.7(2)"c" was amended to reflect that utilities must be either presently at the site or the applicant must describe the steps necessary to bring the utilities to the site and provide adequate evidence of the action necessary to bring utilities to the site.

56. Paragraph 12.7(2)"d" was amended to clarify the requirement for a market study for projects with 12 or fewer units.

57. Paragraph 12.7(2)"e" was amended to require that, as part of a complete application, the applicant must include other financing applications with the tax credit application.

58. Subrule 12.7(3) was amended to require that applicants list sources and uses of all funds. Additionally, the subrule was amended to add a reference to IRC Section 42 requiring underwriting for the projects.

59. Subrule 12.7(4) was amended to create a list of items that will cause an application to be rejected outright. Subrules 12.7(5) through 12.7(9) were incorporated into the list with appropriate language changes. Additionally, in new paragraph "a," if an applicant has received a deferred conviction or sentence, the applicant's application will be rejected outright.

60. Subrules 12.7(10) and 12.7(11) were moved to rule 12.12(16).

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61. The introductory paragraph of rule 12.9(16) was amended to clarify that the point range is described in each subrule.

62. Subrule 12.9(4) was amended to omit the reference to deferred development fees. Applicants will be scored in this category if an equity contribution in any amount is made.

63. Subrule 12.9(5) was amended to provide that a lending institution must be domiciled in or have a branch office in Iowa to score in this category.

64. Subrule 12.9(8) was amended to more accurately reflect Authority staff practice. The Authority will compare the credit request per unit in comparison to the universe of all the projects proposed. Additionally, the ranges were adjusted to reflect staff practice.

65. Paragraph 12.9(9)"b" was amended to include the USDA as a source for low-income property eligible for preservation.

66. Subrule 12.9(10) was added. This item was inadvertently omitted when the rule was noticed. It provides 15 points for new construction outside an MSA or in a high-cost, difficult development or targeted area.

67. Subrule 12.9(13) was amended to reflect Authority staff practice. The point range is based upon a comparison of the projected construction costs for the projects when compared with each other.

68. Subrule 12.9(14) was amended to award points for providing housing support services supported by local governments or nonprofit organizations. Ten points are awarded for this item.

69. Subrule 12.9(18) was amended to clarify the language regarding the domiciliary of the contractor.

70. Subrule 12.9(19) was amended to define housing support services. The subrule requires written evidence of the services the applicant can supply to the project.

71. Subrule 12.9(21) was amended to clarify the reference to housing for older persons.

72. Subrule 12.9(24) was amended to define transitional housing as described in IRC Section 42.

73. Subrule 12.9(26) was amended to score the preference required by IRC Section 42 for serving the lowest income tenants. The subrule indicates that the Authority will examine the elections made and the rents charged to tenants to determine the scoring in this category. The subrule indicates the scoring range and provides examples of scoring for this item.

74. Subrule 12.9(27) was amended to provide an additional reference to IRC Section 42(m). Other language was eliminated as unnecessary.

75. The introductory paragraph of rule 12.10(16) was amended to clarify where the Authority Board will use its discretion in awarding tax credits and how the Board will deal with a tie. The rule was renumbered and a subrule was added to address ties after the Board exercises its discretion.

76. Paragraph 12.10(1)"b" was amended to clarify the type of information the Board will rely on to award credits when it is considering whether the market is saturated with low-income housing.

77. Paragraph 12.10(1)"c" was amended to omit the provision allowing the Board to consider oral or written presentations at the public meeting where the Authority decides to award tax credits.

78. Paragraph 12.10(1)"f" was amended to omit the stated limits per county. The Authority Board may decide to limit the number of projects in a given political subdivision.

79. Paragraph 12.10(1)"g" was amended to omit the $500,000 cap.

80. Subrule 12.10(2) was added to provide the factors the Authority can use to break a tie.

81. Subrules 12.10(7) and 12.10(8) were omitted.

82. Rule 12.11(16) was amended to provide that the Authority will provide notice of the award of tax credit reservations. This rule also includes a mechanism for the waiting list and provides that the Board can adjust the order on the waiting list. Finally, the rule provides that placement on the waiting list requires the applicant to reapply for tax credits for the next round in order to obtain funding.

83. Subrule 12.12(1) was amended to clarify the circumstances when an applicant can amend the application after a tax credit reservation has been received.

84. Subrule 12.12(3) was amended to describe the documentation required to obtain a carryover agreement or an IRS Form 8609 from the Authority.

85. Subrules 12.12(4) through 12.12(6) were added to provide for postreservation treatment of changes in ownership for partnerships, corporations and limited liability companies.

86. The opening paragraph of rule 12.13(16,17A) was amended to provide that the filing of an appeal does not act as a stay of the award of tax credit reservations. Appeals may be filed within seven days after the date of the notice of tax credit awards is received by an applicant. An aggrieved party must specifically request a stay from the Authority to prevent the awards from going forward.

87. Subrule 12.13(5) was added to provide for settlement negotiations with the executive director, the prosecuting attorney, and the aggrieved party. The subrule provides for procedures to submit settlements to the Board and to allow for the waiver of certain provisions of Iowa Code chapter 17A.

88. Subrule 12.13(7) was added to provide for a remedy for aggrieved parties by adding the aggrieved party to a waiting list.

89. Subrule 12.14(8) is amended to provide that the Authority will provide notice to a project owner before it inspects individual units in a project.

The Authority finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments, 35 days after publication, should be waived and the amendments be made effective upon filing on October 6, 1999. These amendments confer a benefit on the public by the award of low-income tax credits to developers committed to build low-income housing in Iowa in 1999.

The Authority is taking the following steps to notify potentially affected parties of the effective date of the amendments: publishing the amendments in the Iowa Administrative Bulletin, providing free copies on request, mailing copies of the rules to all 1999 applicants, posting the rules to the Authority's home page at http://www.ifahome.com and having copies available wherever requests for information about the program are likely to be made.

These amendments are intended to implement Iowa Code section 16.52 and IRC section 42.

The Authority adopted these amendments on October 6, 1999.

These amendments became effective on October 6, 1999.

Rescind 265—Chapter 12 and adopt the following **new** chapter in lieu thereof:

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CHAPTER 12
LOW-INCOME HOUSING TAX CREDITS

265—12.1(16) Definitions.

"Affiliate" means an individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with any other person, and specifically shall include parents or subsidiaries.

"Applicable fraction" means the fraction used to determine the qualified basis of the qualified low-income building, which is the smaller of the unit fraction or the floor space fraction, as defined more fully in IRC Section 42(c)(1).

"Applicable percentage" means the percentage used to determine the amount of the low-income housing tax credit, as defined more fully in IRC Section 42(b).

"Applicant" means any person and any affiliate of such person that submits an application to the authority requesting a tax credit allocation pursuant to these rules. Each project owner and each of the project owner's successors in interest shall be obligated to carry out the commitments made to the authority by the applicant.

"Application" means those forms required by the authority, including any required attachments, exhibits or other supporting materials, filed with the authority by an applicant requesting a low-income housing tax credit allocation. The application must include all information required by rule and as may be subsequently required by the authority.

"Area gross median income (AGMI)" means the most current tenant income requirements pursuant to the qualified low-income housing project requirements of IRC Section 42(g).

"Board" means the board of directors of the authority.

"Carryover agreement and allocation and taxpayer's election statement" means an allocation of current year tax credit authority by the authority pursuant to the provisions of IRC Section 42(h)(1)(E) and Treasury Regulations, § 1.42-6.

"Code" or "IRC" means the Internal Revenue Code of 1986 together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service relating to the low-income housing tax credit program authorized by IRC Section 42. A copy of the Internal Revenue Code and Treasury regulations relating to this program are found in the state law library and are available for review by the public.

"Combined 30 percent and 70 percent of the present value of the credit" means the total amount of credit calculated at either 4 percent or 9 percent used to calculate the total number of credits requested per unit for a project.

"Compliance period," as defined in IRC Section 42(i)(1) as amended to January 1, 1986, means, with respect to any building, the period of 15 consecutive taxable years beginning with the first taxable year of the credit period.

"Control" (including the terms "controlling," "controlled by," "under common control with," or some variation or combination of all three) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any person or affiliate thereof, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50 percent of the general partner interest in a limited partnership, or designation as a managing general partner or the managing member of a limited liability company.

"Cost certification procedures" means those procedures described by these rules for the filing of requests for IRS Form 8609 for projects placed in service under the low-income housing tax credit program and for carryover agreements and allocations and taxpayer's election statements.

"Credit" means the low-income housing tax credit issued pursuant to the program, IRC Section 42 and Iowa Code section 16.52.

"Credit period" means, with respect to a building within a project, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the project owner, the succeeding taxable year, as more fully defined in IRC Section 42(f)(1).

"Declaration of land use restrictive covenants (LURA)" means an agreement between the authority, the project owner and all successors in interest to the project owner which encumbers the project with respect to provisions stipulated in IRC Section 42(h), this chapter and Iowa Code section 16.52.

"Determination notice" means a notice issued by the authority to the owner of a tax-exempt bond project which states that the project may be eligible to claim low-income housing tax credits without receiving an allocation of credits from the state housing credit ceiling, sets forth conditions which must be met by the individual project before the authority shall issue the IRS Form(s) 8609 to the project owner, and specifies the amount of tax credits necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

"Difficult development area" means any area that is so designated by the Secretary of the United States Department of Housing and Urban Development (HUD) as an area which has high construction, land, and utility costs relative to area median family income.

"Eligible basis" means, with respect to a building within a project, the building's eligible basis as defined in IRC Section 42(d).

"Equity gap" means the difference between the total sources of financing for the project and the total project costs that is to be filled with the proceeds of the credit.

"Evaluator" means members of the authority staff or temporary staff hired to review and score the applications after October 18, 1999.

"Fannie Mae" means the Federal National Mortgage Association.

"FHLB" means the Federal Home Loan Bank.

"Forward funding" or "forward commitment" shall have the same meaning as described in IRC Section 42(b)(2)(A)(ii)(I) and 42(h)(1)(C).

"Freddie Mac" means the Federal Home Loan Mortgage Corporation.

"General requirements" means items at a construction site necessary to complete the job. For example, general requirements may include power to the site, toilets, signage or other barriers.

"Governmental entity" means federal or state agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts and other similar entities, their employees, board members or agents.

"HART team" means the housing assistance review team. It is a committee comprised of representatives of governmental and quasi-governmental entities which administer affordable housing programs that may contribute financing

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and market information to low-income housing projects eligible for low-income housing tax credits. Members of the HART team include representatives from the authority, the Iowa department of economic development, the United States Department of Agriculture, the Federal Home Loan Bank of Des Moines, HUD and Fannie Mae.

"Housing credit agency" means the authority. Pursuant to Iowa Code section 16.52, the authority is charged with the responsibility of allocating low-income housing tax credits pursuant to IRC Section 42(h)(8)(A) and pursuant to Iowa Code section 16.52.

"Housing project for older persons" shall have the same meaning as described in 42 U.S.C. Section 3607(b)(2).

"Housing support services" means medical and psychological counseling, financial counseling, employment counseling, nutritional counseling, housing and placement counseling, and assistance in applying for other benefits and services such as child care and transportation.

"HUD" means the United States Department of Housing and Urban Development, or its successor.

"Intermediary costs" means costs associated with the sale or use of credits to raise equity capital. Such costs include, but are not limited to, financing fees and expenses, soft costs, syndication costs, developer fees and project reserves as described in subrule 12.6(47), numbered paragraphs "26" to "41."

"IRS" means the Internal Revenue Service, or its successor.

"Low-income housing credit allocation amount" means, with respect to a project or a building within a project, the amount of credit the authority allocates to a project and determines to be necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the compliance period.

"Low-income housing tax credit (LIHTC)" means the credit determined under IRC Section 42(a) for any taxable year in the credit period equal to the amount of the applicable percentage of the qualified basis for each qualified low-income building.

"Low-income unit" means any residential rental unit if such unit is rent-restricted and the occupant's income meets the limitations applicable as required for a qualified low-income housing project.

"Market study" means a study of the rental market conditions for the communities where projects are or will be located. An outline of the market study requirements prepared by the authority is incorporated by this reference and pursuant to 265—subrules 17.4(2) and 17.12(2).

"Metropolitan statistical area (MSA)" means a central city containing at least 50,000 people with a total metropolitan population of at least 100,000.

"Organized community revitalization program" means a strategic plan adopted by a political subdivision that designates neighborhood plans, area plans, or comprehensive plans that address housing needs.

"Per capita component" means an item of the state housing credit ceiling, as defined in IRC Section 42(h)(3)(C)(i). The per capita component is based upon the calendar-year population estimates as determined by IRC Section 146(j) and promulgated on an annual basis by an IRS Service Notice.

"Person" shall have the same meaning as contained in Iowa Code chapter 4.

"Program" means the low-income housing tax credit program.

"Project" means a low-income rental housing property the owner of which represents that it is or will be a qualified low-income housing project within the meaning of IRC Section 42(g). With regard to this definition, the "project" is that property which is the basis for the application.

"Project owner" or "owner" means any person or affiliate thereof that owns or proposes to own and develop a project or expects to acquire control of a project consistent with control documents provided by the owner to the authority as part of the application for low-income housing tax credits.

"Property" means the real estate and all improvements thereon which are the subjects of the application, including all items of personal property affixed or related thereto, whether currently existing or proposed to be built thereon in connection with the application.

"Qualified allocation plan (the QAP)" means an allocation plan as described in these rules and in conformance with IRC Section 42 and Iowa Code section 16.52 and incorporated herein by this reference and pursuant to 265—subrules 17.4(2) and 17.12(2). The requirements set forth in these rules also apply to tax-exempt bond financed projects, which may be eligible for credits apart from the annual state housing credit per capita component. Tax-exempt bond financed projects must also satisfy the requirements for allocation under the qualified allocation plan.

"Qualified basis" means, with respect to a building within a project, the building's eligible basis multiplied by the applicable fraction, within the meaning of IRC Section 42(c)(1).

"Qualified census tract" means any census tract which is so designated by the Secretary of HUD and, for the most recent year for which census data are available on household income in such tract, in which 50 percent or more of the households have an income which is less than 60 percent of the area median family income for such year.

"Qualified nonprofit organization" or "nonprofit" means an organization that is described in IRC Section 501(c)(3) or (4), that is exempt from federal income taxation under IRC Section 501(a), that is not affiliated with or controlled by a for-profit organization, and includes as one of its exempt purposes the fostering of low-income housing within the meaning of IRC Section 42(h)(5)(C) and is allowed by law or otherwise to hold and develop property.

"Qualified nonprofit project" means a project in which a qualified nonprofit organization has control (directly or through a partnership or wholly owned subsidiary as defined in IRC Section 42(h)(5)(D)(ii)) and materially participates (within the meaning of IRC Section 469(h)) in its development and operation throughout the compliance period.

"Real estate owned (REO) projects" means any existing residential development that is owned or that is being sold by an insured depository institution in default, or by a receiver or conservator of such an institution, or is a property owned by HUD, Fannie Mae, Freddie Mac, a federally chartered bank, a savings bank, a savings and loan association, the FHLB, a federally approved mortgage company or any other federal agency.

"Recovered credits" means either credits previously awarded to a project or projects that cannot use all the credits the project was awarded or credits from projects that cannot be placed in service by the owner.

"Rehabilitation expenditure" means amounts incurred in connection with the rehabilitation which the project owner represents to be "rehabilitation expenditures" within the meaning of IRC Section 42(e)(2).

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"Rental assistance" means any assistance received by a low-income person from a governmental unit or other entity that permits the person to live in rental housing.

"Rural project" means a project located in Iowa within an area which:

1. Is situated outside the boundaries of an MSA; or
2. Is situated within the boundaries of an MSA if it has a population of not more than 20,000 and does not share boundaries with an urbanized area; or
3. Is located in an area that is eligible for funding by the United States Department of Agriculture-Rural Development.

"Selection criteria" means the criteria described in this chapter to determine the housing priorities of the state under the low-income housing tax credit program.

"State housing credit ceiling" means the limitation imposed by IRC Section 42(h) on the aggregate amount of housing credit allocations that may be made by the authority during any calendar year, as determined from time to time by the authority in accordance with IRC Section 42(h)(3).

"Tax-exempt organization" means an entity which is described in IRC Section 501(c)(3) or (4), and which is either registered or qualified to conduct business in the state or in the governmental unit wherein the project may be situated.

"Threshold criteria" means criteria used to determine the project's qualifications that are the minimum level of acceptability for consideration under the credit program. If a project fails to meet threshold criteria, it shall not be scored.

"Unallocated or unreserved credits" means credits that are not awarded by the authority during its most recent round of financing or are returned to the authority during the current year. These credits would be eligible for redistribution in accordance with the rules of the authority.

"USDA-Rural Development (USDA-RD)" means the rural housing division of the United States Department of Agriculture.

"Utilities" means gas, electricity, water and sewer service.

265—12.2(16) Purpose and objectives. The purpose of the low-income housing tax credit program is to provide an incentive to developers to construct or to acquire or to substantially rehabilitate, or some combination thereof, affordable rental housing units throughout the state for qualified individuals and families. These individuals or families must have an income that is at 60 percent or below the area median gross income. The units must remain in compliance for a minimum period of 15 years. The intent of the program is to allocate tax credits to those projects which best meet and serve the objectives outlined as follows:

1. To assist in the creation of affordable housing units for individuals and families which serve qualified individuals and families for the longest periods of time.
2. To assist in the creation of affordable housing units for individuals and families at the lowest income levels.
3. To assist in the creation of affordable housing units in areas of the greatest need for such housing in the state.
4. To encourage the preservation and rehabilitation of existing affordable housing units.
5. To encourage the construction of new affordable housing units.
6. To encourage the efficient use, leveraging, and coordination of various federal, state, community and private sources of funding and incentives to finance low-income housing development.
7. To assist in the creation of quality, decent, safe and affordable housing units for limited income individuals and families at reasonable costs.

265—12.3(16) Fees. The authority shall collect the following fees for the low-income housing tax credit program.

12.3(1) A nonrefundable $300 application processing fee for projects with up to 12 units. The authority shall collect a nonrefundable application fee of $500 for proposed projects with 13 or more units. The authority may accept checks made payable to the Iowa Finance Authority for the application fee. The fee shall be due with the application. An application shall not be reviewed or scored unless the application fee accompanies the application.

12.3(2) The authority shall collect a reservation fee of 5 percent of the total annual credit amount for projects receiving $100,000 or less in annual credit, and a reservation fee equal to 7 percent of the total annual credit shall be required for projects receiving $100,001 or more in annual credit. The reservation fee is nonrefundable.

12.3(3) A compliance monitoring fee shall be charged once the project has been placed in service, but prior to the issuance of IRS 8609 form after the authority has received, reviewed and approved the IRS 8609 request package. The compliance monitoring fee shall be charged one time. A compliance monitoring manual may be provided with the IRS 8609 forms free of charge. The compliance fee shall be 2.55 percent of the total annual credit amount awarded to the owner. The compliance monitoring manual is incorporated in this rule by this reference and pursuant to 265—subrules 17.4(2) and 17.12(2).

265—12.4(16) Application process and general information. Upon request, the authority shall forward an application packet to a potential applicant. As may be necessary for the benefit of the program, the authority may distribute unsolicited application packets to local financial institutions, regional councils of government, landlord associations, and other rental housing groups.

12.4(1) The application packet shall consist of the qualified allocation plan as described in these rules and the application form prepared by the authority to reflect the requirements of the qualified allocation plan.

a. All applications shall be typed, not handwritten. The application form provided by the authority must be used. The authority may supply the application form to any applicant in electronic form upon request.

b. Applications submitted on forms that have been retyped or on a form other than the application form supplied by the authority shall not be accepted.

c. All exhibits shall be labeled to match the applicable page of the application and must be submitted in numerical order.

12.4(2) For purposes of the applications due for the 1999 cycle of tax credit reservations, the authority shall consider only the applications, attachments and supporting documents filed on October 1, 1998, for the 1999 cycle and amendments filed pursuant to subrule 12.4(3). All applications filed on October 1, 1998, shall be considered newly filed as of October 7, 1999. All amendments filed between and including October 2, 1998, and March 9, 1999, shall be deemed part of the application filed on October 7, 1999. Any site visit conducted by the authority between August 1, 1999, and October 6, 1999, may be relied upon during the scoring of these applications after October 6, 1999.

12.4(3) Amendments to the applications filed on October 7, 1999, shall be due on October 18, 1999. Thereafter, no amendments to the 1999 applications shall be accepted. Except as provided in this subrule, applicants may amend their applications to conform with or address changes made in the qualified allocation plan as described in these rules.

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a. Applicants may change the site described in the application as of March 9, 1999, only if the change in site was caused by a delay necessitated by the contested cases consolidated under 99 IFA 001 initially filed on March 23, 1999, and the ruling entered on July 2, 1999. An applicant shall certify in writing to the authority that the site change is due to delay necessitated by the contested case and the ruling and provide adequate evidence of the need for a site change. Adequate evidence shall include but is not limited to a letter notifying an applicant that an option had lapsed or a contract clearly showing that the passage of the option date qualifies as adequate evidence.

b. For the 1999 round every applicant shall provide an update confirming all of its financial commitments whether the commitments are firm or conditional. The applicant shall make these amendments to its sources and uses of funds included in the application.

c. In the event an applicant intends to syndicate or place tax credits, updated information regarding the syndicator or the placement of the credits shall be included as an amendment to the applicant's application. The amendment shall include the proceeds from the tax credit, proceeds from historic tax credits, the date the funds will be paid, the type of offering, the type of investor, the name of the fund, the name of the syndicator, the address, state, and ZIP code, and the telephone number. A copy of any agreement or contract relating to the syndication or placement of partnership interest must be included with the amendment.

12.4(4) Incomplete applications shall not be scored. An incomplete application is any application that is missing any document required by these rules. The authority will not notify an applicant if required documents are missing from the application.

12.4(5) The authority shall designate a single contact person for the low-income housing tax credit program for the 1999 cycle. The contact person shall not be an evaluator. Questions concerning the qualified allocation plan and the application may be addressed in writing to the authority's contact person by mail, E-mail, hand delivery or facsimile, no later than October 13, 1999, 3 p.m. Central time. Questions received and answers the authority provides shall be mailed or faxed on October 14, 1999, to all applicants and posted on the authority's Web page under Frequently Asked Questions regarding the 1999 tax credit round. Responses shall not be E-mailed to applicants. Oral questions shall not be accepted. The authority shall not be bound by any oral representation made in connection with the application or award of tax credit reservations. For the 1999 cycle, the authority shall have an in-person question and answer period for all applicants regarding the 1999 applications on October 13, 1999, for any applicant wishing to attend. The authority shall notify all applicants of the time and place of the meeting by fax prior to the meeting.

12.4(6) The authority is not responsible for any costs incurred by an applicant which are related to the preparation or delivery of the application or any other activities carried out by the applicant related to its response to the qualified allocation plan and application.

12.4(7) By submitting an application, an applicant agrees that the authority shall copy the application for purposes of facilitating the evaluation or to respond to requests for public records. The applicant agrees that such copying shall not violate the rights of any third party.

12.4(8) All applications become property of the authority and shall not be returned to the applicants even in the event that no tax credits are awarded. At the conclusion of the selection process, the contents of all proposals shall be placed in the public domain and be opened to inspection by interested parties subject to the provisions of Iowa Code chapter 22.

12.4(9) All information submitted by an applicant may be treated as a public record by the authority unless the applicant properly requests that the information be treated as confidential information at the time the application is submitted. Public records shall be copied by the authority as necessary to comply with Iowa's public record laws and to be consistent with the authority's rules.

a. Any request for confidential treatment of information must be included with the application and must enumerate the specific grounds in Iowa Code chapter 22 which support treatment of the material as confidential and must indicate why disclosure is not in the best interest of the public. The request must also include the name, address, and telephone number of the person authorized by the applicant to respond to any inquiries by the authority concerning the confidential status of the materials.

b. In the event the authority receives a request for the release of information that includes material an applicant has marked as confidential, the authority shall provide a written notice by fax to the applicant regarding the request as soon as practicable. Unless otherwise directed by a court of competent jurisdiction, the authority shall release the requested information within 15 days after faxing and mailing a written notice to the affected applicant.

c. The applicant's failure to request confidential treatment of material pursuant to this subrule and the relevant laws and administrative rules shall be deemed by the authority as a waiver of any right to confidentiality that the applicant may have had.

12.4(10) The amount of tax credits available in Iowa in each calendar year shall reflect the sum of the amounts allowed as the state credit ceiling under IRC Section 42(h)(3)(C). One or more reservation cycles may be established for each calendar year. The executive director, in consultation with authority staff, may determine in each calendar year the dates for each reservation cycle and the amount of tax credit (up to 100 percent of the state credit ceiling) available for reservation in each cycle. The authority shall maintain a list of persons who have expressed an interest in receiving a copy of the QAP and the application. Notices announcing specific dates and the amounts of tax credit available for reservation in each cycle shall be mailed to the persons on the list and posted on the authority's Web site at http://ifahome.com or otherwise made available prior to the beginning of each reservation cycle. The notice shall be deemed to have been given for the 1999 cycle.

12.4(11) The following conditions shall apply to the 1999 cycle of tax credits:

a. Any credit not reserved at the end of the first cycle shall be carried over to the next cycle, if any, for the same purpose.

b. Any unallocated or recovered credits or a combination of both may be awarded as part of the 1999 cycle of awards for tax credits, or may be carried over to 2000 at the discretion of the board.

c. The board may establish a waiting list to distribute unreserved or recovered credits for 1999 and as provided in rules 12.11(16) and 12.13(16). This is not a commitment to forward fund any project or ensure that a project shall be funded in another round of tax credit reservations.

12.4(12) Any determinations by the authority in connection with any aspect of the low-income housing tax credit

program shall not be construed to be a representation or warranty to any person, sponsor, investor, or lender as to the feasibility or viability of any project. The authority's review of the applications and the supporting exhibits is for its own purposes. The authority makes no representations or warranties to owners, investors, lenders or any other persons as to compliance with the Internal Revenue Code, the Iowa Code, Treasury regulations or any other laws or regulations governing low-income housing tax credits.

12.4(13) The authority shall make a determination as to the amount of credit as required by IRC Section 42(m)(2) at each of the following times:

1. When the application is made.
2. When the allocation is made.
3. When the project is placed in service (if subsequent to allocation).

Prior to each determination above, the applicant shall certify to the authority the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) to the project.

12.4(14) The authority may request additional information from an applicant. The information requested shall not be used to amend any category that is scored except as described herein. The information obtained from the applicant shall be reduced to writing and shall be added to the project file.

12.4(15) The authority may make site visits as it deems necessary to review proposed project sites. The staff shall prepare a written document describing the site and make it available to the board for review in the consideration of awarding tax credits to a particular project. The written document may include photographs including electronic or digital photographs to describe the site. Applicants may not be notified of a site visit unless access to a building is required.

12.4(16) For the 1999 round, once the time has expired for making amendments to the applications, neither the applicants nor any person on behalf of the applicant may contact the evaluators assigned by the authority to review and score the applications for the cycle under consideration. Any such contact may require the authority to reject the applicant's proposal. Applicants shall not contact board members to discuss the merits of the applicant's application.

12.4(17) Applicants who have no previous history of receiving tax credit allocations in the state of Iowa must submit a certification to the authority concerning the applicant's previous participation and histories as principals in rental housing projects.

12.4(18) In the event an applicant is seeking funding from any other public funding source, including but not limited to the housing assistance program administered by the authority (HAF), HOME funds, a program administered by the department of economic development, or FHLB loan or grant funds or USDA-RD funds, the applicant must submit a copy of the application for the funds or a letter of intent to fund from the appropriate funding source at the same time the application for tax credits is submitted. For the purpose of the 1999 cycle, the applicant must submit a letter indicating that funding previously awarded remains in place or will be awarded or provide adequate evidence of financial feasibility without one of these funding sources.

265—12.5(16) Nonprofit set-aside.

12.5(1) In accordance with IRC Section 42 and Iowa Code section 16.52, at least 10 percent of the annual state housing credit ceiling must be set aside for qualified nonprofit organizations which own an interest in and materially participate in the development and the operation of a qualified low-income housing project. This credit amount cannot be used for any other purpose, and any unused credit portion may be carried over at the end of the allocation year. Any amount of the credit carried over at the end of the allocation year shall be used to fund nonprofit projects during the following year.

12.5(2) The authority shall allocate housing credits from the 10 percent set-aside to qualified nonprofit organizations based upon the selection criteria and scoring and other factors described in these rules. Nonprofit applicants shall be scored with all of the for-profit applicants except that the 10 percent nonprofit set-aside shall be available in its entirety beginning with the first cycle, until fully allocated. In the event the nonprofit set aside is exhausted, projects proposed by qualified nonprofit organizations shall be permitted to compete for the remaining 90 percent of the annual state credit ceiling.

265—12.6(16) Application contents. Applicants shall be required to respond to the following questions or provide the following information in the application prepared by the authority:

12.6(1) Identify the type of low-income housing tax credit requested.

12.6(2) Identify whether the applicant is requesting credit from the nonprofit set-aside, housing assistance fund, HOME, or Federal Home Loan Bank.

12.6(3) Identify project information including legal name of owner, whether the owner is formed or will be formed, the name of the general partner or managing partner, or both.

12.6(4) Identify the contact person for the project, including address, telephone number, fax number and E-mail address, if applicable.

12.6(5) Identify the name of the project, the project address including all buildings, the city, the ZIP code, the census tract, census block and the county.

12.6(6) Identify whether the project is in a metropolitan statistical area.

12.6(7) Identify whether the project is in a qualified census tract or high-cost area.

12.6(8) Identify the congressional district, the state senate district and the state house district in which the project is located.

12.6(9) Calculate the applicable fraction using the number of low-income units, the total number of units in the project, the percentage of low-income units, the total floor space of the low-income units measured in square feet, the total floor space of all units measured in square feet, and the percentage of floor space of low-income units.

12.6(10) Identify other project characteristics including the total number of buildings, the gross floor area of all buildings in the project, the residential floor area, and the nonresidential or commercial floor area.

12.6(11) Identify the types of units in the project including detached housing, transient housing, townhouse, row house, residential condominiums, detached single family, multifamily rental residential, garden apartments, single-room occupancy housing, or other type of housing that is specified in the application.

12.6(12) Identify whether the building has an elevator, basement and the number of stories in the building.

12.6(13) Identify whether the units have been targeted to specific populations including housing projects for older persons, family (three or more bedrooms), units specifically designed for persons with disabilities, persons on the public housing waiting list, persons needing transitional housing, or other targeted groups as identified by the applicant. The ap-

plicant must indicate the number of units for each target population.

12.6(14) Identify accessory buildings and areas, recreation facilities, commercial facilities, the total number of parking spaces, and the total number of garages.

12.6(15) Identify whether the building has four or fewer units any of which will be occupied by the owner of the building or any person related to the owner.

12.6(16) Identify whether the site is controlled by the applicant, the owner or taxpayer or some combination thereof for the project and describe the site control form, i.e., purchase contract, option, recorded warranty deed, executed long-term lease through compliance and extended use period.

12.6(17) Identify information regarding the form of site control including the expiration date of the contract or option, the total cost of the land, the exact area of the site, the name of the seller, the seller's address and telephone number.

12.6(18) Identify whether the site currently has proper zoning for the project.

12.6(19) Identify whether the site is the subject of a current request for rezoning.

12.6(20) Identify whether all utilities are presently available at the site.

12.6(21) Identify which utilities need to be brought to the site and describe what actions are required to bring utilities to the site.

12.6(22) Identify any activities anticipated to be located within a 100-year flood plain.

12.6(23) Identify whether the applicant is a for-profit entity or a not-for-profit entity and include the name of the entity, the contact person, the address, the city, state and ZIP code for the entity, the telephone number, fax number and E-mail address for the applicant.

12.6(24) If the applicant is a partnership, identify the name of the partnership, the type of partnership, the federal identification number for the partnership, and the names of each of the partners indicating which are the general partners, the partners' share of ownership and the telephone number for each partner.

12.6(25) If the applicant is a corporation, identify the name of the corporation, its federal identification number, the names and titles of the corporate officers and shareholders, an indication of the number of shares owned by each shareholder, and the telephone numbers of the officers and shareholders.

12.6(26) If the applicant is a limited liability company, identify the name of the limited liability company, its federal identification number, the names and titles of the managers, officers and members, an indication of the number of members and the telephone numbers of the managers, officers and the members.

12.6(27) Identify all projects in which the applicant(s) or general partner(s) has received an allocation of low-income housing tax credits or sold a project which received an allocation of low-income housing tax credits. Additionally, if the applicant has not received tax credits for projects in Iowa, additional information shall be required by the authority. An applicant shall be required to describe all previous projects and certify the project list.

12.6(28) Identify each member of the development team for a project. An applicant must submit a résumé that lists qualifications, address, and telephone number. The development team includes the applicant, developer, general partner, majority shareholder, contractor, architect, management company, the sponsoring organization for the development team member, consultant, tax accountant, attorney, engineer, and any other person assisting with the application or project. Identify the function for each person on the development team. An applicant must also identify whether any member of the development team has an indirect or direct financial interest or other interest with any other member of the development team. The applicant must identify the nature of the interest. If there is no identification of interests, the applicant should list "None."

12.6(29) An applicant that seeks a portion of the nonprofit set-aside must demonstrate that it owns an interest in the proposed project and that it is materially participating in the development and operation of the project throughout the compliance period. Consistent with IRC Section 469(h), "materially participating" means an activity only if the nonprofit is involved in the operations of the activity on a basis which is regular, continuous and substantial. The nonprofit must identify that it is an organization described in paragraph (3) or (4) of IRC Section 501(c) and is exempt from tax under Section 501(a); that one of its exempt purposes includes fostering low-income housing; or that it is not affiliated with or controlled by a for-profit corporation.

12.6(30) Describe the nonprofit's ownership interest or percentage of ownership, or both, in the project.

12.6(31) Describe the nonprofit's participation in the development and operation of the project, including management, social services, development and funding.

12.6(32) Describe any support services to be offered by the nonprofit to tenants of the project and where these services will be offered.

12.6(33) Identify the names of its board members and its officers.

12.6(34) Identify all paid full-time staff and sources of funding for annual operation expenses and current programs.

12.6(35) Indicate whether the nonprofit applicant's ownership of the project will remain the same throughout the compliance period.

12.6(36) Indicate whether it is a certified community housing development organization (CHDO).

12.6(37) Identify how many buildings, if any, will be acquired for the proposed project. An applicant must also indicate whether the buildings are currently under the control of the project owner and, if not, when the buildings will be under the control of the project owner for acquisition. An applicant must list the buildings under its control, the type of control, the expiration of the control document, the number of units and the acquisition cost of the building.

12.6(38) Identify whether the building or buildings acquired or to be acquired were acquired from a related party or an unrelated party.

12.6(39) Identify whether the building or buildings acquired or to be acquired with buyer's basis are or are not determined with reference to seller's basis.

12.6(40) Identify whether the building or buildings were acquired or are to be acquired from an insured depository institution in default or from a receiver or conservator of such institution. If so, an applicant must identify the name of the institution.

12.6(41) Identify whether the building or buildings were acquired or are to be acquired from an owner in default or as a result of foreclosure. If so, an applicant must identify the name of the owner.

12.6(42) Identify whether the building or buildings were acquired or are to be acquired from a governmental unit or a qualified nonprofit organization. If so, an applicant must identify the governmental unit or the nonprofit organization.

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12.6(43) Identify whether the building or buildings were acquired or are to be acquired from an owner who used such residence for no other purpose than the owner's principal residence. If so, the applicant must identify the name of the owner.

12.6(44) An applicant must confirm eligibility under IRC Section 42(d)(2)(B)(ii) (the ten-year rule) by listing each building by building address, the date the building was placed in service by the owner from whom the building was or will be acquired, the date the building was or is planned for acquisition by the applicant, and the number of years between the date the building was last placed in service and the expected date of acquisition. If the number of years for any building is less than ten years, an applicant must explain any exception under the Internal Revenue Code, which would make the building eligible for credit under IRC Section 42(d)(2)(B)(ii).

12.6(45) If the applicant is proposing to rehabilitate a building or several buildings, information regarding rehabilitation expenditures for each building must be provided. An applicant must identify, with respect to each building, the rehabilitation expenditures as defined in IRC Section 42(e)(2) which shall be allocable to or substantially benefit the affordable units in such building. An applicant must show the calculations for whether the amount of rehabilitation expenditures is at least equal to the greater of 10 percent of the expected adjusted basis of the building or $3,000 rehabilitation expenditure per low-income unit. Additionally, an applicant must indicate that all buildings in the project qualify for the exception provided for in IRC Section 42(e)(3)(B) regarding the 10 percent basis requirement or that all the buildings qualify for the exception provided for in IRC Section 42(f)(5)(B)(ii)(II) regarding the $3,000 per unit requirement or that there are different circumstances for each building as described by an applicant.

12.6(46) Identify whether the project involves the relocation of tenants and describe any relocation assistance, if any.

12.6(47) An applicant must list the total project costs and eligible basis by credit type for the residential portion of a project. Based on this information, the eligible basis for the project shall be calculated along with the total adjusted eligible basis, the total qualified basis, the maximum allowable credit amount, the combined 30 percent and 70 percent of the present value of the credit and the total credit requested per unit. The qualified eligible basis must be determined on a building-by-building basis. Project costs include costs for:

1. Land and broker fees;
2. Existing structures;
3. On-site work;
4. Off-site work;
5. Demolition;
6. Relocation;
7. Other work around the site;
8. A new building;
9. Rehabilitation;
10. General requirements for rehabilitation and new construction;
11. Contractor overhead;
12. Contractor profit;
13. Other items for rehabilitation and new construction;
14. Architect fees;
15. Engineer fees;
16. Attorney fees;
17. Accountant fees;
18. Consultant fees;
19. Processing agent fees;
20. Other professional fees;
21. Construction insurance;
22. Construction interest;
23. Construction loan origination fees;
24. Construction loan credit enhancement;
25. Taxes during construction;
26. A permanent loan origination fee;
27. Permanent loan credit enhancement;
28. Title and recording fees;
29. Other financing fees and expenses;
30. Property appraisal;
31. Market study;
32. Environmental report;
33. Tax credit fees;
34. The organization of a partnership;
35. Bridge loan fees or expenses;
36. Tax opinion;
37. Developer overhead;
38. Developer fees;
39. Other items related to the developer fees;
40. The rent-up reserve;
41. The operation reserve.

12.6(48) Identify the sources of construction financing including the amount of funds and the term of the loan.

12.6(49) Identify the sources of permanent financing not including equity funds.

12.6(50) Identify all sources of funds for the project.

12.6(51) Identify all sources and amounts of funds that are financed directly or indirectly with federal, state or local government funds.

12.6(52) Indicate whether the applicant will exclude any below market federal loan from the eligible basis of the project building.

12.6(53) Indicate whether tax-exempt financing is used for the project and the percentage of tax-exempt financing used in comparison to the total cost of the project.

12.6(54) Indicate whether taxable bond financing is used and in what amount.

12.6(55) Indicate whether the project's permanent financing will have any type of credit enhancement and, if so, the type of enhancement.

12.6(56) Indicate whether the project has any existing subsidies provided by a federal, state, local or other source.

12.6(57) Indicate whether HUD approval is required for the transfer of any physical assets associated with the project.

12.6(58) Indicate whether a project investor will be providing equity funds for the project in exchange for tax credits. If so, provide information concerning any syndication or placement of interest in the owner entity and estimated proceeds to be received from such sale or placement as follows:

a. Amount of low-income tax credit proceeds;
b. Amount of historic tax credit proceeds;
c. Date the proceeds from the low-income tax credits and historic tax credits will be paid;
d. Whether the funds result from a public or private offering;
e. The type of investors; and
f. The name of the fund, the name, address and telephone number of the syndicator.

12.6(59) The authority shall provide space where an applicant can calculate a trial amount for the tax credit needed for a project. However, the authority shall calculate the actual amount of the credit needed for the proposed project. The trial amount calculated for the tax credit may differ from the amount calculated by the authority. The amount calculated

by the authority shall be the amount relied upon by the authority.

12.6(60) The applicant shall make an irrevocable election to follow the minimum set-aside requirements established by IRC Section 42. The minimum set-aside elections shall include one or more of the following:

a. At least 20 percent of the rental residential units in the project are rent-restricted and are to be occupied by individuals whose income is 50 percent or less of area gross median income;

b. At least 40 percent of the rental residential units in the project are rent-restricted and are to be occupied by individuals whose income is 60 percent or less of area gross median income;

c. In addition to the minimum set-aside requirement contained in this rule, the project shall meet the deep rent skewing option defined in IRC Section 142(d)(4); that is, 15 percent of the units are occupied by individuals whose income is 40 percent or less of area gross median income and other requirements included therein.

12.6(61) Indicate whether any of the low-income units receive or have been approved to receive rental assistance at the time the application for low-income tax credits was filed with the authority. If so, an applicant must list the type of rental assistance received, the number of units receiving rental assistance, the number of years of the rental assistance contract, the details of the rent restrictions including the actual rent for one month, the actual utilities paid by the tenant for one month and the total rent and utilities paid by the tenant for one month.

12.6(62) Based upon an applicant's response to the minimum set-aside election, the applicant shall indicate the maximum monthly rent that may be charged per unit based upon 40 percent of the area gross median income for one unit for one month, 50 percent of the area gross median income for one unit for one month, and 60 percent of the area gross median income for one unit for one month, using the information attached to the application to calculate these amounts.

12.6(63) For the low-income units in a project, an applicant must estimate the monthly income for the low-income units. The estimate must include an estimate of the annual percentage increase in the annual income from the project.

12.6(64) For market rate units, an applicant must estimate the monthly income for the market rate units. The estimate must include an estimate of the annual percentage increase in the annual income from the project.

12.6(65) An applicant must calculate the amount of the monthly utilities for the units in a project and identify whether the tenant or the owner is paying the cost. An applicant must indicate the source of information for the calculation.

12.6(66) Identify administrative expenses including advertising, management fees, legal fees, partnership fees, accounting and audit fees and other expenses.

12.6(67) Identify maintenance costs including decorating, repair, exterminating, grounds expense and any other cost items identified and detailed as to amount.

12.6(68) Identify operating expenses including elevator maintenance, water and sewer, electric, gas, trash removal costs and payroll and related employment costs, including taxes, insurance costs and other costs related to operating expenses.

12.6(69) Identify real estate tax costs or special assessments or any other fee levied by a local or state governmental unit.

12.6(70) Identify the annual replacement reserve for the units in the project and provide an estimate for the annual percentage increase in annual expenses.

12.6(71) Identify the project schedule including site preparation, ownership completion, financing for construction, permanent loan, other loans and grants, plans and specifications, closing and transfer information, construction start date, completion of construction, the date the building is placed in service and the date lease is completed.

12.6(72) Identify the name of the local jurisdiction in which the project will be located and include the name and address of the chief executive officer of the political jurisdiction. See IRC Section 42(m)(1)(A)(ii). If this information is not provided, the authority shall not be able to notify the local jurisdiction that an application has been filed. An award of tax credits may be invalid if this notification is not accomplished.

12.6(73) An applicant must indicate that the project shall be subject to the standard extended use agreement which requires that the project be used for affordable housing for at least 30 years. Pursuant to IRC Section 42, in certain circumstances, such an extended use period may be terminated. The applicant must indicate that the project shall be subject to the standard extended use agreement which permits early termination (after the mandatory 15-year compliance period) of the extended use period or that the project will be subject to an extended use agreement in which the owner's rights to an early termination of the extended use provision are waived for additional years after the 15-year compliance period.

12.6(74) An applicant must indicate whether:

a. The project is located in a community that is experiencing a shortage of low-income housing;

b. The project combines the tax credit with financial assistance from the local community, or other state or federal sources;

c. The project is in an official neighborhood preservation or other organized community revitalization program.

The applicant shall attach documentation to support the items identified in this subrule including, but not limited to, a current market study, written commitments of community or state support including financial commitments, neighborhood preservation or revitalization plans or other supporting documents. The information must be current. Current information is information dated within the last five years from October 1, 1998. The information is intended to satisfy the requirements of IRC Section 42(m)(1)(C) which requires that the QAP include the following criteria: (1) project location; (2) housing needs characteristics; (3) project characteristics; (4) sponsor characteristics; (5) participation of local tax-exempt organizations; (6) tenant populations with special needs; and (7) public housing waiting lists. Compliance with this provision shall be scored as described in rule 12.9(16).

12.6(75) Include a list of previous projects on a form prescribed by the authority. The applicant must make a full disclosure regarding all previous projects and participation history as a principal in any rental housing project including, but not limited to, the name and address of all principals in the projects, the name, location, governmental agency and number of units in the project, the role, interest, and year when participation began and ended, the year the project was placed in service, and whether there have been any sales, foreclosures, defaults, instances of IRS noncompliance and issuance of IRS Form 8823.

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12.6(76) An applicant must sign the taxpayer certification and attach it to the application.

12.6(77) An applicant must sign a certification of ownership, disclosure, prior experience, and release relating to all previous projects.

12.6(78) The following exhibits must be included with the application if applicable:

1. Site control documentation.
2. Documentation of zoning as described in rule 12.7(16).
3. Evidence of availability of utilities at the site as described in rule 12.7(16).
4. Evidence of a conditional or final financing commitment from all sources as described in rule 12.7(16).
5. Evidence of rental assistance contracts or public housing authority letter, if applicable.
6. A market study if the project contains more than 12 units. A market study is not required for a project with 12 or fewer units.
7. A sketch plan of the site including plans and specifications or work write-ups.
8. A legible site location map.
9. A copy of the recorded deed showing that the owner or the taxpayer or both hold the title to the site must be provided before a carryover agreement can be signed or an IRS Form 8609 can be issued, whichever is applicable in the year in which the project receives a reservation.
10. A copy of the letter from the Internal Revenue Service indicating the federal identification number for a partnership and a copy of the executed partnership agreement or other evidence indicating that the federal identification number has been applied for.
11. A copy of the letter from the Internal Revenue Service indicating the federal identification number for a corporation, or other evidence indicating that the federal identification number has been applied for, an executed copy of the articles file-stamped by the secretary of state and an executed copy of the bylaws of the corporation.
12. A copy of the letter from the Internal Revenue Service indicating the federal identification number for a limited liability company or other evidence that the federal identification number has been applied for, an executed copy of articles of organization file-stamped by the secretary of state and a copy of the executed operating agreement for the limited liability company.
13. If the applicant is seeking a portion of the nonprofit set-aside, the nonprofit organization must include a copy of its articles of incorporation, articles of organization or partnership agreement and the determination letter of tax-exempt status from the Internal Revenue Service.
14. If the applicant has obtained a waiver for its building or buildings, a copy of the waiver must be included with the application. An allocation cannot be made until the waiver has been received.
15. A copy of the agreement or contract relating to syndication or placement of partnership interests.
16. A copy of any rental assistance contract, agreements or approvals from a public housing authority.
17. Documentation of the utility calculations. The most recent public housing assistance, HUD or rental development utility calculation chart must be used for the calculations.
18. A legal description of the site.
19. A 15-year after-tax cash flow of the project.
20. A 15-year total benefit approximation that includes the after-tax cash flow plus benefits of the requested tax credit showing the estimated percentage of return on the owner's investment and limited partner's investment.
21. An AIA construction contract or other contract detailing the estimated construction costs for the project.
22. A list of previous projects for an applicant or a general partner who has not had previous tax credit allocations in Iowa.
23. A résumé of each member of the development team for projects of five or more units.
24. Documents supporting housing needs characteristics.
25. If the project is designed to serve tenants with special housing needs, documentation supporting the previous experience of the development team with the type of housing or service delivery proposed.
26. Other documentation as identified in the application or these rules.

265—12.7(16) Threshold requirements—all applicants. To be considered for a reservation of tax credits, a project described in an application must first demonstrate that it meets all of the following basic requirements. Any application that fails to meet any one of these requirements shall be rejected and shall not be scored.

12.7(1) The applicant has certified in writing that the project as proposed will qualify as a qualified residential rental project that is consistent with the requirements of IRC Section 42. The certification must be attached to the application.

12.7(2) The applicant is ready to proceed. Readiness includes but is not limited to a showing of the following:

a. The applicant has site control. Adequate evidence of site control is accomplished through one of the following (one of these items must be attached to the application as an exhibit):

(1) A copy of a recorded warranty deed in the name of the ownership entity or entities which comprise the project owner;

(2) A contract for sale or lease (the minimum term of the lease must be at least 45 years) in the name of the ownership entity or entities which comprise the project owner. The contract for sale or the lease must be valid for the entire period of development that is under consideration for tax credits or at least 90 days, whichever is greater.

(3) A copy of an exclusive option or a binding agreement to purchase in the name of the ownership entity or entities which comprise the applicant. The option must be valid for the entire period the project is under consideration for tax credits or at least 90 days from the date of the filing of the application, whichever is greater.

b. The applicant shall provide evidence of current and appropriate zoning in the form of a letter from the appropriate municipal authority. Adequate evidence attached as an exhibit to the application of zoning approval includes but is not limited to:

(1) A current copy of a letter from the city or town where the project will be located indicating that appropriate zoning approvals for the project have been or will be granted by the time the project commences construction. A current copy of a letter shall be a letter dated within six months before or after October 1, 1998, or six months before or after October 7, 1999.

(2) A copy of a letter or other written evidence that documents that a zoning request has been filed with the appropriate zoning authority and indicates when the zoning authority is expected to act on the zoning request.

c. The project site must have utilities presently available at the site or the applicant must describe in writing the action

necessary to bring utilities to the site. Adequate evidence showing the existence of utilities or the actions necessary to bring the utilities to the site includes, but is not limited to:

(1) A copy of a letter from the appropriate municipal provider or local provider, or

(2) A copy of the last monthly utility bill which must clearly identify the project by its full address.

Either of these documents must be attached to the application as an exhibit.

d. The applicant must supply documentation of housing needs of the community. Adequate evidence of housing needs is a market study. The market study must be attached to the application as an exhibit. For the 1999 cycle of tax credit awards, a market study is current if it was completed between October 2, 1997, and October 1, 1998. The market study is not required for projects with 12 or fewer units.

e. The applicant must file a complete and timely application which includes applications for other public funding sources.

f. The applicant must exhibit a willingness to enter into a land use restrictive covenant (LURA) for the project with the authority, as required by IRC Section 42(h)(6). Adequate evidence of willingness to enter into an extended use agreement is a copy of the agreement or a certification that the applicant shall execute an extended use agreement with the authority.

12.7(3) The applicant must demonstrate that the project is financially feasible and viable using the least amount of housing credit dollar. See IRC Section 42(m)(2) and Iowa Code section 16.52(2). Adequate evidence of financial feasibility and continuing viability must include a detailed description of the following:

a. The sources and uses of all funds and the total financing planned for the project;

b. Any proceeds or receipts expected to be generated by reason of local, state or federal tax benefits;

c. The percentage of the housing credit dollar amount used for project costs other than the costs of intermediaries; and

d. The reasonableness of the development and operational costs of the project.

The authority shall use generally accepted underwriting criteria to assess the financial feasibility and continuing viability of a project. Based upon its own assessment as required by IRC Section 42 and the financial information submitted to support the project, the authority shall determine whether the applicant has requested the least amount of housing credit dollar necessary to ensure project feasibility.

12.7(4) An application shall be rejected outright for any of the following:

a. The authority determines that an applicant or any of its principals or affiliates who own at least 5 percent of the applicant or any of the officers or board members of the applicant have been convicted of, entered an agreement for immunity from prosecution, received a deferred conviction or sentence or suspended conviction, or pled guilty, including a plea of no contest, to a crime of dishonesty, fraud, tax fraud, embezzlement, bribery, payments of illegal gratuities, perjury, false statements, racketeering, blackmail, extortion, or falsification or destruction of records.

b. An applicant has been debarred from any program administered by the authority, any other state agency, or any federal agency.

c. An applicant has an identity of interest with any debarred entity.

d. An applicant includes the developer fees and overhead and consultant fees that exceed 15 percent of the total eligible adjusted basis of the project in its application. The authority shall determine developer fees by subtracting the developer fees and overhead and consultant fees from the eligible basis before calculating the fees as a percentage of the adjusted eligible basis.

e. The application indicates that the contractor's profit exceeds 6 percent of the project costs.

f. The application indicates that the contractor's overhead exceeds 2 percent of the project costs.

g. The application indicates that the general requirements for a project exceed 6 percent of the project costs.

h. The application fails to disclose any direct or indirect financial or other interest a member of the project development team may have with another member of the project development team or with the project.

265—12.8(16) Threshold requirements for nonprofit applicants. To be considered for a reservation of tax credits, a project described in an application must first demonstrate that it meets all of the requirements of rule 12.7(16). In addition, nonprofit applicants must meet the requirements of rule 12.8(16). Any application that fails to meet any of the requirements of rule 12.7(16) or 12.8(16) shall not be scored and the application shall be rejected.

12.8(1) For applicants (project owners) seeking credits from the nonprofit set-aside, all of the following documents that confirm that the project owner is a qualified nonprofit organization pursuant to IRC Section 42(h)(5)(C) must be attached to the application:

a. An IRS determination letter which states that the qualified nonprofit organization is an IRC Section 501(c)(3) or (4) entity;

b. If the project involves a joint venture between a qualified nonprofit organization and a for-profit entity, an agreement which shows that the nonprofit organization controls the project (directly or indirectly) and shall materially participate (within the meaning of IRC Section 469(h)) in the development and operation of the project throughout the compliance period;

c. A current list of all directors and officers of the qualified nonprofit organization, including their names, addresses, and primary occupations. All directors and officers must disclose any relationship with an affiliate or otherwise with other members of the applicant or any members of an affiliate of the development team or any combination thereof; and

d. A copy of the articles of incorporation of the qualified nonprofit organization that specifically states that the fostering of affordable housing is one of the exempt purposes for the qualified nonprofit organization.

12.8(2) The applicant must show that the qualified nonprofit organization owns an interest in the project (directly or through a partnership) and must materially participate in the development and operation of the project throughout the compliance period. Adequate evidence of ownership includes but is not limited to a certified statement of ownership. Adequate evidence of material participation includes but is not limited to a description of the management and operational plan for the project demonstrating the material participation of the qualified nonprofit organization.

12.8(3) The authority reserves the right to conduct additional due diligence to determine whether or not an entity is a qualified nonprofit organization.

265—12.9(16) Selection criteria and scoring. The authority shall evaluate applications for tax credit allocations using

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the selection and point system described in this rule. Each subrule has either a specific point designation or a range of points an applicant may be awarded. Points shall be awarded based on the following selection criteria:

12.9(1) The project is located outside an MSA (5 points).

12.9(2) The project is located in a qualified census tract or a difficult development area and qualifies for up to a 30 percent increase in eligible basis, pursuant to IRC Section 42(d)(5)(C). A list of these areas is provided in the application package (5 points).

12.9(3) The sources of funding for the project combine the low-income housing tax credit with community-based financial assistance, such as tax abatements, tax increment financing, local CDBG or HOME funds, local housing trust funds, or other local financial assistance. A maximum total score of 15 points is possible for this item. Each source of local funding identified in the property budget in the application shall receive 5 points. In order to score in this category, the local funding contribution must be at least 3 percent of the total project costs.

12.9(4) The project includes the project owner's equity contribution in any amount. Adequate evidence of this item must be reflected in the application and evidenced by the identification of a commitment in the form of a letter specifying the amount and terms of the project owner's equity contribution (5 points).

12.9(5) The project utilizes conventional mortgage financing from a financial institution that is either domiciled in or has a branch office in Iowa as evidenced by a commitment letter from the local Iowa lending office of the financial institution (5 points).

12.9(6) The project must have local support. The project is supported by the local governmental entity as evidenced by a letter from a senior governmental entity official which states that the governmental entity supports or does not oppose the proposed project (5 points).

12.9(7) The project supports a specific neighborhood preservation or other organized community revitalization program as evidenced by a letter from a local government, housing authority, neighborhood-based nonprofit organization or other responsible party, which describes a specific plan for preservation or revitalization of the neighborhood (5 points).

12.9(8) The project utilizes only the amount of credit deemed necessary to reasonably meet the needs of low-income tenants likely to reside in the project, rather than the maximum amount of credit as required by IRC Section 42(m). The authority's analysis regarding this item shall compare the actual credit cost per unit in comparison with other proposed projects received for the current round of financing. A maximum of 15 points shall be awarded to this item on a sliding scale.

a. For projects that do not involve rehabilitation, the points shall be allocated as follows:

Credit Request Per Unit	Points
$4,900 or less	15
$4,901 to $6,000	10
$6,001 to $7,500	5
$7,501 to $10,000	3
Over $10,000	0

b. For projects involving rehabilitation of buildings, the points shall be allocated as follows:

Rehabilitation Cost Per Unit	Points
$30,000 or less	15
$30,001 to $60,000	10
$60,001 to $100,000	5
Over $100,000	0

12.9(9) The project preserves existing low-income housing as evidenced by one of the following items:

a. The project owner must show that the property in the project would be subject to foreclosure or default were no credit allowed, or is or shall be acquired from an insured depository institution in default or from a receiver or conservator of such institution. Adequate evidence of this item is a letter from the institution to which the project is in danger of being assigned (15 points); or

b. The project owner must show that the project owner is purchasing or has purchased a property owned by HUD or USDA, an insured depository institution in default, or a receiver or conservator of such an institution, or is an REO property. Adequate evidence of this item must be in the form of a binding contract to purchase from such federal or other entity as described in this rule, closing statements, or a copy of recorded warranty deed (15 points).

12.9(10) The project involves new construction in an area outside a metropolitan statistical area, or in a high-cost, difficult development or targeted area (15 points).

12.9(11) The project consists of "mixed-use" units; i.e., qualified tax credit and market rate units (5 points).

12.9(12) The project consists of 12 or fewer units (5 points).

12.9(13) A high percentage of the total costs of the project are allocated to actual construction costs as illustrated in the construction budget as opposed to the use of intermediary costs. The authority shall compare the construction costs per unit and award points on the following scale:

Construction Cost Per Unit	Points
$25,000 to $50,000	15
$50,001 to $80,000	10
$80,001 or higher	5

12.9(14) Local governmental or nonprofit organizations have evidenced support of the project and are committed to participating in supplying housing support services as evidenced by a letter of commitment to provide such services. The maximum number of points for this item is 10 points with 5 points awarded for each supportive service identified in the application package.

12.9(15) For an applicant of five or more units, the applicant has a successful track record as a developer or owner, or both, of completing and placing in service low-income housing in Iowa (10 points).

12.9(16) For an applicant of five or more units, the applicant has a successful track record as a developer or owner, or both, of providing housing under the LIHTC program as evidenced by having placed an LIHTC project in service prior to October 1, 1998 (5 points).

12.9(17) For an applicant with a management agent of five or more units, the applicant has signed a contract or a letter of intent with a management agent who has successful experience in the management of affordable housing, including LIHTC projects or other federally assisted projects, as evidenced by a copy of the contract or letter of intent and the résumé of the management agent (10 points).

12.9(18) The applicant has a construction contract for the project with a contractor who is domiciled in the state of Iowa. A copy of the construction contract detailing the estimated costs of construction must be provided with the application (10 points).

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12.9(19) The applicant is providing housing support services for tenants. The applicant must provide written evidence that describes previous successful experience in addressing and delivering housing support services to tenants. The written evidence can be a summary of the applicant's experience, references, or other information the applicant deems supportive of this requirement. The applicant must also provide a written commitment to the authority indicating that the applicant shall provide appropriate services to meet these needs at the project. A total of 10 points is available for this category. A project shall receive 5 points for each service provided and a commitment to provide the service for the life of the project.

12.9(20) The applicant is a qualified Iowa nonprofit organization with previous successful experience in the development of housing similar to that proposed in the application. The project owner must provide a list of previous housing projects that the nonprofit organization has developed (10 points).

12.9(21) For housing projects for older persons only, the project must not contain any units with three or more bedrooms (5 points).

12.9(22) At least 10 percent of the units in the project have three or more bedrooms and are suitable for occupancy by families with children (5 points).

12.9(23) At least 10 percent of the units in the project are specifically designed for persons with disabilities (5 points).

12.9(24) The project is designed for transitional housing for the homeless as described in IRC Section 42 (5 points).

12.9(25) The project shall provide housing for persons on waiting lists for public housing. An applicant must submit a letter from the applicable public housing authority addressed to the project owner describing the public housing waiting list. The letter must indicate the number of persons on the list (5 points).

12.9(26) The project shall serve tenants with maximum household incomes lower than the AGMI requirements of IRC Section 42(g). The authority shall examine the elections made by the applicant in the application and the rents charged by the applicant to score this category. The rents shall be compared to the market rents included in the application as an exhibit to determine the percentage of market rate rents the applicant is charging. A maximum of 20 points shall be awarded for this item. A mixed-use project shall receive a percentage of the point total for this category based upon the percentage of low-income units included in the project. The following scale shall be used to award points:

Percentage of units at below market rates	Percentage of AGMI	Points
20	50	0[1]
40	60	0[1]
20 80	50 60	11[2]
40 60	50 60	11[2]
100	50	15
100	60	10
100	40	20

[1]This is a minimum requirement for federal law.

[2]This distribution of units and income amounts is required to qualify for HOME funds.

Additional points shall be awarded for deep rent skewing. If 15 percent of the units are occupied by individuals whose income is 40 percent or less of AGMI, a project shall be awarded 2 extra points. For example, a project that is proposing to build 35 units with HOME funds, and elects to rent 20 percent of the units to individuals with 50 percent AGMI and 65 percent of the units to individuals with 60 percent of AGMI and 15 percent of the units to persons with 40 percent of AGMI, the applicant is awarded 11 points for the 20 percent at 50 percent combination, 0 points for the minimum combination of 65 percent at 60 percent and 2 points for the deep rent skewing combination of 15 percent at 40 percent.

If an applicant proposes a project with market units and below market units, the total points available shall be multiplied by the percentage of the project dedicated to below market rates to obtain the rounded score for this category. For example, if a project has 75 percent of its units dedicated at below market rates and applied for HOME funds and the 20 percent at 50 percent and 80 percent at 60 percent combination is applied, the total rounded score would be 8 (75% $\times$ 11 = 8.25 or 8 rounded).

12.9(27) The project shall be obligated to serve qualified tenants for additional years beyond the minimum 15-year compliance period required by IRC Section 42(m)(1)(B)(i)(I) and 42(m)(1)(B)(ii)(I) and (II). A maximum of 35 points is possible for this item. Each additional year of compliance beyond the minimum 15-year requirement shall receive one additional point.

265—12.10(16) Other considerations to award tax credit reservations.

12.10(1) When the authority considers awarding tax credit reservations, at a minimum, it shall review during its public meeting, the relative scoring for each project, the sources and uses of funds, the location of the project and whether the applicant is a nonprofit owner or a for-profit owner. In addition and irrespective of scoring including a tie in the scoring, the authority may determine that a project shall not be funded for any of the reasons identified in this rule. In the event the authority elects not to award tax credits to a project for the reasons identified herein, the reasons must be clearly identified during the public meeting where the authority considers applications for tax credits.

a. The project does not further the stated purposes and objectives of the low-income housing tax credit program as described in rule 12.2(16).

b. The project is in a market that is saturated with low-income housing projects. The authority may rely on data gathered by the staff regarding the current number of low-income units in a specific part of the state, public housing waiting lists, vacancy rates or other information gathered regarding the concentration of projects and low-income persons.

c. The project is not preferred by other state or federal governmental units or political subdivisions with an interest in housing. The authority may consider the recommendations of the HART team where relevant or any other comments received from other state or federal agencies regarding a proposed project. The authority may consider whether funding commitments made by other governmental units have been received by a project.

d. The applicant has a history of noncompliance with IRC Section 42 and the Treasury regulations implementing IRC Section 42.

e. The applicant has failed to complete and place in service a previous allocation.

f. The project is in a county that has more than one project proposed for the county. The authority may consider the number of projects proposed for a certain county and decide to limit the number of projects on a local political subdivision basis, county basis or regional basis.

g. The project is one of several proposed by a single applicant. The authority may consider the number of projects an applicant is awarded during any one cycle and limit the total amount of credits or projects awarded for any annual ceiling cap.

12.10(2) In the event that projects remain tied after the board has considered the items contained in subrule 12.10(1), the board may award credits to a project on the following grounds in the following order:

a. The project serves the lowest-income tenants based on the weighted average of the percentage of the AGMI of the tenants served by the project.

b. The project serves low-income tenants for the longest period of time.

c. The project is located in a county that has not received a tax credit project in the last five years.

d. In the event a tie remains after all of the items in 12.10(1) and 12.10(2)"a" to "c" have been considered by the board, the board may in its discretion choose a project for the award of tax credits.

265—12.11(16) Notice of the tax credit award. Once the authority has reserved credits, a written notice of reservation shall be faxed and mailed to all approved applicants. The unsuccessful applicants shall be notified by fax and by mail that the authority did not select their projects and provide a brief explanation as to why the authority did not select the applicant's project. All notices shall be sent on the same day the awards are made. The board may establish a waiting list for unsuccessful projects. An applicant placed on the waiting list shall be required to reapply for tax credits if the applicant seeks funding in the next round of tax credit awards. Placement on the waiting list does not imply either directly or indirectly that the board will forward fund the applicant's project. The waiting list shall be based on financial feasibility, relative scoring, developer concentration, geographic distribution, or any of the remaining criteria described in rule 12.10(16). The board in its discretion may adjust the order on the waiting list for any reason, including but not limited to the result of a contested case proceeding.

265—12.12(16) Postreservation requirements.

12.12(1) An applicant may amend its application after an award of tax credits is made solely for the purpose of showing changes in the following:

a. Sources and uses of funds that do not change the amount of tax credits awarded or change the nature of the project; or

b. Changes in partnership members, shareholders, or limited liability members.

12.12(2) Each applicant receiving a reservation of credit is required to execute and record a declaration of land use restrictive covenants. The original recorded document must be recorded before an IRS Form 8609 shall be issued or a carryover agreement executed, whichever form of allocation is applicable.

12.12(3) All applicants receiving a carryover allocation must submit a carryover agreement and allocation and taxpayer's election statement and a certified public accountant's (CPA) cost certification evidencing that the taxpayer has accumulated at least 10 percent of its reasonably expected basis. In addition, all applicants receiving an IRS Form 8609 allocation must submit an IRS Form 8609 request package in its entirety, which includes a CPA cost certification evidencing final project costs, and pay the compliance monitoring fee before the IRS Form 8609 shall be issued. In addition to the carryover agreement, a tax credit reservation recipient shall provide the information and documents described in this subrule. The authority shall not execute a carryover agreement or issue an IRS Form 8609 until it has received these documents:

a. If the tax credit reservation recipient is a partnership, the partnership shall submit a copy of the letter from the Internal Revenue Service indicating the federal identification number for a partnership and a copy of the executed partnership agreement.

b. If a tax credit reservation recipient is a corporation, a copy of the letter from the Internal Revenue Service indicating the federal identification number for a corporation, an executed copy of the article of incorporation file-stamped by the secretary of state and an executed copy of the corporation's bylaws.

c. If a tax credit reservation recipient is a limited liability company, a copy of the letter from the Internal Revenue Service indicating the federal identification number for the company and an executed copy of the articles of organization file-stamped by the secretary of state and a copy of the executed operating agreement for the company.

12.12(4) If the applicant is a partnership or a limited partnership, the authority shall reserve tax credits to a partnership and the general partners. Reservations are not transferable. In the event there is a change in a general partner after an allocation of credits has been made, the authority shall be notified by the partnership to obtain approval of the change. The new general partner shall meet the requirements described in these rules before the authority shall consent to the change. If the requirements outlined in these rules are not met, the request for transfer shall not be approved.

12.12(5) If the applicant is a corporation, the authority shall reserve tax credits to a corporation. Reservations are not transferable. In the event there is a change in the majority shareholder after an allocation of credits has been made, the authority shall be notified by the corporation to obtain approval of the change. The new majority shareholder shall meet the requirements described in these rules before the authority shall consent to the change. If the requirements outlined in these rules are not met, the request for transfer shall not be approved.

12.12(6) If the applicant is a limited liability company, the authority shall reserve tax credits to the limited liability company. Reservations are not transferable. In the event there is a change in the majority membership after an allocation of credits has been made, the authority shall be notified by the limited liability company to obtain approval of the change. The new member(s) shall meet the requirements described in these rules before the authority shall consent to the change. If the requirements outlined in these rules are not met, the request for transfer shall not be approved.

265—12.13(16,17A) Applicant appeals. An applicant whose application has been timely filed, who is aggrieved by the award of the authority and desires to challenge the award shall appeal the decision by filing a written notice of appeal within seven days of the denial of an award before the Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309. Filing a notice of appeal shall not stay the tax credit reservation awards made by the authority. The notice of appeal must actually be received at this address within the time frame specified to be considered timely. A

written notice of appeal may also be filed by fax transmission at (515)242-4957 within seven days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The notice of appeal shall state the grounds upon which the applicant challenges the authority's award. In order to prevent the award of credits by the authority, an aggrieved party shall request a stay of the authority's decision in conformance with rule 265—7.29(17A). In the event a request for stay is made, the request for stay will be heard before the contested case.

12.13(1) Procedures for applicant appeal. The aggrieved applicant shall file a contested case and follow the procedures set out in this rule.

12.13(2) Hearing. Upon receipt of a notice of an applicant appeal, the authority may contact the department of inspections and appeals to arrange for a hearing. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved applicant or applicants. The authority shall select a presiding officer and hold a hearing on the applicant appeal in conformance with its rules on contested cases within 30 days of the date the notice of appeal was received by the authority.

12.13(3) Discovery. Any discovery requests shall be served simultaneously on the parties within 15 days of the notice of appeal.

12.13(4) Witnesses and exhibits. Within 15 days following the notice of appeal, the parties shall contact each other regarding witnesses and exhibits. There is no requirement for witness and exhibit lists. However, the parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials. The parties may request a prehearing conference to discuss witnesses, exhibits or other matters relating to the hearing.

12.13(5) Settlements.

a. A contested case may be resolved by informal settlement. Settlement negotiations may be initiated at any stage of a contested case by the executive director, prosecuting attorney, or the aggrieved party. No party is required to participate in the informal settlement process.

b. The executive director shall have authority to negotiate on behalf of the board. No party shall communicate with any board member about settlement negotiations until a written proposed settlement is submitted to the full board for approval, unless all parties to the settlement negotiations waive this prohibition. No proposed settlement shall be presented to the full board for approval until it is in final, written form signed by the aggrieved party.

c. All proposed settlements are subject to approval of a majority of the full board. If the board fails to approve a proposed settlement, it shall be of no force or effect to either party and shall not be admitted into evidence during the hearing on the contested case. If the board approves a proposed settlement, it shall become binding when it is signed by both the chairperson or the chairperson's designee and the aggrieved party.

d. A board member who participates in settlement negotiations at the request of the parties pursuant to paragraph 12.13(5)"b" or is presented with a settlement proposal pursuant to paragraph 12.13(5)"c" that is rejected by the board shall not be disqualified from adjudicating the contested case due to that participation.

12.13(6) Evidence for a telephone or network hearing. If the hearing is conducted by telephone or on the fiberoptic network, all exhibits must be delivered to the office of the authority three days prior to the time the hearing is conducted. Any exhibits which have not been served on the opposing party should be served at least seven days prior to the hearing.

12.13(7) Remedies. In the event an applicant is successful in demonstrating that the applicant should have been awarded tax credits, the board may place the project on a waiting list for unreserved or returned credits.

12.13(8) Contents of decision. The presiding officer shall issue a decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform with Iowa Code chapter 17A. The decision shall be sent to all parties by first-class mail.

12.13(9) Record requirements. The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6). The record shall also include any request for a contested case hearing and other relevant procedural documents regardless of their form.

a. Oral proceedings in connection with an applicant appeal shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by a certified shorthand reporter shall bear the costs of the reporter.

b. Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

c. Copies of tapes of oral proceedings may be obtained from the board at the requester's expense.

d. The recording or stenographic notes of oral proceedings or the transcription shall be filed and maintained by the board for at least two years from the date of the proposed decision.

12.13(10) Dismissal. A ruling dismissing all of a party's claims or a voluntary dismissal is a decision under Iowa Code section 17A.15.

12.13(11) Requests for rehearing. Requests for rehearing shall be made to the authority within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision fails to include adequate findings or conclusions on all issues. A request for rehearing is not necessary to exhaust administrative remedies.

12.13(12) Judicial review. Judicial review of the authority's final decisions may be sought in accordance with Iowa Code section 17A.19.

265—12.14(16) Monitoring procedures and recordkeeping requirements.

12.14(1) The authority is required to establish procedures for monitoring compliance with the provisions of IRC Section 42 and for notifying the Internal Revenue Service of any noncompliance of which it becomes aware. In order to satisfy its monitoring and reporting obligations, the authority shall require each owner of a low-income housing project to comply with the requirements described in this rule.

12.14(2) For each year in the compliance period, the owner of a low-income housing project shall keep records for each qualified low-income building in the project that show the following:

a. The total number of residential rental units in the building including the number of bedrooms and the size in square feet of each residential rental unit;

b. The percentage of residential rental units in the building that are low-income units;

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c. The rent charged on each residential rental unit in the building including any utility allowance;

d. The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under IRC Section 42(g)(2) (as in effect before the amendments made by the Revenue Reconciliation Act of 1989);

e. The low-income unit vacancies in the building and information that shows when and to whom the next available units were rented;

f. The annual income certification of each low-income tenant per unit;

g. Documentation to support each low-income tenant's income certification (e.g., a copy of the tenant's federal income tax return, Form W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income shall be calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), and not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this rule is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under IRC Section 42(g);

h. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

i. The character and use of the nonresidential portion of the building included in the building's eligible basis under IRC Section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

12.14(3) The owner of a low-income housing tax credit project shall retain the records described in subrule 12.14(2) for each building in the project for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the initial taxable year must be retained for at least six years after the due date for filing the federal income tax return for the last year of the compliance period of the building.

12.14(4) The owner of a low-income housing project shall certify at least annually to the authority that, for the preceding 12-month period:

a. The project met the requirements of:

(1) The 20-50 test under IRC Section 42(g)(1)(A) or the 40-60 test under IRC Section 42(g)(1)(B), whichever minimum set-aside test is applicable to the project, and

(2) If applicable to the project, the 15-40 test under IRC Sections 42(g)(4) and 142(d)(4)(B) for deep rent skewed projects;

b. There was no change in the applicable fraction (as defined in IRC Section 42(c)(1)(B)) of any building in the project, or that there was a change and a description of such change;

c. The owner has received an annual income certification from each low-income tenant and documentation to support that certification or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority as described at 12.14(4)"g" shall satisfy the income verification requirement;

d. Each low-income unit in the project was rent-restricted under IRC Section 42(g)(2);

e. All units in the project were for use by the general public and used on a nontransient basis (except for transitional housing for the homeless provided under IRC Section 42(i)(3)(B)(iii));

f. Each building in the project was suitable for occupancy, taking into account local health, safety and building codes;

g. There was no change in the eligible basis (as defined in IRC Section 42(d)) of any building in the project, or if there was a change, the nature of the change;

h. All tenant facilities included in the eligible basis under IRC Section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants in the building;

i. If a low-income unit in the project became vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or shall be rented to tenants not having a qualifying income;

j. If the income of tenants of a low-income unit in the project increased above the limit allowed in IRC Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and

k. An extended affordable housing commitment as described in IRC Section 42(h)(6) was in effect (for buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989).

12.14(5) Review.

a. The authority shall review the certifications submitted under subrule 12.14(4) for compliance with the requirements of IRC Section 42.

b. The owners of all low-income housing projects shall submit to the authority each year general information on tenant income and rent for each low-income unit in the form and manner designated by the authority. Additionally, each year the authority shall select at least 20 percent of the tenants in at least 20 percent of the projects for whom the owners shall submit to the authority for compliance review a copy of the annual income certification, the documentation the owner has received to support that certification, and the rent records.

c. The authority may also inspect a reasonable number of projects each year, review on site the low-income tenant income certifications for that year, the documentation the owner has received to support those certifications, and the rent records for the project.

d. The authority shall determine which records are to be inspected or submitted by the owner for review. The records to be inspected pursuant to 12.14(5)"c" shall be chosen in a manner that shall not give owners of low-income housing tax credit projects advance notice that their records for a particular year are subject to inspection. However, the authority may give an owner reasonable notice that an inspection may occur so that the owner may assemble records.

12.14(6) The certifications and review of certifications described in subrules 12.14(4) and 12.14(5) shall be made at least annually covering each year of the 15-year compliance period under IRC Section 42(i)(1). The certifications shall be made under penalty of perjury. The authority may require that certifications and reviews be made more frequently, provided that all months within each 12-month period are subject to certification.

12.14(7) Exceptions for certain buildings.

IOWA FINANCE AUTHORITY[265](cont'd)

a. If the authority has met the requirements of 12.14(7)"b," owners are not required to submit, and the authority is not required to review, the tenant income certification, supporting documentation, and rent records for:

(1) Buildings financed by the USDA under the Section 515 program, or

(2) Buildings of which 50 percent or more of the aggregate basis (taking into account the building and the land) is financed with tax-exempt bonds.

b. The authority shall enter into an agreement with USDA or the tax-exempt bond issuer pursuant to which USDA or the tax-exempt bond issuer agrees to provide information to the authority concerning the income and rent of the tenants in the building. The authority may assume the accuracy of the information provided by USDA or the tax-exempt bond issuer without verification. The authority shall review the information and determine that the income limitation and rent restriction of IRC Section 42(g)(1) and (2) are met. However, if the information provided by the USDA or tax-exempt bond issuer is not sufficient for the authority to make this determination, the authority shall request the necessary additional income or rent information from the owner of the buildings.

12.14(8) Inspection provisions. The authority shall have the right to perform an on-site inspection of any project at least through the end of the compliance period of the buildings in the project. The inspection provision of this rule is separate from any review of low-income certifications, supporting documentation and rent records under subrule 12.14(5). The authority will provide 48 hours' advance notice to the project owner to inspect any individual units in a project. Otherwise, advance notice to the owner is not necessary for purposes of the inspection provisions set forth in this rule.

12.14(9) Notification of noncompliance provisions. The authority is required to give the notice described in subrule 12.14(10) to the owner of a low-income housing project and the notice described in subrule 12.14(11) to the Internal Revenue Service.

12.14(10) Notice to owner. The authority shall provide prompt written notice to the owner of a low-income housing project if the authority does not receive the certification described in subrule 12.14(4) or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in subrule 12.14(5), or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of IRC Section 42.

12.14(11) Notice to Internal Revenue Service. The authority is required to file IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, with the Internal Revenue Service no later than 45 days after the end of the correction period (as described in subrule 12.14(13)), including extensions permitted under subrule 12.14(13), and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The authority must explain on IRS Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under subrule 12.14(4) that results in a decrease in the qualified basis of the project under IRC Section 42(c)(1)(A) is noncompliance that must be reported to the Internal Revenue Service under subrule 12.14(9). If the authority reports on IRS Form 8823 that a building is entirely out of compliance and shall not be in compliance at any time in the future, the authority need not file IRS Form 8823 in subsequent years to report that building's noncompliance.

12.14(12) Authority retention of records. The authority shall retain records of noncompliance or failure to certify for six years beyond the authority's filing of the respective IRS Form 8823. In all other cases, the authority must retain the certifications and records described in this subrule for three years from the end of the calendar year in which the authority receives the certification and records.

12.14(13) Correction period. The correction period shall be a period not exceeding 90 days from the date of the notice to the owner described in subrule 12.14(10), during which the owner must supply any missing certifications and bring the project into compliance with the provisions of IRC Section 42. The authority may extend the correction period for up to six months, but only if the authority determines there is good cause for granting the extension.

12.14(14) Delegation of monitoring. The authority may retain an agent or other private contractor (the "authorized delegate") to perform compliance monitoring. The authorized delegate must be unrelated to the owner of any building that the authorized delegate monitors. The authorized delegate may be delegated all of the functions of the authority to monitor compliance, except for the responsibility of notifying the Internal Revenue Service under subrule 12.14(11). The authorized delegate must notify the authority of any noncompliance or failure to certify.

12.14(15) Limitations. The authority shall use reasonable diligence to ensure that any authorized delegate to whom compliance monitoring is delegated properly perform the delegated monitoring functions. Delegation of compliance monitoring functions by the authority to an authorized delegate does not relieve the authority of its obligation to notify the Internal Revenue Service of any noncompliance of which the authority becomes aware.

12.14(16) Liability. Compliance with the requirements of IRC Section 42 is the responsibility of the owner of the building for which the credit is allowable. The authority's obligation to monitor for compliance with the requirements of IRC Section 42 shall not make the authority liable for an owner's noncompliance.

12.14(17) Effective date. These procedures for monitoring for noncompliance became effective on January 1, 1992, were amended on February 3, 1993, and apply to buildings placed in service for which a low-income housing tax credit is, or has been, allowable at any time. Notwithstanding the effective date, if the authority becomes aware of noncompliance that occurred prior to January 1, 1992, it is required to notify the Internal Revenue Service of that noncompliance.

265—12.15(16) Tax-exempt bond financed projects. Pursuant to IRC Section 42(m)(2)(D), projects which do not receive an allocation from the state housing credit ceiling because they qualify pursuant to IRC Section 42(h)(4) and are financed with tax-exempt bond obligations issued after December 31, 1998, must satisfy the requirements for allocation of a housing dollar amount under the qualified allocation plan and these rules. These projects shall be subject to the threshold requirements and evaluation procedures of the qualified allocation plan as described in these rules. However, tax-exempt bond financed projects shall not participate in the competitive funding rounds. A project that qualifies for an allocation of tax credit pursuant to IRC Section 42(h)(4) shall be eligible only for an allocation at the 4 percent present value credit level.

IOWA FINANCE AUTHORITY[265](cont'd)

These rules are intended to implement Iowa Code section 16.52.

[Filed Emergency After Notice 10/6/99, effective 10/6/99]
[Published 11/3/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/3/99.

ARC 9440A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Pharmacy Examiners hereby amends Chapter 1, "Purpose and Organization," Chapter 10, "Controlled Substances (Drugs)," Chapter 12, "Precursor Substances," Chapter 14, "Public Information and Inspection of Records," Chapter 17, "Wholesale Drug Licenses," Chapter 26, "Petitions for Rule Making," Chapter 27, "Declaratory Orders," Chapter 28, "Agency Procedure for Rule Making," and Chapter 35, "Contested Cases," Iowa Administrative Code.

The amendments were approved during the September 14, 1999, meeting of the Board of Pharmacy Examiners.

The amendments change the Board's office address.

In compliance with Iowa Code subsection 17A.4(2), the Board finds that notice and public participation are unnecessary in that the amendments reflect a change of office location and mailing address and such amendments have been previously identified as a category of rules exempt from notice.

The Board also finds, pursuant to Iowa Code subparagraph 17A.5(2)"b"(2), that the normal effective date of these rules, 35 days after publication, should be waived. These changes confer a benefit to the public and to licensees and registrants regulated by the Board by ensuring that references to the Board's location and mailing address are correct and became effective to coincide with the Board's office relocation on October 11, 1999.

These amendments are intended to implement Iowa Code section 17A.3.

These amendment became effective October 11, 1999.

The following amendments are adopted.

Amend the following rules, subrules, and paragraphs to reflect the board of pharmacy examiners' new address as follows:

Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

Subrule **1.1(4)**; subrule **1.1(5)**, paragraph **"e"**; rule **657—10.23(124)**; subrule **12.11(1)**; rule **657—12.12(124B)**; rule **657—12.20(124B)**, introductory paragraph; subrule **14.3(1)**; subrule **17.3(2)**; rule **657—26.1(17A)**; rule **657—26.3(17A)**; rule **657—27.1(17A)**, introductory paragraph; subrule **27.3(3)**, introductory paragraph; rule **657—27.5(17A)**; subrule **27.6(2)**; subrule **28.5(1)**; subrule **28.6(2)**, introductory paragraph; subrule **28.11(1)**; subrule **35.11(3)**; and subrule **35.11(5)**, paragraph **"d."**

[Filed Emergency 10/6/99, effective 10/11/99]
[Published 11/3/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/3/99.

ARC 9453A

TREASURER OF STATE[781]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 12D.2(17), the Treasurer of State hereby amends Chapter 16, "Iowa Educational Savings Plan Trust," Iowa Administrative Code.

These amendments are necessary given changes in the law in 1999 (1999 Iowa Acts, Senate File 457) that make participation in the program more consumer-friendly in regard to the mandatory use of account benefits and more consistent and easier to understand in regard to the cancellation and refund provisions. Also, these amendments lessen the application paperwork for participants since verification of the student's age will not be required upon application but upon request of the program administrator. Finally, the amendments provide for a reduction in forms from four to one when a participant seeks to cancel, amend, or use an account.

In compliance with Iowa Code section 17A.4(2), the Treasurer of State finds that notice and public participation are impracticable because of the immediate need for amendments to implement provisions of this law.

The Treasurer also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and the amendments should be made effective upon filing with the Administrative Rules Coordinator on October 15, 1999, as the amendments confer a benefit upon persons participating or seeking to participate in the program.

The Treasurer of State adopted these amendments on October 15, 1999.

These amendments are also published herein under Notice of Intended Action as **ARC 9454A** to allow public comment.

These amendments became effective October 15, 1999.

These amendments are intended to implement Iowa Code sections 12D.3 and 12D.5 as amended by 1999 Iowa Acts, Senate File 457.

The following amendments are adopted.

ITEM 1. Amend **781—Chapter 16** by changing the parenthetical implementation from "(77GA,HF2119)" to "(12D)".

ITEM 2. Amend rule 781—16.2(12D), introductory paragraph, as follows:

781—16.2(12D) Definitions. In addition to the terms defined in ~~1998 Iowa Acts, House File 2119, section 1,~~ *Iowa Code section 12D.1,* the following terms apply to this chapter:

ITEM 3. Amend rule 781—16.4(12D) as follows:

781—16.4(12D) Notices or requests. The following ~~forms~~ *form* shall be used to administer the Iowa educational savings plan trust.

TREASURER OF STATE[781](cont'd)

~~"Notice to suspend benefits"~~ *"Cancel, Amend, or Use CSI Account Form"* means the form that a participant submits to the program administrator to suspend benefits under a participation agreement.

~~"Notice to terminate agreement"~~ *"Cancel, Amend, or Use CSI Account Form"* means the form that a participant submits to the program administrator to terminate a participation agreement.

~~"Notice to transfer ownership of account"~~ *"Cancel, Amend, or Use CSI Account Form"* means the form that a participant submits to the program administrator to transfer ownership rights of a college savings Iowa account to another person pursuant to ~~1998 Iowa Acts, House File 2119, section 6, subsection 6,~~ *Iowa Code section 12D.6(6)*.

~~"Notice to use benefits"~~ *"Cancel, Amend, or Use CSI Account Form"* means the form ~~which~~ *that* a participant submits to the program administrator to notify the administrator of the date benefits are to begin and level of benefits to be paid.

~~"Request to substitute beneficiary"~~ *"Cancel, Amend, or Use CSI Account Form"* means the form ~~which~~ *that* a participant submits to the program administrator of the trust to request the substitution of a beneficiary.

ITEM 4. Amend rule 781—16.5(12D), introductory paragraph, as follows:

781—16.5(12D) Participant eligibility. ~~1998 Iowa Acts, House File 2119, section 3,~~ *Iowa Code section 12D.3* provides that the trust may enter into participation agreements with participants to effectuate the purposes, objectives and provisions of the trust. This rule establishes the eligibility criteria for a participant.

ITEM 5. Amend rule 781—16.6(12D) as follows:

781—16.6(12D) Beneficiary eligibility. ~~1998 Iowa Acts, House File 2119, section 3, subsection 2,~~ *Iowa Code section 12D.3(2)* provides that a beneficiary of a participation agreement may be designated from date of birth up to, but not including, the beneficiary's ~~seventeenth~~ *eighteenth* birthday. This rule establishes the eligibility criteria for a beneficiary.

16.6(1) A beneficiary may be a resident of any state, who, on the day the participation agreement is executed, is under ~~17~~ *18* years of age.

16.6(2) A participant shall, on signing a participation agreement, *agree to* provide the program administrator *upon request* ~~with proof of~~ the beneficiary's ~~age, in the form of a~~ birth certificate *or other official documents which verify the beneficiary's age.* ~~or such other form as the program administrator may require.~~

16.6(3) No change.

ITEM 6. Amend rule 781—16.7(12D) as follows:

781—16.7(12D) Payments and payment schedules. ~~1998 Iowa Acts, House File 2119, section 1,~~ *Iowa Code section 12D.3(1)* states that participation agreements ~~shall~~ *may* require participants to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary, not to exceed $2000 per beneficiary per year, adjusted annually to reflect increases in the consumer price index. This rule provides for implementation of this provision.

16.7(1) ~~A participant must agree to pay a minimum of $25 per month up to a maximum of $2000 annually per beneficiary per year.~~ The program administrator will provide each participant a ~~monthly~~ *quarterly* statement. Participants are allowed to pay installments monthly or at other intervals during the calendar year provided that each installment payment is made with ~~the~~ *a* payment coupon ~~included with the account statement~~ provided to the participant and further, provided that each installment is at least $25. Installment payments of less than $25 may be returned to the participant. Payments received from a person who has not entered into a participation agreement shall be returned or held until a participation agreement is submitted and approved.

16.7(2) No change.

16.7(3) Beginning in the ~~fall of 1999~~ *spring of 2000* and each ~~fall~~ *spring* thereafter, the program administrator shall determine the maximum amount that a participant may contribute on behalf of a beneficiary for the ~~succeeding~~ calendar year by applying the applicable inflation adjustment. The adjusted annual maximum shall be communicated to participants in college savings Iowa and the public in any reasonable manner determined by the program administrator.

ITEM 7. Amend rule 781—16.8(12D) as follows:

781—16.8(12D) Substitution or change of beneficiary. ~~1998 Iowa Acts, House File 2119, section 3, subsection 5, paragraph "a,"~~ *Iowa Code section 12D.3(5)"a"* provides that beneficiaries may be changed subject to the rules and regulations of the treasurer of state. This rule establishes the criteria for substituting one beneficiary for another.

16.8(1) ~~A participant may substitute a beneficiary at any time prior to the date of the beneficiary's enrollment in an institution of higher education.~~ At the time of the substitution, the substitute beneficiary must be an eligible beneficiary pursuant to rule 781—16.6(12D) and be a member of the family of the beneficiary being substituted as defined in subrule 16.8(3).

16.8(2) and **16.8(3)** No change.

16.8(4) A participant may request that a beneficiary be substituted by submitting to the program administrator the form entitled ~~Request to Substitute Beneficiary~~ *Cancel, Amend, or Use CSI Account Form*. The request shall accompany evidence, as specified by the program administrator, that the proposed substitute beneficiary is a member of the family of the beneficiary.

ITEM 8. Amend rule 781—16.9(12D) as follows:

781—16.9(12D) Change of participant or account owner. The participant is the initial owner of the account established under college savings Iowa and, as such, has the exclusive right to cancel the participation agreement or change the designated beneficiary.

16.9(1) A participant may transfer the participant's current ownership rights in an account to another eligible individual or to a minor beneficiary. To do so, the participant shall file the form entitled ~~Notice to Transfer Ownership of Account~~ *Cancel, Amend, or Use CSI Account Form* with the program administrator.

16.9(2) A participant may also designate on the participation agreement a ~~survivor~~ *successor* that shall succeed to the ownership of the account in the event of the death of the participant. A participant may change the designated ~~survivor~~ *successor* by filing a new ~~Notice to Transfer Ownership of Account~~ *Cancel, Amend, or Use CSI Account Form* with the program administrator.

16.9(3) In the event a participant or other account owner dies and has not designated a ~~survivor~~ *successor* to the account, the following criteria will be used.

a. The designated beneficiary, if 18 years of age or older at the time of the participant's death, shall become the owner of the college savings Iowa account as well as remaining the beneficiary.

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b. If the designated beneficiary is under the age of 18, account ownership will be transferred to the beneficiary's surviving parent or parents or other legal guardian.

16.9(4) The participant may name a successor to the account even though the successor may already have established or plans to establish a college savings Iowa account.

ITEM 9. Amend rule 781—16.10(12D) as follows:

781—16.10(12D) Payment of benefits and qualified distributions. ~~1998 Iowa Acts, House File 2119, section 3, subsection 3,~~ *Iowa Code section 12D.3(3)* provides that ~~payment of benefits provided under participation agreements must begin not later than the first full academic quarter or semester at an institution of higher education following the beneficiary's twenty-second birthday or high school graduation, whichever is later~~ *a participant's account balance shall be refunded to the participant, less endowment fund earnings, and less a refund penalty levied by the trust against account balance earnings, if any, in the event an account balance remains in the account for a 30-day period following the beneficiary's thirtieth birthday.* This rule establishes the procedures for the payment of benefits.

16.10(1) The participant must initiate distributions for qualified costs. The participant must file the form entitled ~~Notice to Use Benefits~~ *Cancel, Amend, or Use CSI Account Form* with the program administrator. The form ~~is available from the program administrator and~~ should be filed at least two months before the beneficiary's first day of class in the institution. The form will allow the participant to select the maximum to pay each period of enrollment. This amount will be used until the benefits are exhausted or until otherwise directed by the participant, whichever occurs first.

16.10(2) Upon submission of the ~~Notice to Use Benefits~~ *Cancel, Amend, or Use CSI Account Form*, the participant shall specify the level of benefits to be paid. The participant may elect distribution of an allotment of the account balance, calculated by dividing the account balance by the number of academic periods in the beneficiary's program of study, or a higher amount, which shall not exceed the beneficiary's qualified higher education costs for each academic period. The participant may adjust the level of benefits paid in any academic period by notifying the program administrator in writing.

16.10(3) Benefits will be paid in one of two ways once the ~~Notice to Use Benefits~~ *Cancel, Amend, or Use CSI Account Form* is filed with the program administrator.

a. Benefits will be paid directly to the institution of higher education when an invoice from the institution is provided to the program administrator. Benefits will then be paid in accordance with the ~~Notice to Use Benefits~~ *Cancel, Amend, or Use CSI Account Form* filed by the participant to the extent the amount invoiced by the institution is for qualified expenses.

b. Upon receipt of complete and legible documentation regarding the purpose, date, and amount of the payment, the program administrator will reimburse the participant or beneficiary. Again, the amount of benefits that will be paid must be in accordance with the ~~Notice to Use Benefits~~ *Cancel, Amend, or Use CSI Account Form* and to the extent the reimbursement is for qualified expenses. Failure on the part of the participant or beneficiary to provide documentation requested by the program administrator to verify the purpose, date, and amount of payment will result in the denial of the request for reimbursement.

16.10(4) No change.

16.10(5) If, following the submission of a ~~Notice to Use Benefits~~ *Cancel, Amend, or Use CSI Account Form*, the beneficiary interrupts the beneficiary's attendance at an institution of higher education, the participant must submit a form entitled ~~Notice to Suspend Benefits~~ *Cancel, Amend, or Use CSI Account Form.*

~~a. Participants may suspend the distribution of trust benefits until the beneficiary's twenty-seventh birthday. If the participant does not submit a Notice to Use Benefits on or before beneficiary's twenty-seventh birthday, the program administrator shall refund money held by the trust according to program rules.~~

~~b.~~ Distribution of benefits shall begin after receipt by the program administrator of the form entitled ~~Notice to Use Benefits~~ *Cancel, Amend, or Use CSI Account Form* and shall continue throughout the beneficiary's period of enrollment at an institution of higher education or until the account balance has been exhausted, whichever occurs first.

16.10(6) If the beneficiary graduates from an institution of higher education and a balance remains in the beneficiary's account, the program administrator shall refund to the participant the balance of the payments and the earnings from the investments in the program fund remaining in the account *unless directed by the participant to transfer the funds to another eligible beneficiary.*

~~The program administrator shall make the payment from the program fund within 60 days from the date of the beneficiary's graduation. The refund shall be made unless the beneficiary plans to continue at a higher education institution and the participant submits a completed Notice to Suspend Benefits or Notice to Use Benefits.~~

16.10(7) to **16.10(9)** No change.

ITEM 10. Amend rule 781—16.12(12D) as follows:

781—16.12(12D) Earnings in endowment fund. ~~1998 Iowa Acts, House File 2119, section 4, subsection 2,~~ *Iowa Code section 12D.4(2)* provides that each beneficiary for whom funds are saved under a participation agreement shall receive an interest in a portion of the investment income of the endowment fund of the trust. This rule provides for implementation of this provision.

16.12(1) to **16.12(4)** No change.

16.12(5) When payment of benefits for the beneficiary begins under a participation agreement, earnings from the endowment fund that have been earmarked for use by the beneficiary shall be made available for higher education costs under the following procedure.

Endowment fund earnings, if any, shall be paid in the following manner. Once the ~~Notice to Use Benefits~~ *Cancel, Amend, or Use CSI Account Form* is submitted to the program administrator, the total amount earmarked for the account, adjusted annually to allow for contributions when the beneficiary is in attendance, shall be distributed in equal installments over the remaining estimated number of enrollment periods that are customarily required by the institution of higher education to graduate in the beneficiary's course of study.

ITEM 11. Amend rule 781—16.13(12D) as follows:

781—16.13(12D) Cancellation and payment of refunds. ~~1998 Iowa Acts, House File 2119, section 5,~~ *Iowa Code section 12D.5* provides that any participant may cancel a participation agreement at will. This rule establishes the criteria for canceling a participation agreement and providing a refund.

16.13(1) A participant may at any time cancel a participation agreement, without cause, by submitting to the program

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administrator the form entitled ~~Notice to Terminate Agreement~~ *Cancel, Amend, or Use CSI Account Form.*

16.13(2) If the participation agreement is canceled, the participant is entitled to a refund. The refund shall be mailed or otherwise sent to the participant within 60 days after receipt by the program administrator of the form entitled ~~Notice to Terminate Agreement~~ *Cancel, Amend, or Use CSI Account Form.* The amount of the refund shall be determined according to the following criteria.

~~a. If the participation agreement is in effect for less than two years, the participant shall receive the lesser of the account balance, or the aggregate payments made to the account less any distributions made from the account. Earnings, if any, credited to the account shall be forfeited to the administrative fund. Endowment fund interest, if any, earmarked to the account shall revert back to the endowment fund.~~

~~b. If the participation agreement is in effect for two or more years, the~~ *The* participant shall receive the account balance less a penalty fee equal to 10 percent of the net earnings credited to the account and less any endowment fund earnings earmarked to the account. The penalty fee shall be placed in the administrative fund. Any endowment fund earnings earmarked to the account shall revert back to the endowment fund.

16.13(3) to **16.13(5)** No change.

ITEM 12. Amend **781—Chapter 16**, implementation sentence, as follows:

These rules are intended to implement ~~1998 Iowa Acts, House File 2119~~ *Iowa Code sections 12D.1, 12D.2, 12D.4, and 12D.6 to 12D.11 and Iowa Code sections 12D.3 and 12D.5 as amended by 1999 Iowa Acts, Senate File 457.*

[Filed Emergency 10/15/99, effective 10/15/99]
[Published 11/3/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/3/99.

ARC 9464A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 159.5(11), 192.102, and 194.2, the Department of Agriculture and Land Stewardship hereby adopts amendments to Chapter 68, "Dairy," Iowa Administrative Code.

These amendments are intended to make several changes relating to the terms and conditions for the holding of a Grade A or Grade B dairy permit. The changes include providing a definition of "habitual violator," clarifying the conditions for the suspension of a dairy permit, and adopting the most current version of federal regulations dealing with Grade B milk.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 14, 1999, as **ARC 9202A**. The adopted amendments are substantially similar to those published under Notice. Changes to the Notice reflect comments received during the comment period and minor editorial changes. These include the following:

1. In rule 21—68.1(192,194) the definition of "habitual violator" was changed to provide that a person with a fourth antibiotic violation in a 12-month period of time will be considered a habitual violator. The proposed amendment stated that a person with a fifth antibiotic violation would be considered a habitual violator. Subrule 68.36(8) is rescinded and the last sentence of subrule 68.36(9) is stricken to reflect this change.
2. In rule 21—68.11(192,194), an editorial change was made deleting the term "R-5" from the reference to the 1997 version of the Pasteurized Milk Ordinance.
3. Proposed new rule 21—68.37(192,194) was omitted. Further consideration of this issue will be given at a later date to determine whether additional rule making is needed.

No waiver provisions have been included in these amendments. It was felt that waivers were not appropriate to the subject matter of the amendments. However, the language in rule 21—68.22(192,194) provides the Department with flexibility in determining whether to take enforcement action against an individual meeting the definition of a "habitual violator." This flexibility provides for the consideration of individual circumstances that might justify deferring the taking of enforcement action.

These amendments will become effective December 8, 1999.

These amendments are intended to implement Iowa Code chapters 192 and 194.

The following amendments are adopted.

ITEM 1. Amend rule **21—68.1(192)** as follows:

Amend the parenthetical implementation as follows:

21—68.1(192,*194*) Definitions.

Adopt the following **new** definition in alphabetical order:

"Habitual violator" is a producer or other dairy industry business entity that is regulated by the department, for whom the monthly official records for somatic cell counts, bacteria, cooling or added water show that the violation has occurred eight times in a 12-month period, including the accelerated testing counts; or has received three two-of-four warning letters in a 12-month period; or has received a second three-of-five, off-the-market letter in a 12-month period; or has been found with a fourth positive antibiotic in a 12-month period.

ITEM 2. Amend rule 21—68.11(192) as follows:

21—68.11(192,*194*) Suspension of dairy farm permits.

68.11(1) Grade A *and Grade B* farm permit suspension *and revocation.* The department may temporarily suspend a Grade A *or Grade B* farm permit if the dairy farm fails to meet all of the requirements as set forth in "Grade A Pasteurized Milk Ordinance, ~~1993~~ *1997* revision, printed as Public Health Service/Food and Drug Administration Publication No. 229" and incorporated into rule 21—68.12(192) *or Grade B United States Department of Agriculture document titled, "Milk for Manufacturing and Its Production and Processing, Recommended Requirements," 1996 Revision.* A Grade A farm under temporary suspension of ~~their~~ *the* Grade A permit may sell the milk as "milk for manufacturing purposes" until reinstated as a Grade A farm *if the former Grade A farm meets the requirements necessary to sell Grade B milk. A Grade B farm under temporary suspension of the Grade B permit may sell milk as "Undergrade Class 3" until reinstated as a Grade B farm if the former Grade B farm meets the requirements of Undergrade Class 3. If an inspection reveals a violation which, in the opinion of the inspector, is an imminent hazard to the public health, the inspector shall take immediate action to prevent any milk believed to have been exposed to the hazard from entering commerce. In addition, the inspector shall immediately notify the department that such action has been taken. In other cases, if there is a repeat violation of a dairy standard as determined by two consecutive routine inspections of a dairy farm, the inspector shall immediately refer the violation to the department for action.*

The department may revoke the dairy permit of a person that the department determines is a habitual violator as defined in rule 21—68.1(192,194).

68.11(2) Summary suspension of dairy farm permits. If the department finds that the public health, safety or welfare imperatively requires emergency action, summary suspension of a permit may be ordered pending proceedings for revocation or other action. If a permit is summarily suspended, no milk or milk products may be sold or offered for sale until permit is reinstated.

The following situations or incidents are situations in which summary suspension is appropriate:

a. Unclean milk contact surfaces of equipment or utensils.

b. Filthy conditions in a milking barn or parlor or in a cattle housing area, including several days' accumulation of manure in the milking barn gutters, calf pens or in other areas.

c. Filthy conditions in a cow yard and very dirty cows.

d. Filthy conditions in a milk room/milk house.

e. Water supply, water pressure, or water heating facilities not in compliance with standard operating procedures.

f. No access to hand-washing facility in the milk room/milk house.

g. Violation of standards under this chapter related to well construction or potability of water supply, including any cross connections between potable and nonpotable water sources.

h. Lack of an approved sanitizer in the milk room/milk house or adjacent storage area to meet the sanitizing requirements.

i. Visibly dirty udders and teats on cows being milked.

j. Milk not cooled in compliance with subrule 68.22(4).

k. Rodent activity in the milk room/milk house, or severe rodent activity in a milking barn or milking parlor or in a feed storage room.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

l. Dead animals in the milking barn, parlor or cow yard.

m. Other situations where the department determines that conditions warrant immediate action to prevent an imminent threat to the public health or welfare.

ITEM 3. Amend rule 21—68.15(192,194) as follows:

21—68.15(192,194) Milk standards. Standards for the production and processing of milk for manufacturing purposes shall conform to standards contained in the USDA document entitled "Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements," Volume 37, Number 68, Part II, dated ~~Friday, April 7, 1972,~~ *November 12, 1996,* which is hereby incorporated into this rule by reference and made a part thereof insofar as applicable ~~except Subpart A entitled "Sample State Enabling Act," and Subpart E entitled "Requirements for Licensed Dairy Plants," which are not adopted and are not a part of this rule~~, a copy of which is on file with the department.

ITEM 4. Rescind and reserve subrule **68.36(8)**.

ITEM 5. Amend subrule 68.36(9) as follows:

68.36(9) When the tests show a load is nonviolative, but routine regulatory sampling shows that a producer on the load is violative, the permit shall be suspended until subsequent testing establishes that the milk does not exceed safe levels of inhibitory residues. The first or second monetary penalty within a 12-month period shall be waived. In case of a third violation within a 12-month period, the permit shall be suspended and revocation procedures shall be initiated as provided in subrule 68.36(7). ~~In the event of a fourth violation within a 12-month period, the permit shall be suspended and revocation procedures shall be initiated as provided in subrule 68.36(8).~~

[Filed 10/15/99, effective 12/8/99]
[Published 11/3/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/3/99.

ARC 9446A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 1999 Iowa Acts, House File 760, section 10, subsection 1, and section 47, the Department of Human Services hereby amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

These amendments revise some of the current drug prior authorization rules and add new therapeutic classes of drugs which will require prior authorization before Medicaid payment can be made.

The Seventy-eighth General Assembly directed the Department to expand the drug prior authorization program. These changes are projected to result in a cost savings to the Medicaid program of up to $1 million in state funds annually.

The changes were recommended by the Medicaid Drug Utilization Review Commission and are summarized as follows:

- The histamine H2-receptor antagonist rule was changed to require prior authorization of all single-source products regardless of dose level or length of therapy. Previously, prior authorization was required only for full therapeutic dose levels after 90 days of therapy. In addition, the approval criteria were revised to reflect current therapeutic guidelines for therapy.
- Sucralfate was placed in a separate section and the approval criteria were updated.
- The previous prior authorization requirement for nonsedating antihistamines was revised to cover all single-source antihistamines so that newer antihistamines could be included regardless of classification as nonsedating or lower sedating.
- New prior authorization requirements were added for quantity limits on ergotamine derivatives, narcotic agonist-antagonist nasal sprays, and serotonin 5-HT1-receptor agonists to ensure that prophylactic therapy is tried before continuing to use these products long term.
- New criteria were added for oral antifungal therapy to ensure that long-term therapy is used only in cases where it is medically indicated.
- New criteria were added for isotretinoin therapy to ensure its use only as long as medically appropriate and with appropriate precautions.
- New criteria were added for nonparenteral vasopressin derivatives of posterior pituitary hormone products to ensure use only where medically appropriate and for the appropriate length of time.

These amendments were previously Adopted and Filed Emergency and published in the June 30, 1999, Iowa Administrative Bulletin as **ARC 9144A**. Notice of Intended Action to solicit comments on that submission was published in the June 30, 1999, Iowa Administrative Bulletin as **ARC 9143A**. An Amended Notice of Intended Action was published in the August 11, 1999, Iowa Administrative Bulletin as **ARC 9243A** to schedule public hearings.

Eight public hearings were held around the state. Twenty-three persons attended. The following revisions were made to the Notice of Intended Action based on recommendations from the Medicaid Drug Utilization Commission:

Subrule 78.1(2), paragraph "a," subparagraph (3), and subrule 78.28(1), paragraph "d," subparagraph (16), were revised to provide that documented trials are not required for approval of acne conglobata and to provide that prior approval of isotretinoin therapy for treatment of conditions other than acne will be considered on an individual basis after review of submitted documentation.

As amended, the drug prior authorization rules provide that prior authorization requirements do not apply in various specified situations. For example, the prior authorization requirement for multiple-source histamine H2-receptor antagonists applies only to prescriptions for longer than a 90-day period or more frequently than one 90-day course of therapy per 12-month period per recipient. The requirement of documented trials and therapy failures with systemic antibiotic therapy and topical tretinoin therapy for prior approval of isotretinoin therapy for acne does not apply to treatment of acne conglobata. These amendments do not provide for waiver of prior approval requirements in any other specified situations because the Department does not believe that additional waivers are appropriate in any situations that can be specified. Waiver of prior approval may be requested in any unanticipated situations pursuant to the Department's general rule on exceptions at rule 441—1.8(217).

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Council on Human Services adopted these amendments October 13, 1999.

These amendments are intended to implement Iowa Code section 249A.4 and 1999 Iowa Acts, House File 760, section 10, subsection 1.

These amendments shall become effective January 1, 2000, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule **78.1(2)**, paragraph **"a,"** subparagraph **(3)**, as follows:

(3) Payment will be made for certain drugs only when prior approval is obtained from the fiscal agent and when prescribed for treatment of specified conditions as follows. Prior authorization will be granted for 12-month periods per recipient as needed unless otherwise specified.

Payment for amphetamines and combinations of amphetamines with other therapeutic agents and amphetamine-like sympathomimetic compounds used for obesity control, including any combination of these compounds with other therapeutic agents, will be provided when there is a diagnosis of narcolepsy, hyperkinesis in children, or senile depression but not for obesity control. (Cross-reference 78.28(1)"a")

Payment for multiple vitamins, tonic preparations and combinations thereof with minerals, hormones, stimulants, or other compounds which are available as separate entities for treatment of specific conditions will be approved when there is a specifically diagnosed vitamin deficiency disease or for recipients aged 20 or under if there is a diagnosed disease which inhibits the nutrition absorption process secondary to the disease. (Prior approval is not required for products principally marketed as prenatal vitamin-mineral supplements.) (Cross-reference 78.28(1)"b")

Full therapeutic dose levels and maintenance dose levels for the following drugs are those listed in the American Hospital Formulary Service Drug Information, United States Pharmacopeia-Drug Information, American Medical Association Drug Evaluations, and the peer-reviewed medical literature.

Prior authorization is required for prescriptions for all *single-source* histamine H2-receptor antagonists~~, and sucralfate,~~ at ~~full therapeutic~~ *all* dose levels ~~that exceed a 90-day supply for therapy at that dose level. Prior authorization is not required for prescriptions for maintenance doses of these drugs or for a 90-day supply at full therapeutic dose levels per 12-month period per recipient.~~ *Single source is defined as the brand-name drug or the innovator of a multiple-source drug. Payment for the single-source histamine H2-receptor antagonist will be authorized only for cases in which there is documentation of a previous trial and therapy failure with at least one multiple-source histamine H2-receptor antagonist.*

~~Sucralfate prescribed concurrently with histamine H2-receptor antagonists for a period exceeding 30 days will be considered duplicative and inappropriate.~~

~~The following conditions will be considered justification for continued use of full therapeutic doses of histamine H2-receptor antagonists beyond the 90-day limitation:~~

Prior authorization is required for multiple-source histamine H2-receptor antagonists prescribed at full therapeutic dose levels for longer than a 90-day period or more frequently than one 90-day course of therapy per 12-month period per recipient. Payment for single- or multiple-source histamine H2-receptor antagonists at full therapeutic dose levels beyond the 90-day limit or more frequently than one 90-day course of therapy per patient per 12-month period will be authorized in cases where there is a diagnosis of:

1. Hypersecretory conditions (Zollinger-Ellison syndrome, systemic mastocytosis, multiple endocrine adenomas).
2. Symptomatic gastroesophageal reflux ~~(not responding or failure by maintenance therapy)~~.
3. Symptomatic relapses ~~(duodenum or gastric ulcer) on maintenance therapy~~ *of duodenal or gastric ulcers not responding to maintenance therapy and with documentation of either failure of Helicobacter pylori treatment or a negative Helicobacter pylori test result.*
4. ~~Barretts Esophagus~~ *Barrett's esophagus.*
5. *Erosive esophagitis.*

Other conditions will be considered on an individual patient basis *with submitted documentation of medical necessity.*

Prior authorization is required for proton pump inhibitor usage longer than 60 days or more frequently than one 60-day course per 12-month period. Payment for proton pump inhibitors beyond the 60-day limit or more frequently than one 60-day course per recipient per 12-month period shall be authorized upon request for those cases in which there is a diagnosis of:

1. ~~Specific hypersecretory~~ *Hypersecretory* conditions (Zollinger-Ellison syndrome, systemic mastocytosis, multiple endocrine adenomas).
2. ~~Barretts~~ *Barrett's* esophagus.
3. Symptomatic gastroesophageal reflux after documentation of previous trials and therapy failure with at least one histamine H2-receptor antagonist at full therapeutic doses as defined by the histamine H2-receptor antagonist prior authorization guidelines.
4. Recurrent peptic ulcer disease after documentation of previous trials and therapy failure with at least one histamine H2-receptor antagonist at full therapeutic doses and with documentation of either failure of Helicobacter ~~Pylori~~ *pylori* treatment or a negative Helicobacter ~~Pylori~~ *pylori* test result.

Proton pump inhibitors prescribed concurrently with histamine H2-receptor antagonists shall be considered ~~duplicative and inappropriate~~ *duplication of therapy. Payment for duplication of therapy will be considered on an individual basis after review of submitted documentation of medical necessity.*

Prior authorization is not required for a cumulative 60 days of therapy with a proton pump inhibitor per 12-month period per recipient. The 12-month period is patient specific and begins 12 months prior to the requested date of prior authorization.

The medical condition of patients receiving continuous long-term treatment with proton pump inhibitors shall be reviewed yearly to determine the need for ongoing treatment.

Prior authorization is required for sucralfate at full therapeutic dose levels for longer than a 90-day period or more frequently than one 90-day course of therapy per patient per 12-month period. Payment for sucralfate at full therapeutic dose levels beyond the 90-day limit or more frequently than a 90-day course per patient per 12-month period will be authorized in cases where there is a diagnosis of:

1. Hypersecretory conditions (Zollinger-Ellison syndrome, systemic mastocytosis, multiple endocrine adenomas).

2. Symptomatic gastroesophageal reflux.

3. Symptomatic relapses of duodenal or gastric ulcers not responding to maintenance therapy and with documenta-

tion of either failure of Helicobacter pylori treatment or a negative Helicobacter pylori test result.

4. Barrett's esophagus.

5. Erosive esophagitis.

Other conditions will be considered on an individual basis with submitted documentation.

Concurrent sucralfate therapy prescribed with histamine H2-receptor antagonists or proton pump inhibitors beyond a 30-day period is considered duplication of therapy. Concurrent sucralfate therapy prescribed with misoprostol is also considered duplication of therapy. Payment for duplication of therapy will be considered on an individual patient basis after review of submitted documentation of medical necessity.

Prior authorization is not required for misoprostol when prescribed concurrently with a nonsteroidal anti-inflammatory drug. Prior authorization is required for any other therapy with misoprostol beyond 90 days. Justification for other therapy will be considered on an individual patient basis. Misoprostol prescribed concurrently with histamine H2-receptor antagonists, *sucralfate, or proton pump inhibitors* will be considered ~~duplicative and inappropriate~~ *duplication of therapy. Payment for duplication of therapy will be considered on an individual patient basis after review of submitted documentation of medical necessity.* (Cross-reference 78.28(1)"d"(1))

Prior authorization is required for single-source nonsteroidal anti-inflammatory drugs. Requests must document previous trials and therapy failure with at least two multiple-source nonsteroidal anti-inflammatory drugs. Prior authorization for chronic conditions will be issued for a 12-month period. Once a prior authorization has been issued, the single-source nonsteroidal anti-inflammatory drug being prescribed may be changed to another single-source product without a new request within the approved time period of 12 months. Patients who have been established on proven therapy with a single-source product prior to October 1, 1992, will not require a prior authorization.

Prior authorization is not required for prescriptions for multiple-source nonsteroidal anti-inflammatory drugs. (Cross-reference 78.28(1)"d"(2))

Prior authorization is required for single-source benzodiazepines. Requests must document a previous trial and therapy failure with one multiple-source product. Prior authorization will be approved for 12 months for documented:

1. Generalized anxiety disorder.
2. Panic attack with or without agoraphobia.
3. Seizure.
4. Nonprogressive motor disorder.
5. Bipolar depression.
6. Dystonia.

Prior authorization requests will be approved for a three-month period for all other diagnoses related to the use of benzodiazepines. Justification will be considered on an individual patient basis. Patients who have been established on proven therapy with a single-source product prior to October 1, 1992, will not require a prior authorization. (Cross-reference 78.28(1)"d"(3))

Prior authorization is required for therapy with growth hormones. All of the following criteria must be met for approval for prescribing of growth hormones:

1. Standard deviation of 2.0 or more below mean height for chronological age.
2. No intracranial lesion or tumor diagnosed by MRI.
3. Growth rate below five centimeters per year.
4. Failure of any two stimuli tests to raise the serum growth hormone level above seven nanograms per milliliter.
5. Bone age 14 to 15 years or less in females and 15 to 16 years or less in males.
6. Epiphyses open.

Prior authorization will be granted for 12-month periods per recipient as needed. (Cross-reference 78.28(1)"d"(4))

Prior authorization is required for all prescription topical acne products for the treatment of mild to moderate acne vulgaris. An initial treatment failure of an over-the-counter benzoyl peroxide product, which is covered by the program, is required prior to the initiation of a prescription product, or evidence must be provided that use of these agents would be medically contraindicated. If the patient presents with a preponderance of comedonal acne, tretinoin products may be utilized as first line agents without prior authorization. (Cross-reference 78.28(1)"d"(5))

Prior authorization is required for all tretinoin prescription products for those patients over the age of 25 years. Alternatives such as topical benzoyl peroxide (OTC), and topical erythromycin, clindamycin, or oral tetracycline must first be tried (unless evidence is provided that use of these agents would be medically contraindicated) for the following conditions: endocrinopathy, mild to moderate acne (noninflammatory and inflammatory), and drug-induced acne. Prior authorization will not be required for those patients presenting with a preponderance of comedonal acne. Upon treatment failure with the above-mentioned products or if medically contraindicated, tretinoin products will be approved for three months. If tretinoin therapy is effective after the three-month period, approval will be granted for a one-year period. Skin cancer, lamellar ichthyosis, and Darier's disease diagnoses will receive automatic approval for lifetime use of tretinoin products. (Cross-reference 78.28(1)"d"(6))

Prior authorization is required for ~~all nonsedating antihistamines~~ *single-source antihistamines including single active ingredient and combination products. Prior authorization is not required for multiple-source antihistamines. Single source is defined as the brand-name drug or the innovator of a multiple-source drug.* Patients 21 years of age and older must have received two unsuccessful trials with other covered *multiple-source* antihistamines ~~(chlorpheniramine or diphenhydramine)~~ unless evidence is provided that the use of these agents would be medically contraindicated, prior to the utilization of ~~the nonsedating antihistamines~~ *single-source antihistamines.* Patients 20 years of age and younger must have one unsuccessful trial with another covered *multiple-source* antihistamine ~~(chlorpheniramine or diphenhydramine)~~ unless evidence is provided that the use of these agents would be medically contraindicated, prior to the utilization of ~~the nonsedating antihistamines~~ *single-source antihistamines.* (Cross-reference 78.28(1)"d"(7))

Prior authorization is required for all dipyridamole prescriptions outside the hospital setting. Dipyridamole will only be approved if aspirin is medically contraindicated in a patient. (Cross-reference 78.28(1)"d"(8))

Prior authorization is required for all cephalexin hydrochloride monohydrate prescriptions. Treatment failure with cephalexin monohydrate will be required prior to the initiation of a cephalexin hydrochloride monohydrate prescription. (Cross-reference 78.28(1)"d"(9))

Prior authorization is required for epoetin prescribed for outpatients for the treatment of anemia. Patients who meet the following criteria may receive prior authorization for the use of epoetin:

1. Hematocrit less than 30 percent.

2. Transferrin saturation greater than 20 percent (transferrin saturation is calculated by dividing serum iron by the total iron binding capacity), or ferritin levels greater than 100 mg/ml.

3. Laboratory values must be current to within three months of the prior authorization request.

4. For AZT-treated patients, endogenous serum erythropoietin level needs to be greater than 500 mU/ml.

5. Patient should not have a demonstrated gastrointestinal bleed.

6. Exceptions may be made if the patient does not meet criteria "2," but is on aggressive oral iron therapy (i.e., twice or three times per day dosing). The prior authorization for this exception would be for a limited time. (Cross-reference 78.28(1)"d"(10))

Prior authorization is required for filgrastim prescribed for outpatients whose conditions meet the following indications for use:

1. Decrease the incidence of infection due to severe neutropenia caused by myelosuppressive anticancer therapy. For this indication, the following criteria apply: Filgrastim therapy can continue until the postnadir, absolute neutrophil count is greater than 10,000 cells per cubic millimeter and routine CBC and platelet counts are required twice per week.

2. Decrease the incidence of infection due to severe neutropenia in AIDS patients on zidovudine. For this indication, the following criteria apply: Evidence of neutropenic infection exists or absolute neutrophil count is below 750 cells per cubic millimeter, filgrastim is adjusted to maintain absolute neutrophil count of approximately 1000 cells per cubic millimeter, and routine CBC and platelet counts are required once per week. (Cross-reference 78.28(1)"d"(11))

Prior authorization is required for drugs used for the treatment of male sexual dysfunction. For prior authorization to be granted, the patient must:

1. Be 21 years of age or older.

2. Have a confirmed diagnosis of impotence of organic origin or psychosexual dysfunction.

3. Not be taking any medications which are contraindicated for concurrent use with the drug prescribed for treatment of male sexual dysfunction.

Approval for these drugs, with the exception of yohimbine, will be limited to four doses in a 30-day period.

The 72-hour emergency supply rule found below and at paragraph 78.28(1)"d" does not apply for drugs used for the treatment of male sexual dysfunction. (Cross-reference 78.28(1)"d"(13))

Prior authorization is required for ergotamine derivatives used for migraine headache treatment for quantities exceeding 18 unit doses of tablets, injections, or sprays per 30 days. Payment for ergotamine derivatives for migraine headache treatment beyond this limit will be considered on an individual basis after review of submitted documentation. For consideration, the following information must be supplied:

1. The diagnosis requiring therapy.

2. Documentation of current prophylactic therapy or documentation of previous trials and therapy failures with two different prophylactic medications. (Cross-reference 78.28(1)"d"(14))

Prior authorization is required for narcotic agonist-antagonist nasal sprays for quantities exceeding 10 milliliters (approximately 60 doses) per 30 days. Payment for narcotic agonist-antagonist nasal spray beyond this limit will be considered on an individual basis after review of submitted documentation. For consideration, the diagnosis must be supplied. If the use is for the treatment of migraine headaches, documentation of current prophylactic therapy or documentation of previous trials and therapy failures with two different prophylactic medications must be provided. (Cross-reference 78.28(1)"d"(15))

Prior authorization is required for isotretinoin therapy.

Payment will be approved for isotretinoin therapy for acne under the following conditions:

1. There are documented trials and therapy failures of systemic antibiotic therapy and topical tretinoin therapy. Documented trials and therapy failures of systemic antibiotic therapy and topical tretinoin therapy are not required for approval for treatment of acne conglobata.

2. There is a confirmed negative serum pregnancy test, if appropriate.

3. There is a plan for contraception in place, if appropriate.

Initial authorization will be granted for up to 20 weeks. A minimum of two months without therapy is required to consider subsequent authorizations.

Prior authorization of isotretinoin therapy for treatment of conditions other than acne will be considered on an individual basis after review of submitted documentation. (Cross-reference 78.28(1)"d"(16))

Prior authorization is required for oral antifungal therapy beyond a cumulative 90 days of therapy per 12-month period per patient. Payment for oral antifungal therapy beyond this limit will be authorized in cases where the patient has a diagnosis of an immunocompromised condition or a systemic fungal infection. Other conditions will be considered on an individual basis after review of submitted documentation. This prior authorization requirement does not apply to nystatin. (Cross-reference 78.28(1)"d"(17))

Prior authorization is required for nonparenteral vasopressin derivatives of posterior pituitary hormone products. Payment for nonparenteral vasopressin derivatives of posterior pituitary hormone products will be authorized for the following diagnoses:

1. Diabetes insipidus.

2. Hemophilia A.

3. Von Willebrand's disease.

Payment for nonparenteral vasopressin derivatives of posterior pituitary hormone products used in the treatment of primary nocturnal enuresis will be authorized for patients who are six years of age or older for periods of six months. Approvals will be granted for subsequent six-month periods only after a drug-free interval to assess the need for continued therapy. (Cross-reference 78.28(1)"d"(18))

Prior authorization is required for serotonin 5-HT1-receptor agonists for quantities exceeding 18 unit doses of tablets, syringes or sprays per 30 days. Payment for serotonin 5-HT1-receptor agonists beyond this limit will be considered on an individual basis after review of submitted documentation. For consideration, the following information must be supplied:

1. The diagnosis requiring therapy.

2. Documentation of current prophylactic therapy or documentation of previous trials and therapy failures with two different prophylactic medications. (Cross-reference 78.28(1)"d"(19))

For all drugs requiring prior authorization, in the event of an emergency situation when a prior authorization request cannot be submitted and a response received within 24 hours such as after regular working hours or on weekends, a 72-hour supply of the drug may be dispensed and reimbursement will be made.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Prior authorization is required for selected brand-name drugs as determined by the department for which there is available an "A" rated bioequivalent generic product as determined by the federal Food and Drug Administration. For prior authorization to be considered, evidence of a treatment failure with the bioequivalent generic drug must be provided. A copy of a completed Med Watch form, FDA Form 3500, as submitted to the federal Food and Drug Administration shall be considered as evidence of a treatment failure. Brand-name drugs selected by the department shall be obtained from those recommended by the Iowa Medicaid drug utilization review commission after consultation with the state associations representing physicians. The list of selected brand-name drugs shall be published in the Medicaid Prescribed Drug Manual and the Physician Manual.

ITEM 2. Amend subrule **78.28(1)**, paragraph **"d,"** as follows:

Amend subparagraphs **(1)** and **(7)** as follows:

(1) Antiulcer drugs. Prior authorization is required for prescriptions for all *single-source* histamine H2-receptor antagonists~~, and sucralfate,~~ at ~~full therapeutic~~ *all* dose levels ~~that exceed a 90-day supply for therapy at that dose level. Prior authorization is not required for prescriptions for maintenance doses of these drugs or for a 90-day supply at full therapeutic dose levels per 12-month period per recipient.~~ *Single source is defined as the brand-name drug or the innovator of a multiple-source drug. Payment for the single source histamine H2-receptor antagonist will be authorized only for cases in which there is documentation of a previous trial and therapy failure with at least one multiple-source histamine H2-receptor antagonist.*

~~Sucralfate prescribed concurrently with histamine H2-receptor antagonists for a period exceeding 30 days will be considered duplicative and inappropriate.~~

~~The following conditions will be considered justification for continued use of full therapeutic doses of histamine H2-receptor antagonists beyond the 90-day limitation:~~

Prior authorization is required for multiple-source histamine H2-receptor antagonists prescribed at full therapeutic dose levels for longer than a 90-day period or more frequently than one 90-day course of therapy per 12-month period per recipient. Payment for single- or multiple-source histamine H2-receptor antagonists at full therapeutic dose levels beyond the 90-day limit or more frequently than one 90-day course of therapy per patient per 12-month period will be authorized in cases where there is a diagnosis of:

1. Hypersecretory conditions (Zollinger-Ellison syndrome, systemic mastocytosis, multiple endocrine adenomas).
2. Symptomatic gastroesophageal reflux ~~(not responding or failure by maintenance therapy)~~.
3. Symptomatic relapses ~~(duodenum or gastric ulcer) on maintenance therapy~~ *of duodenal or gastric ulcers not responding to maintenance therapy and with documentation of either failure of Helicobacter pylori treatment or a negative Helicobacter pylori test result.*
4. ~~Barretts~~ *Barrett's* esophagus.
5. *Erosive esophagitis.*

Other conditions will be considered on an individual patient basis *with submitted documentation of medical necessity.*

Prior authorization is required for proton pump inhibitor usage longer than 60 days or more frequently than one 60-day course per 12-month period. Payment for proton pump inhibitors beyond the 60-day limit or more frequently than one 60-day course per recipient per 12-month period shall be authorized upon request for those cases in which there is a diagnosis of:

1. Specific hypersecretory conditions (Zollinger-Ellison syndrome, systemic mastocytosis, multiple endocrine adenomas).
2. ~~Barretts~~ *Barrett's* esophagus.
3. Symptomatic gastroesophageal reflux after documentation of previous trials and therapy failure with at least one histamine H2-receptor antagonist at full therapeutic doses as defined by the histamine H2-receptor antagonist prior authorization guidelines.
4. Recurrent peptic ulcer disease after documentation of previous trials and therapy failure with at least one histamine H2-receptor antagonist at full therapeutic doses and with documentation of either failure of Helicobacter ~~Pylori~~ *pylori* treatment or a negative Helicobacter ~~Pylori~~ *pylori* test result.

Proton pump inhibitors prescribed concurrently with histamine H2-receptor antagonists shall be considered ~~duplicative and inappropriate~~ *duplication of therapy. Payment for duplication of therapy will be considered on an individual basis after review of submitted documentation of medical necessity.*

Prior authorization is not required for a cumulative 60 days of therapy with a proton pump inhibitor per 12-month period per recipient. The 12-month period is patient specific and begins 12 months prior to the requested date of prior authorization.

The medical condition of patients receiving continuous long-term treatment with proton pump inhibitors shall be reviewed yearly to determine the need for ongoing treatment.

Prior authorization is required for sucralfate at full therapeutic dose levels for longer than a 90-day period or more frequently than one 90-day course of therapy per patient per 12-month period. Payment for sucralfate at full therapeutic dose levels beyond the 90-day limit or more frequently than a 90-day course per patient per 12-month period will be authorized in cases where there is a diagnosis of:

1. *Hypersecretory conditions (Zollinger-Ellison syndrome, systemic mastocytosis, multiple endocrine adenomas).*
2. *Symptomatic gastroesophageal reflux.*
3. *Symptomatic relapses of duodenal or gastric ulcers not responding to maintenance therapy and with documentation of either failure of Helicobacter pylori treatment or a negative Helicobacter pylori test result.*
4. *Barrett's esophagus.*
5. *Erosive esophagitis.*

Other conditions will be considered on an individual basis with submitted documentation.

Concurrent sucralfate therapy prescribed with histamine H2-receptor antagonists or proton pump inhibitors beyond a 30-day period is considered duplication of therapy. Concurrent sucralfate therapy prescribed with misoprostol is also considered duplication of therapy. Payment for duplication of therapy will be considered on an individual patient basis after review of submitted documentation of medical necessity.

Prior authorization is not required for misoprostol when prescribed concurrently with a nonsteroidal anti-inflammatory drug. Prior authorization is required for any other therapy with misoprostol beyond 90 days. Justification for other therapy will be considered on an individual patient basis. Misoprostol prescribed concurrently with histamine H2-receptor antagonists, *sucralfate, or proton pump inhibitors* will be considered ~~duplicative and inappropriate~~ *duplication of therapy. Payment for duplication of therapy will be*

considered on an individual patient basis after review of submitted documentation of medical necessity.

(7) Prior authorization is required for ~~all nonsedating antihistamines~~ *single-source antihistamines including single active ingredient and combination products. Prior authorization is not required for multiple-source antihistamines. Single source is defined as the brand-name drug or the innovator of a multiple-source drug.* Patients 21 years of age and older must have received two unsuccessful trials with other covered *multiple-source* antihistamines ~~(chlorpheniramine or diphenhydramine)~~ unless evidence is provided that the use of these agents would be medically contraindicated, prior to the utilization of ~~the nonsedating antihistamines~~ *single-source antihistamines.* Patients 20 years of age and younger must have one unsuccessful trial with another covered *multiple-source* antihistamine ~~(chlorpheniramine or diphenhydramine)~~ unless evidence is provided that the use of these agents would be medically contraindicated, prior to the utilization of ~~the nonsedating antihistamines~~ *single-source antihistamines.*

Adopt the following **new** subparagraphs **(14)** to **(19)** as follows:

(14) Prior authorization is required for ergotamine derivatives used for migraine headache treatment for quantities exceeding 18 unit doses of tablets, injections, or sprays per 30 days. Payment for ergotamine derivatives for migraine headache treatment beyond this limit will be considered on an individual basis after review of submitted documentation. For consideration, the following information must be supplied:

1. The diagnosis requiring therapy.
2. Documentation of current prophylactic therapy or documentation of previous trials and therapy failures with two different prophylactic medications.

(15) Prior authorization is required for narcotic agonist-antagonist nasal sprays for quantities exceeding 10 milliliters (approximately 60 doses) per 30 days. Payment for narcotic agonist-antagonist nasal spray beyond this limit will be considered on an individual basis after review of submitted documentation. For consideration, the diagnosis must be supplied. If the use is for the treatment of migraine headaches, documentation of current prophylactic therapy or documentation of previous trials and therapy failures with two different prophylactic medications must be provided.

(16) Prior authorization is required for isotretinoin therapy.

Payment will be approved for isotretinoin therapy for acne under the following conditions:

1. There are documented trials and therapy failures of systemic antibiotic therapy and topical tretinoin therapy. Documented trials and therapy failures are not required for approval for treatment of acne conglobata.
2. There is a confirmed negative serum pregnancy test, if appropriate.
3. There is a plan for contraception in place, if appropriate.

Initial authorization will be granted for up to 20 weeks. A minimum of two months without therapy is required to consider subsequent authorizations.

Prior authorization of isotretinoin therapy for treatment of conditions other than acne will be considered on an individual basis after review of submitted documentation.

(17) Prior authorization is required for oral antifungal therapy beyond a cumulative 90 days of therapy per 12-month period per patient. Payment for oral antifungal therapy beyond this limit will be authorized in cases where the patient has a diagnosis of an immunocompromised condition or a systemic fungal infection. Other conditions will be considered on an individual basis after review of submitted documentation. This prior authorization requirement does not apply to nystatin.

(18) Prior authorization is required for nonparenteral vasopressin derivatives of posterior pituitary hormone products. Payment for nonparenteral vasopressin derivatives of posterior pituitary hormone products will be authorized for the following diagnoses:

1. Diabetes insipidus.
2. Hemophilia A.
3. Von Willebrand's disease.

Payment for nonparenteral vasopressin derivatives of posterior pituitary hormone products used in the treatment of primary nocturnal enuresis will be authorized for patients who are six years of age or older for periods of six months. Approvals will be granted for subsequent six-month periods only after a drug-free interval to assess the need for continued therapy.

(19) Prior authorization is required for serotonin 5-HT1-receptor agonists for quantities exceeding 18 unit doses of tablets, syringes or sprays per 30 days. Payment for serotonin 5-HT1-receptor agonists beyond this limit will be considered on an individual basis after review of submitted documentation. For consideration, the following information must be supplied:

1. The diagnosis requiring therapy.
2. Documentation of current prophylactic therapy or documentation of previous trials and therapy failures with two different prophylactic medications.

[Filed 10/13/99, effective 1/1/00]
[Published 11/3/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/3/99.

ARC 9458A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue and Finance hereby adopts amendments to Chapter 67, "Administration," Chapter 68, "Motor Fuel and Undyed Special Fuel," and Chapter 69, "Liquefied Petroleum Gas—Compressed Natural Gas," Iowa Administrative Code.

These amendments incorporate the provisions of Senate File 136, as enacted by 1999 Iowa Acts.

Item 1 amends the definition of "Exporter" to provide that a person need not export fuel exclusively to be considered an exporter.

Item 2 amends the definition of "Motor fuel" to include "transmix" which is used as a buffer between different types of fuel products as they pass through the pipeline distribution system.

Items 3 and 4 provide that an agreement may be reached between the Department and the taxpayer to extend the statute of limitations for making an assessment and claiming a refund.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

Items 5 to 12, 14, 15, 18, 23, and 25 to 27 provide consistency in the motor vehicle fuel tax rules by changing the word "report" to "return" or adding the word "report" or "return".

Items 13 and 24 require L.P.G. (liquified petroleum gas) and C.N.G. (compressed natural gas) dealers and users to post a bond when delinquent in paying the tax or filing returns and specify the amount of bond required.

Item 16 requires a licensee who collects tax in error from a consumer to either return the tax to the consumer or remit it to the Department.

Item 17 clarifies that the tax is to be paid by the person who owns the fuel at the time it is imported into the state.

Items 19 and 20 clarify that a tax refund is available on fuel used in machinery and equipment used for nonhighway purposes.

Item 21 deletes an obsolete provision pertaining to refunds not being allowed for the tax paid on fuel used in the performance of a contract paid from state funds.

Item 22 prohibits the allowance of an income tax credit for the tax paid on fuel relating to idle time, power takeoffs, reefer units, exports, and excess tax paid on ethanol blended gasoline. Refund claims are required to be filed under these circumstances.

Notice of Intended Action was published in IAB Volume XXII, Number 5, page 339, on September 8, 1999, as **ARC 9346A**.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective December 8, 1999, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 452A as amended by 1999 Iowa Acts, Senate File 136.

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 [67.1 to 67.3, 67.5, 67.11, 67.15, 67.17, 67.18, 67.21(1), 67.23(4), 67.24, 67.26, 68.2, 68.5, 68.8, 68.9(6), 68.12, 69.2, 69.4(2), 69.8, 69.13(2), 69.15] is being omitted. These amendments are identical to those published under Notice as **ARC 9346A**, IAB 9/8/99.

[Filed 10/15/99, effective 12/8/99]
[Published 11/3/99]

[For replacement pages for IAC, see IAC Supplement 11/3/99.]

ARC 9451A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on October 13, 1999, adopted amendments to Chapter 400, "Vehicle Registration and Certificate of Title," and Chapter 425, "Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the September 8, 1999, Iowa Administrative Bulletin as **ARC 9319A**.

1999 Iowa Acts, House File 299, provides that an applicant for registration and issuance of a certificate of title who does not have a social security number but has a passport shall list the passport number on the application. House File 299 also allows the applicant to list an out-of-state driver's license number on the application. Item 1 amends subrule 400.3(2) accordingly. This subrule is also being amended to clarify that neither an out-of-state driver's license number nor a passport number will be listed on the title and registration documents. No waiver is provided because acceptance of a passport number and an out-of-state driver's license number on the application is a statutory mandate.

Item 2 implements 1999 Iowa Acts, Senate File 203, section 4, which provides that the owner of a vehicle titled in a foreign jurisdiction but registered in Iowa may transfer ownership of the vehicle to an Iowa licensed motor vehicle dealer without first obtaining an Iowa certificate of title if the foreign title is held by a secured party and the dealer has forwarded to the secured party the sum necessary to discharge the security interest. No waiver is provided because the new statutory language is the waiver.

Item 3 rescinds subrule 400.5(2), which addressed application for special mobile equipment plates. 1999 Iowa Acts, Senate File 203, section 28, repealed Iowa Code section 321.21, which provided for the issuance of these plates. Waiver is not applicable.

1999 Iowa Acts, Senate File 203, section 9, allows the use of a separate form prescribed by the Department to cancel a security interest. Item 4 implements this legislation. No waiver is provided because use of a separate form to note the cancellation of a security interest is permissive under the statute.

Item 5 implements 1999 Iowa Acts, Senate File 203, section 6, which provides that when a security interest is released by a lienholder on a separate form, but the lienholder has not delivered the certificate of title to the appropriate party, the owner may apply for a duplicate title. Item 5 also provides for application for a duplicate title when the original title has been altered. No waiver is provided because this amendment simply reflects new legislation and the fact that an altered title is not transferable.

Item 6 adopts a new rule requiring the owner of a truck tractor registered as a special truck to certify to the owner's county treasurer annually at the time of renewal that the truck tractor is not operated more than 15,000 miles annually. Iowa Code section 321.1, subsection 76, as amended by 1999 Iowa Acts, Senate File 203, section 3, states that a special truck does not include a truck tractor operated more than 15,000 miles annually. The new rule will provide verification each year that the vehicle is being operated within this statutory limitation. No waiver is provided because the mileage limitation is statutory.

Item 7 provides that registration plates may be reassigned and credit allowed when a vehicle owner transfers ownership of the vehicle to a trust created by that owner. No waiver is provided; rather, this provision provides flexibility when transferring ownership of a vehicle to a trust.

Item 8 amends the definition of "Regular business hours" to cite a statutory exception to the definition. Waiver is not applicable.

1998 Iowa Acts, chapter 1058 [Iowa Code subsection 322.5(4)], provides for the issuance of motor truck display permits. 1999 Iowa Acts, Senate File 203, section 23, provides for the issuance of firefighting and rescue show display permits. Item 9 adopts two new rules implementing these new statutory provisions. These new rules do not provide for waivers because the statutes themselves are waivers.

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1997 Iowa Acts, chapter 108, section 38 [Iowa Code section 322.29], eliminated the licensing of motor vehicle factory branches, distributor branches, factory representatives, and distributor representatives. Items 10 and 11 make corresponding amendments. Waivers are not applicable.

1998 Iowa Acts, chapter 1121, section 6 [Iowa Code section 322.27A], requires a wholesaler to have financial liability coverage. Item 12 adopts a new rule reflecting this statutory requirement. No waiver is provided because the required coverages are statutory.

These amendments are identical to the ones published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapters 321 and 322 and 1999 Iowa Acts, House File 299, and 1999 Iowa Acts, Senate File 203, sections 3, 4, 6, 9, 23, and 28.

These amendments will become effective December 8, 1999.

Rule-making actions:

ITEM 1. Amend subrule 400.3(2) as follows:

400.3(2) Motor vehicle control number.

a. If the applicant is an individual:

(1) The individual's ~~Iowa~~ driver's license number and social security number shall be listed on the application form. *If the individual does not have a social security number but has a passport, the passport number shall be listed.* If the individual ~~has neither an Iowa~~ *does not have a* driver's license, ~~number nor~~ a social security number *or a passport,* the department shall assign a unique, temporary motor vehicle control number valid for two months. Before the expiration of two months, the individual shall return to the county treasurer's office and report the newly acquired ~~Iowa~~ driver's license, ~~number or~~ social security *or passport* number.

(2) The individual's Iowa driver's license number is the motor vehicle control number. If the individual does not have an Iowa driver's license, the individual's social security number is the motor vehicle control number.

b. If the applicant is a partnership, corporation, association, or governmental subdivision, ~~for example,~~ the federal employer's identification number shall be listed on the application form. This number is the entity's motor vehicle control number. If the organization does not have a federal employer's identification number, the department shall assign a unique motor vehicle control number.

c. Motor vehicle control numbers are coded and listed on the title and registration as follows:

1 - Iowa driver's license number

2 - Social security number

3 - Federal employer's identification number

If an individual has neither an Iowa driver's license number nor a social security number, a motor vehicle control number shall not be listed on the title and registration.

ITEM 2. Amend subrule **400.4(3)** as follows:

Amend paragraph **"b"** as follows:

b. A certificate of title issued in a foreign jurisdiction may be assigned to a motor vehicle dealer in another jurisdiction, ~~except to a motor vehicle dealer licensed in this state,~~ and the dealer may reassign the certificate of title to the applicant. An assignment or reassignment form, issued by a foreign jurisdiction, may be used with a foreign title ~~certificate~~ to complete an assignment or reassignment of ownership from a foreign motor vehicle dealer to the applicant, ~~providing~~ *provided* the ownership chain is complete.

Reletter paragraphs **"c"** to **"e"** as paragraphs **"e"** to **"g,"** respectively, and adopt **new** paragraphs **"c"** and **"d"** as follows:

c. An Iowa licensed motor vehicle dealer who acquires a vehicle registered in another state or country may reassign the foreign certificate of title to the applicant, as provided in Iowa Code subsection 321.48(2) and rule 761—400.27(321, 322).

d. A person who registers a foreign vehicle under Iowa Code subsection 321.23(3) shall be issued a nontransferable-nonnegotiable registration. To transfer ownership of the vehicle, the owner must first obtain an Iowa certificate of title except as follows: If ownership is transferred to an Iowa licensed motor vehicle dealer as provided in Iowa Code subsection 321.23(3), the foreign certificate of title may be assigned to the dealer; the owner is not required to obtain an Iowa title. The dealer may then reassign the foreign title, as provided in Iowa Code subsection 321.48(2) and rule 761—400.27(321,322).

ITEM 3. Rescind and reserve subrule **400.5(2)**.

ITEM 4. Adopt **new** rule 761—400.8(321) as follows:

761—400.8(321) Release form for cancellation of security interest.

400.8(1) A secured party may use Form 411168 to note the cancellation of a security interest.

400.8(2) The secured party may also note the cancellation in a statement written on the secured party's letterhead if the statement contains the following information: county that issued the title; title number; security interest number; vehicle identification number; vehicle owner's name; secured party's name, street address, city, state and ZIP code; date the security interest was canceled; and signature of an authorized representative of the secured party.

400.8(3) The secured party shall forward the original release form (Form 411168 or the signed statement) to the department or to the county treasurer of the county where the title was issued. Facsimiles and photocopies are not acceptable.

400.8(4) The secured party shall note the cancellation on the face of the title, attach a copy of the release form to the title as evidence of cancellation, and forward the title to the next secured party or, if there is no other secured party, to the person designated by the owner or, if there is no person designated, to the owner.

This rule is intended to implement Iowa Code subsection 321.50(4) as amended by 1999 Iowa Acts, Senate File 203, section 9.

ITEM 5. Amend rule 761—400.12(321) as follows:

761—400.12(321) Duplicate certificate of title.

400.12(1) When a certificate of title is lost, ~~or~~ destroyed *or altered, the owner or lienholder shall apply for a duplicate certificate of title. If a security interest noted on the certificate of title was released by the secured party on a separate form, but the secured party has not delivered the original certificate of title to the appropriate party, the owner may apply for a duplicate certificate of title as provided in Iowa Code section 321.42.*

400.12(2) *Application* ~~application~~ for a duplicate certificate of title shall be made on Form 411033, "Application for Duplicate of Iowa Certificate of Title to a Motor Vehicle." All owners of the vehicle as listed on the certificate of title shall sign the application form. If an owner is deceased, the signatures and documents specified in subrules 400.14(4) and 400.14(5) shall be required in lieu of the deceased own-

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er's signature. A person entitled to vehicle ownership under the laws of descent and distribution shall sign the required forms and shall insert the words "heir at law" following the signature.

This rule is intended to implement Iowa Code section 321.42.

ITEM 6. Adopt **new** rule 761—400.28(321) as follows:

761—400.28(321) Special trucks. The owner of a truck tractor registered as a special truck shall certify to the owner's county treasurer annually at the time of renewal that the truck tractor is not operated more than 15,000 miles annually.

This rule is intended to implement Iowa Code subsection 321.1(76) and section 321.121 and 1999 Iowa Acts, Senate File 203, section 3.

ITEM 7. Adopt **new** subrule 400.61(5) as follows:

400.61(5) Registration plates may be assigned and credit allowed if an owner listed on the certificate of title and registration transfers ownership of the vehicle to a trust created by that owner. The owner's copy of the registration receipt showing assignment to the trust shall be submitted.

ITEM 8. Amend rule **761—425.3(322)**, definition of "Regular business hours," as follows:

"Regular business hours" means to be consistently open to the public on a weekly basis at hours reported to the office of vehicle services. *Except as provided in Iowa Code section 322.36, regular business hours for* ~~For~~ a motor vehicle or travel trailer dealer or used vehicle wholesaler~~, regular business hours~~ shall include a minimum of 32 posted hours between Monday and Friday, inclusive.

ITEM 9. Adopt **new** rules 761—425.30(322) and 761—425.31(322) as follows:

761—425.30(322) Motor truck display permit. Application for a permit under Iowa Code subsection 322.5(4) shall be made on Form 411176. The application shall include information or documentation showing that the nonresident motor vehicle dealer is eligible for issuance of a permit and that the event meets the statutory conditions for permit issuance.

This rule is intended to implement Iowa Code subsection 322.5(4).

761—425.31(322) Firefighting and rescue show permit.

425.31(1) Application for a firefighting and rescue show permit shall be made on Form 411220. The application shall include the name, address and license number of the applicant, the type of vehicles being displayed, and the following information about the vehicle show or exhibition: name, location, sponsor(s), and duration, including the opening and closing dates.

425.31(2) The permit is not valid on Sundays. Only one permit shall be issued to each licensee for an event.

425.31(3) The permit holder shall display the permit in a prominent place at the location of the vehicle show or exhibition.

This rule is intended to implement Iowa Code section 322.5 as amended by 1999 Iowa Acts, Senate File 203, section 23.

ITEM 10. Amend rule 761—425.50(322), introductory paragraph, as follows:

761—425.50(322) Manufacturers, distributors, *and* wholesalers~~, factory branches and distributor branches~~. This rule applies to the licensing of manufacturers, distributors, *and* wholesalers~~, factory branches and distributor branches~~ of new motor vehicles and travel trailers. The licensing of used vehicle wholesalers is addressed in rule 425.52(322).

ITEM 11. Rescind and reserve paragraph **425.50(2)"a,"** subparagraph **425.50(2)"d"(3)**, and rule **761—425.51(322)**.

ITEM 12. Adopt **new** rule 761—425.53(322) as follows:

761—425.53(322) Wholesaler's financial liability coverage. A new or used motor vehicle wholesaler shall certify on the license application that it has the required financial liability coverage in the limits set forth in Iowa Code section 322.27A. It is the wholesaler's responsibility to ensure that the required financial liability coverage is continuous with no lapse in coverage as long as the wholesaler maintains a valid wholesaler's license.

This rule is intended to implement Iowa Code section 322.27A.

[Filed 10/14/99, effective 12/8/99]
[Published 11/3/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/3/99.

ARC 9450A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on October 13, 1999, adopted an amendment to Chapter 400, "Vehicle Registration and Certificate of Title," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the September 8, 1999, Iowa Administrative Bulletin as **ARC 9310A**.

This amendment provides that only one signature is required when a "Doing Business As" (DBA) name is involved in a transfer of vehicle ownership. No waiver is provided. Instead, this amendment provides flexibility when a "DBA" name is involved. It allows an authorized representative to sign the transfer document.

This amendment is identical to the one published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 321.45.

This amendment will become effective December 8, 1999.

Rule-making action:

Amend subrule 400.14(1) as follows:

400.14(1) Transfer of vehicle owned by more than one person.

a. If the names of the owners of a vehicle on the certificate of title or on the manufacturer's certificate of origin are joined by the word "or," as in "John Doe or Mary Doe," then the signature of either owner ~~shall be~~ *is* sufficient to transfer title or to junk the vehicle.

b. If ownership of a vehicle is stated as a name or names followed by the words "Doing Business As" or the initials "DBA" and another name, only the name of an owner fol-

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lowed by the signature of an authorized representative of an owner is required to transfer title or to junk the vehicle.

EXAMPLE: Ownership is stated as "John Smith and Mary Smith DBA Smith Repair." Jane Doe is an authorized representative of John Smith and Mary Smith. To transfer ownership, Jane Doe may sign as "John Smith and Mary Smith DBA Smith Repair, by Jane Doe," "John Smith and Mary Smith by Jane Doe," or "Smith Repair by Jane Doe."

c. In all other cases the signature of each named owner ~~shall be~~ *is* required.

[Filed 10/14/99, effective 12/8/99]
[Published 11/3/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/3/99.

ARC 9452A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on October 13, 1999, hereby amends Chapter 401, "Special Registration Plates," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the September 8, 1999, Iowa Administrative Bulletin as **ARC 9321A**.

These amendments add two new types of special registration plates: Legion of Merit plates and veteran plates. See Items 8 and 12.

1999 Iowa Acts, Senate File 462, section 15, provides for Legion of Merit plates. Item 8 requires the applicant to provide a copy of the official government document verifying receipt of the Legion of Merit. A waiver is not appropriate, because eligibility for the plates needs to be verified.

The veteran plate is a special plate approved under Iowa Code paragraph 321.34(13)"d." 1999 Iowa Acts, House File 737, section 8, provides for deposit of the fees collected from the sale of veteran plates into the veterans license fee fund. Item 12 provides that eligibility is determined by the Commission of Veterans Affairs. A waiver is not provided, because the Department of Transportation does not determine eligibility.

Several amendments clarify the fact that special plates with processed emblems are limited to five characters. A waiver is not provided, because there is no room on these plates for six or more characters.

Chapter 401 is being amended to remove all references to Form 411065, which is the special plate application form. Because new types of special plates are added every year, Form 411065 is quite lengthy and needs to be overhauled. To maintain flexibility in this process and eliminate the need for amending the rules in the future for the sole purpose of correcting this form number, the amendments substitute more generic language. A waiver is not applicable.

Chapter 401 is also being amended to correct omissions and delete redundancies.

These amendments are identical to the ones published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 321.34.

These amendments will become effective December 8, 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 [401.2(1), 401.6 to 401.12, 401.16, 401.17(3), 401.19 to 401.25, 401.27 to 401.31] is being omitted. These rules are identical to those published under Notice as **ARC 9321A**, IAB 9/8/99.

[Filed 10/14/99, effective 12/8/99]
[Published 11/3/99]

[For replacement pages for IAC, see IAC Supplement 11/3/99.]

ARC 9442A

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, 476.2, 478.20, 479.17, and 479A.10, the Utilities Board (Board) gives notice that on October 5, 1999, the Board issued an order in Docket No. RMU-99-4, In re: Electric and Pipeline Procedures, "Order Adopting Rules."

The purpose of the rule making is to update the list of forms available for Iowa Code chapters 478 and 479 proceedings, update technical standards, and modify filing requirements for electric and pipeline proceedings. In addition, the Board is amending subrule 25.2(1) regarding the National Electric Safety Code, Part 4.

On April 30, 1999, the Board issued an order to consider adopting amendments to 199 IAC 2.4(17A,474), 7.1(1), 10.2(1), 10.12(1), 10.17(479), 11.2(3)"d," 11.2(8), 13.2(1)"g," 19.2(5)"g," 19.5(2), 20.5(2)"b," 25.2(1), 25.2(2), and 25.2(5)"a." The proposed rule making was published in IAB Vol. XXI, No. 24 (5/19/99) p. 2817, as **ARC 9027A**. Written statements of position were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate), Alliant Utilities (Alliant), MidAmerican Energy Company (MidAmerican), and the Iowa Environmental Group (IEG) on or before June 8, 1999. An oral presentation was held on July 7, 1999.

In written comments, MidAmerican questioned whether the omission of the forms for temporary construction permits was inadvertent or if the forms were no longer required. The electric franchise petition forms were revised to reflect rules adopted on June 30, 1993, In re: Electric Transmission Lines, in Docket No. RMU-92-13. The new form provides a place to request a temporary construction permit, and separate request forms were eliminated.

MidAmerican also contended the last paragraph of amended subrule 7.1(1) duplicates rule 1.3(17A,474) and questioned whether it would impact the ability to request a waiver. The addition of the language to subrule 7.1(1) will not impede the waiver process. However, the phrase "pursuant to 199 IAC 1.3(17A,474)" is added to subrule 7.1(1) for clarification.

MidAmerican contended the requirement in paragraph "g" of subrule 10.2(1) concerning attaching copies of the mailed notice letter and the published notices to the Exhibit G affidavit is an unnecessary procedural step. Alliant also objected to the requirement. Alliant asserted the informational notice is approved prior to mailing and the actual published notice is verified at the meeting site. Alliant stated

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that the inclusion of these documents would add no value to the petition. However, there is no prior formal approval process for the notices. Any informal review by staff would not constitute Board approval. Currently, there is no requirement to file copies of the mailed and published notice with the Board. The adequacy of the notices is frequently an issue in pipeline permit proceedings; therefore, copies of the mailed and published notice should be in the record of the proceeding. The subrule is adopted as proposed.

MidAmerican and Alliant opposed proposed paragraph "d" of subrule 11.2(3) regarding the name and corporate limits of cities and the name and boundaries of any public lands or parks. MidAmerican contended the paragraph requires excessive detail. MidAmerican claimed the phrase "public lands or parks" is too broad and suggested the paragraph be more specific. Alliant maintained obtaining boundary information would be onerous and suggested the rule be changed. Alliant contended the names of the parks were shown on the base maps it used for filings but the maps did not show the park boundaries. Alliant argued that showing the boundaries on the map provides no special protection for such areas. Alliant asserted that even with the subrule, appropriate permits and easements would still be necessary.

Subrule 11.2(3) as amended is identical to the current rules for pipeline permit petitions. The Board is unaware of any difficulties with companies providing the information on maps for pipeline permits. Alliant contended the boundary information required by the subrule may not be readily available and suggested alternative language. Under Alliant's proposed language, the map would only indicate a park in the vicinity of an electric line route and would not show boundaries. A map without boundaries would not address concerns regarding whether the route passes through the area or how close the route is to the park.

The Department of Natural Resources in 571 IAC Chapters 52 and 61 references state parks and recreational areas, preserves, and wildlife refuges. To make subrule 11.2(3) more specific and less burdensome, the Board added a new paragraph "e" requiring the names and boundaries of any public parks, recreational areas, preserves, or wildlife refuges only with petitions proposing construction of a new electric line or relocation of an existing line.

MidAmerican and Alliant also expressed concern regarding the requirement set forth in subrule 11.2(8) to file copies of the mailed letter and published notice along with the affidavit with Exhibit G for an electric franchise petition. MidAmerican sought assurances that a "typical" or "model" letter would satisfy the requirements of the subrule instead of copies of the letter sent to each individual. The intent of the subrule is to file with the Board a copy of the mailed notice letter and a copy of the published notices. Filing a copy of the "model" or "typical" notice letter will satisfy the requirement set forth by the subrule.

Currently in subrule 25.2(1), the Board adopted American National Standards Institute (ANSI) C2-1997 "National Electric Safety Code" (NESC). The NESC is used to evaluate safety and proper installation of electrical facilities. The Board is amending the subrule to exclude Part 4 of the NESC which concerns general work rules (e.g., use of tools, duties of supervisors, protective gear) for utility company employees. The Iowa Environmental Group (IEG) opposed the exemption of Part 4. IEG asserted excluding Part 4 would decrease the safeguarding of public safety.

Very little of Part 4 is applicable to public safety. The few areas in Part 4 pertaining to public safety involved issues such as signs and barricades for controlling traffic or at excavations, guarding downed power lines, and escorting visitors. Part 2 of the NESC, however, does address worker safety applications, such as design and installation of wires and equipment concerning adequate working space for installation and maintenance. The requirements in Part 2 address physical facilities but not the on-the-job performance of workers as in Part 4.

Board staff routinely inspects the design, installation, and physical condition of facilities for safety code compliance and serviceability. The staff does not normally observe work in progress or review utility employee work rules. The deletion of Part 4 will make the rules consistent with the Board's actual inspection practices. Contrary to IEG's assertions, the deletion of Part 4 will not deprive workers and the public of the protection to which they are entitled. The safety of the workers and the public will be ensured by the Occupational Health and Safety Administration's standards. The subrule is adopted as proposed.

These amendments are intended to implement Iowa Code chapters 476, 478, 479, and 479A.

These amendments will become effective December 8, 1999.

The following amendments are adopted.

ITEM 1. Rescind rule 199—2.4(17A,474) and adopt the following **new** rule in lieu thereof:

199—2.4(17A,474) Forms. The following forms for proceedings under Iowa Code chapters 478, 479, and 479B are available upon request:

1. Petition for Electric Line Franchise.
2. Petition for Amendment of Electric Line Franchise.
3. Petition for Extension of Electric Franchise.
4. Exhibit C, Overhead Transmission Line: Typical Engineering Specifications.
5. Exhibit C-UG, Engineering Specifications for Underground Transmission Line.
6. Petition for Permit to Construct, Operate, and Maintain a Pipeline.
7. Petition for Renewal of Permit to Construct, Operate, and Maintain a Pipeline.
8. Exhibit C, Specifications for Pipeline.
9. Petition for Permit for Hazardous Liquid Pipeline.

ITEM 2. Amend subrule 7.1(1) as follows:

7.1(1) Procedure governed. These rules are promulgated under Iowa Code chapter 476 as guides for practice and procedure thereunder before the Iowa utilities board (hereinafter referred to as "board") unless otherwise ordered by the board in any proceeding, and subject to such special rules, or amendments thereto which may hereafter be adopted.

No rule of the board shall in any way relieve a utility from any of its duties under the law of this state.

Except for rules 7.8(476) and 7.9(476), none ~~None~~ of the procedures provided for herein shall apply to electric transmission line hearings under chapter 478 or to pipeline and underground gas storage hearings under chapter 479 *or 479B*.

The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise provided by law, may be waived by the board pursuant to 199 IAC 1.3(17A,474) to prevent undue hardship to a party to this proceeding.

ITEM 3. Amend subrule **10.2(1)**, paragraph **"g,"** as follows:

g. Exhibit "G." If informational meetings were required, an affidavit that such meetings were held in each

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county affected by the proposed project and the time and place of each meeting. *Copies of the mailed notice letter and the published notice(s) of the informational meeting shall be attached to the affidavit.*

ITEM 4. Amend subrule **10.12(1)**, paragraphs **"a"** through **"d,"** as follows:

a. 49 CFR Part 191, "Transportation of Natural and Other Gas By Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," as amended through ~~April 1, 1997~~ *April 30, 1999*.

b. 49 CFR Part 192, "Transportation of Natural and Other Gas By Pipeline; Minimum Federal Safety Standards," as amended through ~~April 1, 1997~~ *April 30, 1999*.

c. 49 CFR Part 195, "Transportation of Hazardous Liquids By Pipeline," as amended through ~~April 1, 1997~~ *April 30, 1999*.

d. 49 CFR Part 199, "Drug Testing," as amended through ~~April 1, 1997~~ *April 30, 1999*.

ITEM 5. Amend rule 199—10.17(479) as follows:

199—10.17(479) Accidents and incidents. Any pipeline incident or accident which is reportable to the U.S. Department of Transportation under 49 CFR Part 191 or Part 195 as amended through ~~September 1, 1994~~ *April 30, 1999*, shall also be reported to the board, except that the minimum economic threshold of damage required for reporting to the board is $15,000. Duplicate copies of any written accident reports and safety-related condition reports submitted to the U.S. Department of Transportation shall be provided to the board.

ITEM 6. Amend paragraph **"d,"** adopt **new** paragraph **"e,"** and reletter existing **"e"** to **"j"** as **"f"** to **"k"** in subrule **11.2(3)** as follows:

d. ~~The corporate limits of cities.~~ *The name and corporate limits of cities.*

e. The name and boundaries of any public lands or parks, recreational areas, preserves or wildlife refuges. This information need only be provided with petitions proposing construction of a new electric line or relocation of an existing electric line.

ITEM 7. Amend subrule 11.2(8) as follows:

11.2(8) Exhibit G. The affidavit required by Iowa Code section 478.3 on the holding of an informational meeting. *Copies of the mailed notice letter and the published notice(s) of the informational meeting shall be attached to the affidavit.* This exhibit is required only if an informational meeting was conducted.

ITEM 8. Amend subrule **13.2(1)**, paragraph **"g,"** as follows:

g. Exhibit "G." If informational meetings were required, an affidavit that such meetings were held in each county affected by the proposed project and the time and place of each meeting. *Copies of the mailed notice letter and the published notice(s) of the informational meeting shall be attached to the affidavit.*

ITEM 9. Amend subrule **19.2(5)**, paragraph **"g,"** as follows:

g. Reports to federal agencies. Copies of reports submitted pursuant to 49 CFR Part 191 as amended through ~~April 1, 1997~~ *April 30, 1999*, "Transportation of Natural and Other Gas By Pipeline: Annual Reports, Incident Reports, and Safety-Related Condition Reports," shall be filed with the board. Utilities operating in states besides Iowa shall provide to the board data for Iowa only.

ITEM 10. Amend subrule 19.5(2) as follows:

19.5(2) Standards incorporated by reference.

a. The design, construction, operation, and maintenance of gas systems and liquefied natural gas facilities shall be in accordance with the following standards where applicable:

(1) 49 CFR Part 191, "Transportation of Natural and Other Gas By Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," as amended through ~~April 1, 1997~~ *April 30, 1999*.

(2) 49 CFR Part 192, "Transportation of Natural and Other Gas By Pipeline; Minimum Federal Safety Standards," as amended through ~~April 1, 1997~~ *April 30, 1999*.

(3) 49 CFR Part 193, "Liquefied Natural Gas Facilities: Federal Safety Standards," as amended through ~~April 1, 1997~~ *April 30, 1999*.

(4) 49 CFR Part 199, "Drug Testing," as amended through ~~April 1, 1997~~ *April 30, 1999*.

(5) ASME B31.8 - 1995, "Gas Transmission and Distribution Piping Systems."

(6) ANSI/NFPA No. 59 - ~~1995~~ *1998*, "Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants."

b. The following publications are adopted as standards of accepted good practice for gas utilities:

(1) ANSI Z223.1/NFPA 54 - 1996, "National Fuel Gas Code."

(2) ANSI A225/NFPA 501A - ~~1992~~ *1997*, "Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities."

ITEM 11. Amend subrule **20.5(2)**, paragraph **"b,"** as follows:

b. National Electrical Code, ANSI/NFPA 70 - ~~1996~~ *1999*.

ITEM 12. Amend subrule 25.2(1) as follows:

25.2(1) National Electrical Safety Code. The American National Standards Institute (ANSI) C2-1997 "National Electrical Safety Code" (NESC) as ultimately conformed to the ANSI-approved draft by correction of publishing errors through issuance of printed corrections is adopted as part of the Iowa electrical safety code, *except Part 4, "Rules for Operation of Electric Supply and Communications Lines and Equipment," which is not adopted by the board.*

ITEM 13. Amend subrule **25.2(2)** by adopting **new** paragraph **"f."**

f. There is added to the first paragraph of Rule 110.A.1, after the sentence stating, "Entrances not under observation of an authorized attendant shall be kept locked," the following sentence:

Entrances may be unlocked while authorized personnel are inside. However, if unlocked, the entrance gate must be fully closed, and must also be latched or fastened if there is a gate-latching mechanism.

ITEM 14. Amend subrule **25.2(5)**, paragraph **"a,"** as follows:

a. The "National Electrical Code," ANSI/NFPA 70 - ~~1996~~ *1999*, is adopted as a standard of accepted good practice for customer owned electrical facilities beyond the utility point of delivery.

[Filed 10/13/99, effective 12/8/99]
[Published 11/3/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/3/99.

AGENCY	RULE	DELAY
Human Services Department[441]	95.1, "Date of collection"; 95.3 [IAB 8/11/99, **ARC 9238A**]	Effective date of October 1, 1999, delayed until the end of the 2000 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held October 11, 1999. [Pursuant to §17A.8(9)]

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

*PROCLAMATION OF DISASTER EMERGENCY

WHEREAS, THE 1999 GRAIN HARVEST ACROSS IOWA HAS BEEN ABUNDANT WITH YIELDS IN MANY AREAS GREATLY EXCEEDING EXPECTATIONS; AND

WHEREAS, 1998 CROPS STILL OCCUPIED A MAJOR PORTION OF IOWA'S GRAIN STORAGE CAPACITY FORCING GRAIN TO BE STORED AT GREAT RISK ON THE GROUND, OUTSIDE AND UNPROTECTED FROM THE ELEMENTS; AND

WHEREAS, EFFORTS TO MOVE LAST YEAR'S CROP TO MARKET WERE HAMPERED BY LOW MARKET CONDITIONS FORCING MORE CROPS TO REMAIN IN STORAGE; AND

WHEREAS, WITH THE POTENTIAL LOSS OF MILLIONS OF BUSHELS OF GRAIN, THIS CRISIS PRESENTS AN IMMINENT THREAT OF PROPERTY DAMAGE AND SEVERE ECONOMIC HARDSHIP FOR IOWA FARMERS AND GRAIN COOPERATIVES, THE CONSEQUENCES OF WHICH MAY HAVE LONG TERM AND DEVASTATING IMPACTS; AND

WHEREAS, STRICT COMPLIANCE WITH THE PERMIT AND FEE REQUIREMENTS OF IOWA CODE SECTION 321E.29 AND 761 IAC 511 ALLOWING OVERSIZE AND OVERWEIGHT DIVISIBLE LOADS UNDER CERTAIN CIRCUMSTANCES WOULD PREVENT OR HINDER EFFORTS TO COPE WITH THIS DISASTER EMERGENCY:

NOW, THEREFORE, I, THOMAS J. VILSACK, GOVERNOR OF THE STATE OF IOWA, ACTING UNDER THE AUTHORITY VESTED IN ME BY IOWA CONSTITUTION ARTICLE IV, SECTIONS 1 AND 8 AND IOWA CODE SECTION 29C.6(1) DO HEREBY DECLARE THE ENTIRE STATE TO BE IN A STATE OF DISASTER EMERGENCY. FURTHER, PURSUANT TO IOWA CODE SECTION 29C.6(6), I DO HEREBY SUSPEND THE REGULATORY PROVISIONS OF IOWA CODE SECTIONS 321.463 AND 321E.29, AND 761 IAC 511 TO THE EXTENT THAT THOSE PROVISIONS RESTRICT THE MOVEMENT OF OVERSIZE AND OVERWEIGHT LOADS OF SOYBEANS, CORN, HAY, STRAW AND STOVER AND REQUIRE A PERMIT TO TRANSPORT SUCH LOADS. SUSPENSION OF THESE PROVISIONS APPLIES TO LOADS TRANSPORTED ON ALL HIGHWAYS WITHIN IOWA, EXCLUDING THE INTERSTATE SYSTEM, AND WHICH DO NOT EXCEED A MAXIMUM OF 90,000 POUNDS GROSS WEIGHT. THIS ACTION IS INTENDED TO ALLOW VEHICLES TRANSPORTING SOYBEANS, CORN, HAY, STRAW, AND STOVER TO BE OVERSIZE AND OVERWEIGHT, NOT EXCEEDING 90,000 POUNDS GROSS WEIGHT, WITHOUT A PERMIT, BUT ONLY FOR THE DURATION OF THIS PROCLAMATION.

*Reproduced as submitted.

THIS PROCLAMATION EXPIRES 30 DAYS FROM THE DATE ISSUED. THE IOWA DEPARTMENT OF TRANSPORTATION IS HEREBY DIRECTED TO MONITOR THE OPERATION OF THIS PROCLAMATION TO ASSURE THE PUBLIC'S SAFETY AND FACILITATE THE MOVEMENT OF THE TRUCKS INVOLVED.

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 11TH DAY OF OCTOBER IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED NINETY-NINE.

THOMAS J. VILSACK
GOVERNOR

ATTEST:

CHESTER J. CULVER
SECRETARY OF STATE

*SUMMARY OF DECISIONS
THE SUPREME COURT OF IOWA
FILED OCTOBER 13, 1999

Note: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA, 50319, for a fee of 40 cents per page.

No. 99-705. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. BISBEE.

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by McGiverin, C.J., and Larson, Neuman, Snell, and Ternus, JJ. Opinion by Neuman, J. (7 pages $2.80)

Brian Bisbee practiced law in a Grinnell, Iowa, partnership. Cora Creamer, an elderly widow, asked Bisbee to clear up delinquent taxes and unpaid utilities on a house she owned in Las Vegas, Nevada. In return, she agreed to give Bisbee fifty percent of her equity in the home. Bisbee flew to Las Vegas and paid $7900 to cure the delinquencies. The home later sold for $102,000, and Bisbee and Creamer each received checks for $43,000. Bisbee did not deposit the payment in the partnership account because, in his view, the services performed were "financial" not "legal." The board of professional ethics and conduct filed a complaint alleging Bisbee's actions violated numerous disciplinary rules. Our grievance commission agreed and recommended license revocation. The case is before us for de novo review in accordance with Iowa Court Rule 118.10. **OPINION HOLDS:** I. A. Bisbee's financial dealings with Creamer gave rise to a conflict of interest which Bisbee failed to disclose to his client—that the proposed financial arrangement was more advantageous for him than her. His failure to cooperate with the board's investigation constitutes a separate violation of our ethics rules. B. The board charged Bisbee with receiving an excessive fee. Although the sum received by Bisbee exceeded any reasonable value of services rendered, it appears his recovery represented a share of a business deal with a client, not a fee. For the same reason we are also not convinced the board established dishonest conduct by Bisbee toward his law partner. II. Bisbee's financial entanglement with Creamer was costly to her. Moreover, his failure to cooperate in these proceedings has impeded the administration of justice and reflects poorly on his fitness to practice law. His disregard for his client's interests, as well as those of the profession, demands a lengthy suspension. We therefore suspend Bisbee's license to practice law in this state indefinitely, with no possibility of reinstatement for three years. Costs are assessed to Bisbee.

*Reproduced as submitted by the Court

No. 99-621. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. GONNERMAN.

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by McGiverin, C.J., and Larson, Neuman, Snell, and Ternus, JJ. Opinion by Larson, J. (4 pages $1.60)

Attorney Donald Gonnerman failed to close a probate estate despite twelve notices of delinquency from the district court clerk and even a public reprimand by this court. He also did not respond to the ethics board's letters of inquiry. Our grievance commission concluded Gonnerman committed the ethical violations charged by the board and recommended a thirty-day suspension. **OPINION HOLDS:** We agree that Gonnerman has violated the disciplinary rules, and we order that his license to practice law be suspended indefinitely, but for not less than one month from the filing of this opinion. As a condition of reinstatement, he shall show that within twenty days of the filing of this opinion he has secured other counsel to complete the proceedings in the Jarrett estate. Costs are assessed to Gonnerman.

No. 98-1268. STATE v. ALLEN.

Appeal from the Iowa District Court for Plymouth County, Robert J. Dull, District Associate Judge. **AFFIRMED.** Considered by Carter, P.J., and Lavorato, Snell, and Cady, JJ., and Schultz, S.J. Per curiam. (4 pages $1.60)

Allen pleaded guilty to OWI and being an habitual offender. The court sentenced Allen to an indeterminate five-year term of incarceration on the OWI count and noted that, because Allen was an habitual offender, he would not be eligible for parole until serving a minimum of three years. After beginning his term of incarceration, the department of corrections notified the sentencing judge that, pursuant to Iowa Code section 902.9(2), an habitual offender must be sentenced to an indeterminate fifteen-year term of confinement, rather than the five-year term. The court entered an order amending the sentence to comply with section 902.9(2). Allen appeals. **OPINION HOLDS:** We reject Allen's contention that, because he had begun serving his sentence, the resentencing violates the prohibition against double jeopardy under the Federal Constitution. A sentence not authorized by statute is void and an illegal sentence is subject to correction at any time. The Double Jeopardy Clause does not require that a sentence be given the degree of finality Allen suggests. A plea of former jeopardy cannot be based on a void sentence, even if part of the illegal sentence has already been served.

No. 97-1780. BUILDERS KITCHEN & SUPPLY CO. v. PAUTVEIN.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge. **AFFIRMED.** Considered by Carter, P.J., and Lavorato, Snell, and Cady, JJ., and Schultz, S.J. Opinion by Lavorato, J. (8 pages $3.20)

Carwil, Inc. built town homes and used Builders Kitchen & Supply Co. as its kitchen subcontractor. Carwil's sole shareholders are James Carlson and Sidney Wilson. Builders required Carlson and Wilson to personally guarantee payment should Carwil default on its payments to Builders. Richard and Janice Pautvein contracted with Carwil to build their town home. The Pautveins made progress payments without obtaining mechanic's lien waivers. Carwil subsequently went out of business. Builders then filed a mechanic's lien against the Pautveins' town home in the amount of $38,660.04. Later, Builders sued to foreclose the mechanic's lien. The district court found Builders had accepted collateral security within the meaning of Iowa Code section 572.3 in the form of personal guarantees from Carlson and Wilson, and therefore, its mechanic's lien was defeated. Builders appealed, and the Pautveins cross-appealed. **OPINION HOLDS:** Section 527.3 (1997) denies a mechanic's lien to anyone "who, at the time of making a contract for furnishing material or performing labor, or during the progress of the work, take[s] any collateral security on such contract." There is no collateral security within the meaning of section 572.3 if the only security given is the additional promise to pay from the party already obligated to pay for the materials. The rule is otherwise if such party furnishes security *in addition* to the party's promise to pay. In the present case, Carwil is a corporation and therefore an entity separate from its owners, Carlson and Wilson. We conclude their personal guarantees were collateral security within the meaning of section 572.3. Therefore, we hold that Builders had no lien to enforce. We affirm.

No. 98-454. WEST SIDE TRANSPORT v. CORDELL.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge. **AFFIRMED.** Considered by Carter, P.J., and Lavorato, Snell, and Cady, JJ., and Schultz, S.J. Opinion by Lavorato, J. (6 pages $2.40)

Phillip Cordell, a North Carolina resident and over-the-road trucker, was injured in a work-related accident in Iowa. He initially received medical treatment in Iowa through his employer, West Side Transport, but eventually chose to obtain treatment from an orthopedic specialist in North Carolina. Cordell filed a petition for alternate care with the Iowa Industrial Commissioner, asking for authorization to obtain medical treatment near his home. In a final agency decision, the deputy commissioner determined that West Side had failed to designate a physician within a reasonable distance of Cordell's residence, and it lost the right to choose his care. The deputy ordered West Side to provide immediate care at its expense by the doctor in North Carolina. West Side sought judicial review and the district court affirmed. West Side appeals. **OPINION HOLDS:** I. If the treatment the employer offers fails to meet any one of the qualifications of Iowa Code section 85.27 (1997), including that it be (1) prompt, (2) reasonably suited to treat the injury, and (3) without undue inconvenience to the claimant, then the commissioner has the authority to order alternate care, including care from a doctor chosen by the claimant. The deputy correctly concluded West Side had "lost the right to choose the care."

No. 98-119. FISHER v. DAVIS.

Appeal from the Iowa District Court for Black Hawk County, Leonard D. Lybbert, Judge. **REVERSED AND REMANDED WITH DIRECTIONS.** Considered by Carter, P.J., and Lavorato, Snell, and Cady, JJ., and Schultz, S.J. Opinion by Lavorato, J. (12 pages $4.80)

Fisher sued Davis to recover damages for neck, elbow, and shoulder injuries she allegedly sustained from an automobile collision. The jury awarded Fisher only $534.14 for past medical expenses, all attributable to the neck injury. Fisher moved for a new trial on all the issues. The district court concluded the jury's failure to award some damages for past pain and suffering was inconsistent with its finding that Fisher had sustained an injury. The court ordered a new trial as to damages only unless *both* parties accepted an additur of $1000. Davis appeals. **OPINION HOLDS:** I. Because the verdict was inadequate, not supported by sufficient evidence, and was contrary to law, the district court did not abuse its discretion when it granted Fisher a new trial. II. The court erred in conditioning the new trial on both parties' consent to the additur. On remand, if the court again grants a new trial on condition of additur, the court shall require only Davis' consent. If either party is dissatisfied with the additur, that party may appeal. III. In the event of a retrial, the issues shall be limited to the damages relating to Fisher's neck injury.

No. 98-70. GROSS v. OMAHA TRIBE.

Appeal from the Iowa District Court for Monona County, Gary E. Wenell, Judge. **AFFIRMED.** Considered by Carter, P.J., and Lavorato, Snell, and Cady, JJ., and Schultz, S.J. Opinion by Carter, J. (4 pages $1.60)

Anneliese Gross suffered a personal injury at a casino located on the lands of the Omaha Tribe of Nebraska. Gross commenced this action against the tribe for the injury. The tribe operates its casino under an agreement between itself and the State of Iowa. Gross relied upon this compact and a federal statute, codified as 25 U.S.C. § 1322, to negate any defense of sovereign immunity or lack of subject matter jurisdiction. The district court granted the tribe summary judgment based on the tribe's sovereign immunity claim. Gross appeals. **OPINION HOLDS:** The subject matter of 25 U.S.C. § 1322 and the gaming compact involves a method of rendering the laws of the State of Iowa applicable to activities taking place on Indian lands and to confer subject matter jurisdiction with respect to the execution of such laws on the courts of this state. As the district court correctly concluded, neither the statute nor the treaty attempt to abrogate the tribe's sovereign immunity.

No. 98-197. HARLAN SPRAGUE DAWLEY, INC. v. IOWA STATE BD. OF TAX REVIEW.

Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Neuman, Snell, and Ternus, JJ. Opinion by Larson, J. (9 pages $3.60)

Harlan Sprague Dawley, Inc. (HSD) purchases raw feed ingredients and additives and makes them into a specialized animal feed in its feed mill. HSD sells approximately forty percent of this feed to third parties. The balance, sixty percent, is fed to HSD's own laboratory animals, which it raises for sale. The Iowa State Board of Tax Review assessed sales tax for the period of July 1, 1987,

No. 98-197. HARLAN SPRAGUE DAWLEY, INC. v. IOWA STATE BD. OF TAX REVIEW (continued).

to June 30, 1991, on HSD's purchases of raw feed ingredients for the feed consumed by its own animals. HSD filed a protest. In a contested case hearing, an administrative law judge concluded HSD's raising of laboratory animals was not "processing" within the meaning of Iowa Code section 422.42(3) (1991), and the feed ingredients were not exempt from sales tax. The board and the district court, on judicial review, affirmed. HSD appeals. **OPINION HOLDS:** We agree with the board of review and the district court that raw food ingredients pelletized and fed by HSD to its laboratory animals do not qualify under the "processing" exemption from the sales tax under section 422.42(3).

No. 98-390. SCHMIDT v. BLACKHAWK FLEET, INC.

Appeal from the Iowa District Court for Scott County, Bobbi M. Alpers, Judge. **AFFIRMED.** Considered by Carter, P.J., and Lavorato, Snell, and Cady, JJ., and Schultz, S.J. Opinion by Carter, J. (4 pages $1.60)

Schmidt was employed by Blackhawk Fleet, Inc. to clean barges on the Mississippi River. He was transported to the barges by a cleaning barge, which was not self-propelled. The cleaning barge carried a crane, which he at times fueled but never operated. He occasionally loaded, tied, and untied the cleaning barge and attached temporary navigation lights thereto. While Schmidt was cleaning the cleaning barge moored to the shore, a crane operator on an adjacent barge dropped a heavy barge cover on Schmidt's hand. Schmidt sought to recover damages under the Jones Act, 46 U.S.C. § 688. The district court granted Blackhawk's motion for summary judgment. Schmidt appeals. **OPINION HOLDS:** We are convinced Schmidt's status is not that of a seaman, and therefore, he is unable to claim under the Jones Act. We agree with the district court that his activities of placement and removal of temporary navigation lights on the cleaning barge and operation of the ropes and lights so as to guide the cleaning barge from one barge to another were entirely transitory and do not constitute the work of a seaman assigned to a vessel on navigable waters. We conclude that the judgment of the district court should be affirmed.

No. 98-879. STATE v. REITER.

Appeal from the Iowa District Court for Osceola County, Frank B. Nelson and Patrick M. Carr, Judges. **REVERSED.** Considered by Carter, P.J., and Lavorato, Snell, and Cady, JJ., and Schultz, S.J. Per curiam. (3 pages $1.20)

Defendant, a sex offender, was required to and did register with the sheriff of Osceola County. Shortly thereafter, he changed residence to the state of Arkansas without notifying the sheriff, as required by Iowa Code section 692A.3 (Supp. 1995). When he later returned to Osceola County, he was arrested and eventually convicted of failure to comply with the sex-offender registry. Defendant appeals. **OPINION HOLDS:** We agree with the defendant that the district court erred in interpreting the penalty clause for "willful failure to register" under Iowa Code section 692A.7(1). We hold section 692A.7 does not prescribe a penalty for a failure to notify the sheriff of a "change of residence." We reverse the district court judgment and sentence.

No. 97-1514. RONNFELDT v. IOWA DIST. CT.

Certiorari to the Iowa District Court for Jones County, Larry J. Conmey, Judge. **WRIT ANNULLED.** Considered by McGiverin, C.J., and Larson, Neuman, Snell, and Ternus, JJ. Opinion by Larson, J. (5 pages $2.00)

Ronnfeldt was an inmate at the Iowa State Penitentiary at Fort Madison when he became qualified for work release. He signed a work release agreement under which he would leave the penitentiary at 8:15 a.m. on October 6, 1995, on a bus, and travel to Waterloo where his sister would pick him up and drive him to his work release assignment at West Union by 5:30 p.m. Ronnfeldt, however, got off the bus in Burlington, not Waterloo, where he was picked up by a female friend, not his sister. Although his friend delivered him to West Union by the 5:30 p.m. deadline, the prison was notified that he had left the bus and he was immediately placed on escape status. A prison disciplinary committee found Ronnfeldt violated a department of corrections' rule on escape from a facility. **OPINION HOLDS:** I. The department's rule on escape does not expressly require intent to escape, nor is an intent requirement even implied under the rule. II. We find Ronnfeldt's conduct fits within the rule's coverage. Although Ronnfeldt had authority to leave Fort Madison, he violated conditions placed on that permission. Furthermore, it is reasonable to include a bus within the term "facility" under the rule. Moreover, an additional basis for finding escape under the rule is an inmate's actions creating a reasonable belief that the inmate has taken flight. A reasonable reading of the disciplinary committee's ruling leads to the conclusion that Ronnfeldt was found guilty on both bases. III. Contrary to Ronnfeldt's claim, he was reasonably notified of the consequences of his actions by the work-release agreement that he signed.

No. 97-1178. BEYER v. TODD.

Appeal from the Iowa District Court for Polk County, James W. Brown, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Neuman, Snell and Ternus, JJ. Opinion by McGiverin, C.J. (11 pages $4.40)

Wendy Beyer was injured in a multi-vehicle accident when a vehicle driven by Christopher Gardner stalled at an intersection stoplight in a left-hand lane of a four-lane divided highway. Another motorist, Lucy Comer, was able to stop before hitting Gardner's vehicle. Beyer, who was traveling behind Comer, was also able to stop. Beyer's vehicle was then struck from behind by Gregory Todd's vehicle. The force of the impact pushed Beyer's vehicle into Comer's vehicle. The road surface was flat and visibility was not an issue. Beyer filed suit against Todd, Comer and Gardner. Todd counterclaimed against Beyer and cross-claimed against Comer and Gardner. Prior to trial, Beyer settled with Comer and Gardner. During trial, Todd made an offer of proof to admit Beyer's petition which alleged negligence by Comer, Gardner and Todd. The petition was not admitted into evidence. Todd also requested a sudden emergency instruction and an instruction that Beyer had the burden of proving fault of the released parties. The district court refused the instruction requests. The jury found in favor of Beyer and Todd appealed. **OPINION HOLDS:** I. A sudden stop in traffic on a divided, four-lane highway, during a busy time of day, is not an uncommon or unforeseen event on the traveled roadways and therefore a sudden emergency instruction was not warranted. II. The burden of proof on an issue is upon the party who would suffer loss if the issue were not established. Todd, as the only remaining defendant had the most to lose, therefore, he had the burden of

No. 97-1178. BEYER v. TODD. (continued)

proving fault of the released parties. III. The trial court did not abuse its discretion in refusing to allow Todd to introduce Beyer's petition as a factual admission by Beyer that Gardner and Comer were negligent. The petition contained mere allegations of negligence, or legal theories of negligence, not an admission by Beyer of a factual matter concerning those persons. We affirm.

No. 98-10. IN RE MARRIAGE OF KNICKERBOCKER.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Fayette County, James L. Beeghly, Judge. **DECISION OF COURT OF APPEALS AFFIRMED; DISTRICT COURT JUDGMENT AFFIRMED AS MODIFIED.** Considered by McGiverin, C.J., and Larson, Neuman, Snell, and Ternus, JJ. Opinion by McGiverin, C.J. (9 pages $3.60)

Respondent Verna Lee Knickerbocker seeks further review of a decision of the court of appeals which reduced Randy Knickerbocker's child support obligation from $521 per month to $201 per month. Verna contends the court of appeals erred in calculating Randy's income. **OPINION HOLDS:** I. It was proper for the court of appeals to recalculate depreciation of Randy's farm assets under a straight line method of depreciation. Reasonable depreciation on farm machinery and other assets related to the farm business is an expense reasonably necessary to maintain the business, and such expenses should be considered in calculating Randy's income. II. The court of appeals properly calculated Randy's net annual income by averaging his income over a four-year period. III. We find no evidence justifying an upward departure from the child support guidelines. Verna has not overcome the presumption that application of the child support guidelines figure would be unjust. We conclude the court of appeals properly determined Randy's child support obligation.

No. 98-389. COMES v. CITY OF ATLANTIC.

Appeal from the Iowa District Court for Cass County, J.C. Irvin, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Neuman, Snell, and Ternus, JJ. Opinion by Ternus, J. (9 pages $3.60)

Plaintiff, James Comes, owns property that adjoins the City of Atlantic's airport. Comes instituted this action seeking an injunction against the City's condemnation of his property until the City had obtained all the approvals, permits, and funding required for a proposed expansion of the airport. The district court entered a permanent injunction against the City that could be dissolved only upon proof that the necessary funding had been approved by the Federal Aviation Administration. The City appeals. **OPINION HOLDS:** This case poses the City's ability to invoke its powers of eminent domain against a landowner's right to obtain injunctive relief. We focus on whether Comes has proved that the City "cannot reasonably expect" to use his property for an airport expansion which depends on whether the City can reasonably expect to complete the airport expansion project. We find that there is no likely obstacle to the City's completion of the contemplated airport expansion. Although contingencies and uncertainties admittedly exist, they do not rise to a level that the City cannot reasonably expect ultimately to be successful. Therefore, the trial court erred in granting injunctive relief. We reverse the order and remand for an order dismissing the plaintiff's petition.

No. 97-1769. SANFORD v. MANTERNACH.

Appeal from the Iowa District Court for Jones County, David Remley, Judge. AFFIRMED IN PART, REVERSED IN PART, AND REMANDED. Considered by McGiverin, C.J., and Larson, Neuman, Snell, and Ternus, JJ. Opinion by Ternus, J. (22 pages $8.80)

In 1994, Patrick Sanford, a minimum security inmate, received disciplinary sanctions including a loss of 1000 days of good-conduct time on two theft convictions. On postconviction relief, the district court upheld Sanford's convictions, but ruled that the loss of 1000 days of good-conduct time was excessive. Upon its remand review, the Iowa Department of Corrections (IDOC) reduced Sanford's loss of good-conduct time to 465 days. Sanford filed this action to recover damages for the time he spent in prison between the date he claims he should have been discharged, and the date of his actual discharge. He has sued the prison officials who imposed and upheld his disciplinary sanctions alleging they deprived him of a constitutionally protected liberty interest by imposing excessive sanctions. Sanford has also sued the State, claiming the State breached a duty under Iowa Code section 903A.3(1) (1993) to have internal guidelines established for determining the loss of good-time credits. Concluding that Sanford's disciplinary convictions and sanctions had not been reversed or invalidated, but merely remanded for reconsideration, the district court held that Sanford was precluded from bringing a claim pursuant to 42 U.S.C. § 1983, and granted the individual defendants' motion for summary judgment. The court granted the State's motion to dismiss because of the failure to state a claim. Sanford appeals. **OPINION HOLDS:** I. Although the defendants state that Sanford's claim for the wrongful loss of good-conduct time is moot, their claim is directed to the mootness of Sanford's original postconviction relief actions and amounts to a prohibited collateral attack on the district court ruling in those actions. Accordingly, the defendants' mootness argument is without merit. II. Sanford has a liberty interest in his good-conduct time that is protected by the Due Process Clause of the Fourteenth Amendment. III. The injury alleged by Sanford was not remedied in the postconviction relief actions by the technical restoration of forfeited good-conduct time because he had already served his elongated sentence when the correction was made. IV. Sanford satisfied the prerequisite that his underlying sanctions, which form the basis of his § 1983 suit, have been invalidated. V. Even if Sanford is correct that Iowa Code chapter 903A creates a duty, an issue we do not decide, there is no cause of action for violation of that duty because of the lack of any indication that the legislature intended to create such an action. The trial court correctly granted the State's motion to dismiss. VI. We affirm the district court's dismissal of Sanford's claim against the State. We reverse the district court's summary judgment ruling dismissing the § 1983 claim against the individual defendants, and remand the case for further proceedings on that claim.

No. 97-1705. CLYMER v. CITY OF CEDAR RAPIDS.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge. AFFIRMED IN PART, REVERSED IN PART, AND REMANDED. Considered by McGiverin, C.J., and Larson, Neuman, Snell, and Ternus, JJ. Opinion by Neuman, J. (12 pages $4.80)

The Gazette Company, a newspaper publisher, sought records from the City of Cedar Rapids concerning the use and compensation of city employees'

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sick leave. An employee union resisted the request claiming much of the information sought was confidential and exempt from disclosure under Iowa Code section 22.7(11) (1997). The district court determined the Gazette was not entitled to individualized sick leave records but could demand access to aggregate data not attributable to any individual employee. The Gazette appeals. **OPINION HOLDS:** I. We reject the Gazette's blanket assertion that the information it seeks implicates no privacy rights and therefore cannot command the protection of section 22.7(11). II. Given the ambiguity of the statutory exemption, we believe the district court properly engaged in a balancing test of the competing interests. III. The compensation allocated to—and used by—individual public employees, whether for salary, sick leave or vacation, is a matter of legitimate concern to the public. So long as the information disclosed does not reveal personal medical conditions or professional evaluations, the public has the right to examine it. IV. It is conceivably impractical for the public to decipher from an aggregate pool of sick leave and other leave information whether an individual is misusing or abusing benefits. The court's decision to release only aggregate leave information contravenes Iowa Code chapter 22 and must be reversed. We remand for an amended order permitting the Gazette access to individualized payroll information concerning sick leave pay and other benefits, including dates taken and hours accrued. V. The disclosure of addresses, gender or birth dates does not advance the general purpose of the open records law and the district court's decision to enjoin the city from releasing this information must be affirmed.

No. 98-180. KENNEDY v. ZIMMERMANN.

Appeal from the Iowa District Court for Johnson County, William L. Thomas, Judge. **REVERSED AND REMANDED.** Considered by Carter, P.J., and Lavorato, Snell, and Cady, JJ., and Schultz, S.J. Opinion by Cady, J. (8 pages $3.20)

Attorney Mary Kennedy represented Thomas Richmond, a prison inmate, in a child custody action. Richmond sued Kennedy alleging she violated her ethical obligations to him by communicating matters within the attorney-client privilege to a third party. Richard Zimmermann, who represented Richmond in the lawsuit, was interviewed by a Waterloo newspaper. He was quoted as saying Kennedy's alleged actions were a "breach of her ethical duties and negligent." Kennedy subsequently sued Zimmermann for defamation based on those statements. Zimmermann moved for summary judgment, claiming he was insulated from liability based upon the absolute privilege granted to an attorney for statements in the course of a judicial proceeding. The district court granted Zimmermann's motion, and Kennedy appealed. **OPINION HOLDS:** We hold that comments to a newspaper reporter following the filing of a lawsuit are not part of the judicial proceeding protected by the absolute privilege, even if those comments merely restate allegations from the petition. To fall within the privilege, not only must the content of the communication relate to a judicial proceeding, but the occasion must also be protected. We therefore reverse the district court order granting summary judgment and remand the case for further proceedings.

No. 98-1793. IN RE H.G.

Appeal from the Iowa District Court for Tama County, Michael J. Newmeister, District Associate Judge. **AFFIRMED AND REMANDED FOR FURTHER PROCEEDINGS.** Considered by Carter, P.J., and Lavorato, Snell, and Cady, JJ., and Schultz, S.J. Opinion by Cady, J. (8 pages $3.20)

H.G. was adjudicated to be a child in need of assistance (CINA) at the age of fourteen. She initially remained in the custody of her mother, but the Department of Human Services eventually recommended placing H.G. at a residential facility. Prior to her placement, H.G. married a twenty-three-year-old man. She then filed an application with the juvenile court for discharge and release based upon her marriage and emancipation. The juvenile court denied the application without a hearing, finding it retained jurisdiction over the case because H.G. had met the definition of a CINA at the time the proceeding was commenced. H.G. appeals. **OPINION HOLDS:** We conclude marriage by a child during the pendency of a CINA proceeding does not divest the juvenile court of its jurisdiction. Nevertheless, marriage may be a factor which could support a finding by the juvenile court that "the purposes of the order have been accomplished and the child is no longer in need of supervision, care, or treatment." Therefore, we remand the case to the juvenile court for a hearing on the application for discharge.

No. 98-849. VIVIAN v. MADISON.

Certified question of law from the United States District Court for the Southern District of Iowa, Ronald E. Longstaff, Judge. **CERTIFIED QUESTION ANSWERED.** Considered by McGiverin, C.J., and Larson, Lavorato, Neuman, and Snell, JJ. Opinion by Snell, J. (12 pages $4.80)

Plaintiff filed a multi-count complaint in federal district court against her employer, United Parcel Service, and her supervisor, Gerry Madison. Vivian alleged she was subjected to repeated acts of racial and sexual discrimination in employment in violation of Title VII, 42 U.S.C. § 2000e, *et seq.*, and Iowa Code section 216 (1995). Madison filed a motion to dismiss on the ground that the Iowa Civil Rights Act does not impose individual liability on supervisory employees. The federal district court certified this question of law to the supreme court. **OPINION HOLDS:** We find that a supervisory employee is subject to individual liability for unfair employment practices under Iowa Code section 216.6(1) of the Iowa Civil Rights Act.

No. 97-2191. LEONARD v. BEHRENS.

Appeal from the Iowa District Court for Clinton County, James E. Kelley, Judge. **AFFIRMED.** Considered by Larson, P.J., and Carter, Ternus, and Cady, JJ., and Harris, S.J. Per curiam. (9 pages $3.60)

Eric Leonard and Chad Behrens, both fifteen years old, participated in a game of "paintball." Eric had never played before but Chad regularly participated. The purpose of the game was to strike players on the opposing side with gelatin capsules filled with colored vegetable oil which are intended to break on contact. The participants were instructed to wear goggles during the game to protect their eyes. Chad provided Eric with goggles even though he knew they

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had a tendency to fog over. Eric's goggles did, in fact, fog over, and he removed them. While the goggles were up, Eric was shot in the eye with a paint ball apparently fired by Chad. Eric and his mother brought an action against Chad seeking compensation for Eric's injures. At trial, Chad was granted a directed verdict. Eric and his mother appeal. **OPINION HOLDS:** Paintball is a contact sport for which a participant's liability is determined under a recklessness standard. substantial evidence of recklessness did not exist to warrant submission of the issues to the jury. We affirm the district court judgment.

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