IOWA ADMINISTRATIVE BULLETIN

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December 1, 1999 Pages 837 to 944

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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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Iowa Administrative Bulletin

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Iowa Administrative Code

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

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

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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).

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

Schedule for Rule Making
1999

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

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
13	**Friday, December 10, 1999**	**December 29, 1999**
14	**Friday, December 24, 1999**	**January 12, 2000**
15	**Friday, January 7, 2000**	**January 26, 2000**

PLEASE NOTE:

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

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

PUBLICATION PROCEDURES

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

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

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

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

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

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, December 14, 1999, at 9:00 a.m. in House Committee Room 1, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Agenda published in the November 17, 1999, Iowa Administrative Bulletin.

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Inmate telephone commissions, 20.20, Notice **ARC 9525A** 12/1/99

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Statewide average charges for nursing facility care and psychiatric medical institution for children care, 75.24(3)"b"(1) and (6), Filed Emergency After Notice **ARC 9494A** 12/1/99
Home- and community-based services waiver program, 77.41(3), 83.102(1)"h," 83.102(2)"b," 83.102(3) to 83.102(7), 83.107(3)"f," 83.110, Filed **ARC 9495A** 12/1/99
Skilled nursing facility rates, 79.1(2), 79.1(9)"a" and "d," 81.10(1), Filed **ARC 9496A** 12/1/99
Family and group day care homes, 110.2(1), 110.2(2), 110.5(11), 110.5(13)"b," "e," and "f," 110.7(3), 110.9(3)"c," ch 110 division II preamble, 110.25(8)"b," 110.25(9)"b"(1)"2" and "3," 110.25(9)"b"(3) and (4), 110.26"3," 110.27(1)"a"(3), 110.27(2)"a"(3), 110.27(2)"c"(3)"2" and "3," 110.27(2)"d," 110.27(3)"c"(2)"1" to "3," 110.27(3)"d," 110.27(4)"c"(2)"1" to "3," 110.27(4)"d," 110.31, 110.35, Filed **ARC 9497A** 12/1/99
Rehabilitative treatment services—determination of rates, 185.112, 185.112(1)"a," 185.112(6)"d" and "e," 185.112(10), Filed **ARC 9498A** 12/1/99

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Mortgage release certificate, 9.20, Filed Emergency After Notice **ARC 9508A** 12/1/99

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Iowa regional library system, ch 8, Filed **ARC 9501A** 12/1/99

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Emergency medical services provider education/training/certification; EMS service program authorization, ch 131, ch 132 title, 132.1, 132.2(4), 132.3 to 132.6, 132.7(6), 132.8(1), 132.10(16), 132.11 to 132.13, Notice **ARC 9522A** 12/1/99

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REVENUE AND FINANCE DEPARTMENT[701]

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Local option sales and service tax; local option school infrastructure sales and service tax, 107.2, 107.8 to 107.10, 107.14, 108.2(3), 108.2(5), 108.2(6), 108.5, 108.7 to 108.9, Notice **ARC 9499A** 12/1/99

TURKEY MARKETING COUNCIL[787]

Refunds, ch 1, Filed **ARC 9507A** 12/1/99

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
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Self-employment loan program, 51.3 IAB 11/17/99 **ARC 9474A** (See also **ARC 9475A**)	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	December 7, 1999 1 p.m.
EDUCATION DEPARTMENT[281]		
Educational programs and services for pupils in juvenile homes, 63.1 to 63.21 IAB 11/17/99 **ARC 9465A**	ICN Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	December 7, 1999 1 p.m.
	All AEAs in the state of Iowa (ICN Network)	December 7, 1999 1 p.m.
	State Board Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	December 8, 1999 11:45 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Water quality, 61.2(2)"h" IAB 11/17/99 **ARC 9478A**	Conference Room—5th Floor Wallace State Office Bldg. Des Moines, Iowa	December 10, 1999 1 p.m.
IOWA FINANCE AUTHORITY[265]		
Waivers or variances from rules, 1.11 IAB 12/1/99 **ARC 9509A**	Suite 250 100 E. Grand Des Moines, Iowa	December 22, 1999 9 a.m.
NATURAL RESOURCE COMMISSION[571]		
Horsepower limit on Lake Icaria, 40.20 IAB 12/1/99 **ARC 9514A**	West Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	December 22, 1999 9 a.m.
PROFESSIONAL LICENSURE DIVISION[645]		
Waivers or variances from administrative rules, ch 18 IAB 12/1/99 **ARC 9502A**	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	December 22, 1999 10 to 11 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Emergency medical services, ch 131; 132.1, 132.2(4), 132.3 to 132.6, 132.7(6), 132.8(1), 132.10(16), 132.11 to 132.13 IAB 12/1/99 **ARC 9522A** **(ICN Network)**	ICN Room—6th Floor Lucas State Office Bldg. Des Moines, Iowa	December 21, 1999 1 to 2 p.m.
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 21, 1999 1 to 2 p.m.
	National Guard Armory 1712 LaClark Rd. Carroll, Iowa	December 21, 1999 1 to 2 p.m.
	National Guard Armory 1160 10th St. SW Mason City, Iowa	December 21, 1999 1 to 2 p.m.
	National Guard Armory 195 Radford Rd. Dubuque, Iowa	December 21, 1999 1 to 2 p.m.
	National Guard Armory 501 Hwy. 1 South Washington, Iowa	December 21, 1999 1 to 2 p.m.

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General, 5.15(9), 7.9, 7.13(7), 9.2(1), 10.1, 10.2, 10.4(2), 10.5, 13.2(5), 13.19(5), 24.29(11), 25.11(2), 25.14(3) IAB 11/17/99 **ARC 9488A**	Suite B 717 E. Court Ave. Des Moines, Iowa	December 7, 1999 9 a.m.

UTILITIES DIVISION[199]

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.

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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CORRECTIONS DEPARTMENT[201]

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 904.207, the Department of Corrections gives Notice of Intended Action to amend Chapter 20, "Institutions Administration," Iowa Administrative Code.

These amendments are intended to make several technical corrections as well as two significant changes, which include reducing the capacity level at the Mitchellville program from 60 to 30 and the Newton program from 100 to 80 and extending the length of legal commitment from 60 days up to six months.

This program provides intensive and highly structured treatment designed to divert offenders that have violated the terms and conditions of correctional supervision to prevent long-term incarceration or return to incarceration.

It has been determined by the Department and the Department of Correctional Services and validated by national research that the current maximum length of 60 days is insufficient time to provide the necessary treatment for return to the community. The short-term treatment creates concerns for the risk and threat to public safety.

Any interested person may submit written comments on or before December 21, 1999. Comments can be submitted to the Director, Department of Corrections, 420 Keo Way, Des Moines, Iowa 50309.

These amendments were approved by the Department of Corrections on November 2, 1999.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9490A**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 904.207.

ARC 9525A

CORRECTIONS DEPARTMENT[201]

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 904.508A, the Department of Corrections gives Notice of Intended Action to amend Chapter 20, "Institutions Administration," Iowa Administrative Code.

Rule 20.20(904) authorizes accounts and establishes standards for the expenditure of revenues received from the Department's inmate telephone system. These amendments modify the expenditure process and create an approval process of institutional expenditures by the appropriate Regional Deputy Director, with periodic oversight by the Corrections Board.

Written comments may be submitted to the Director on or before December 21, 1999, at 420 Keo Way, Des Moines, Iowa 50309.

These amendments were approved by the Department of Corrections on November 8, 1999.

These amendments are intended to implement Iowa Code section 904.508A.

The following amendments are proposed.

Amend rule 201—20.20(904) as follows:

201—20.20(904) Inmate telephone commissions.

20.20(1) All commissions received from the vendor will be deposited in a special account established ~~by the~~ *at each* institution.

20.20(2) All expenditures from this account will be used for the benefit of inmates. Expenditures shall include the enhancement of existing educational, vocational, recreational, work or treatment programs, services or projects, or to initiate new programs, services, or projects. Institutions are encouraged to give spending priority to programs, services, and projects that promote the health and welfare of inmates.

20.20(3) Each institution is authorized to expend or encumber ~~up to 75 percent of available~~ *telephone* commission funds *only for recurring and nonrecurring projects of direct benefit to offenders and approved by the regional deputy director.* ~~No institution~~ *Institutions* will *not* be allowed to ~~overspend its account or borrow from the account~~ *spend or encumber funds not currently in the account. All expenditures must be reviewed and approved by the respective regional deputy director.*

20.20(4) ~~Twenty-five (25) percent of each commission will be held in reserve~~ *The department of corrections will maintain a reserve of nonallocated* funds to assist other institutional programs, services, or projects.

20.20(5) Requests requiring expenditures or encumbrances from the ~~25 percent~~ *nonallocated* reserve will be reviewed by a committee comprised of the director, *a regional* deputy director of institutions, and a warden(s) to be selected by the *regional* deputy director of institutions. These requests will be reviewed at six-month intervals or upon special need as determined by the director.

a. These requests will be in writing to the *regional* deputy director of institutions and shall describe the product or service to be purchased, the expected benefit to inmates, and the ~~actual cost~~ *schedule of expenditures for the complete project.*

b. The committee will approve, deny, or modify the request in writing.

20.20(6) The director may expend and encumber a portion of ~~the 25 percent~~ *each institutional* reserve *of nonallocated* ~~fund~~ *funds* to support or subsidize a service or project at an institution not having sufficient funds to complete a project or service.

20.20(7) The corrections board will periodically review expenditure reports of these commissions.

This rule is intended to implement Iowa Code section 904.508A.

ARC 9489A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

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

These amendments implement a pilot workfare program for able-bodied adults without dependents (ABAWDs). ABAWDs are limited to receiving 3 months of food stamps in a 36-month period if they do not work or participate in a work program a minimum of 20 hours per week. This pilot program will provide job slots in public or private nonprofit organizations for ABAWDs who want to work in exchange for the value of food stamp coupons they receive.

The number of hours ABAWDs are required to work shall be the value of the workfare participant's food stamp allotment divided by the federal minimum wage. If the workfare participant is a member of a household of two or more members, the household's monthly food stamp benefit allotment shall be prorated among the household members and the workfare participant's pro-rata share of the household's allotment shall be divided by the federal minimum wage to determine the number of hours the individual must work.

New ABAWDs shall first be offered the opportunity to make a 30-day job search. Participants that complete the 30-day job search shall be offered a job slot in the pilot workfare program at the end of the 30 days. ABAWDs who choose to participate in workfare at any other time shall not be offered the opportunity to make a 30-day job search and shall be placed in a job slot.

Because of limited funding for the program, workfare shall be offered only in selected counties. Counties in which workfare is not offered are designated to be "exempt" counties and ABAWDs in those counties are exempt from the work requirements. States may exempt up to 15 percent of the state's ABAWD population from the work requirements.

Selection of counties to participate in the workfare program shall be based on the following criteria:

- The counties with the greatest ABAWD population.
- The availability of a service provider in the county.
- The total number of individual exemptions the state is allocated under federal law.
- The availability of federal funding.

The pilot workfare program shall be in effect until September 30, 2001, prior to which time it shall be evaluated for continuation.

The Department of Human Services received notice from the Food and Nutrition Service on September 3, 1999, of the opportunity to participate in an alternative to the reimbursement rate. Under this alternative, states would commit to offer a work opportunity to every ABAWD applicant or recipient (not waived or exempted) who has exhausted the time limit, and the state would then not be subject to the reimbursement rate.

The Department has been working with the Department of Workforce Development to implement this pilot program as quickly as possible.

These amendments do not provide for waiver in specified situations because federal food stamp law does not allow for any waivers.

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 December 22, 1999.

These amendments are intended to implement Iowa Code section 234.12.

The following amendments are proposed.

ITEM 1. Amend rule 441—65.27(234), catchwords and subrule 65.27(2), as follows:

441—65.27(234) Voluntary quit, *or* reduction in hours of ~~work, and failure to participate in workfare.~~

65.27(2) Participating individuals. Participating individuals are subject to the same disqualification periods as provided under subrule 65.28(12) when the participating individuals voluntarily quit employment without good cause~~,~~ *or* voluntarily reduce hours of work to less than 30 hours per week, ~~or fail to comply with a food stamp program workfare program,~~ beginning with the month following the adverse notice period.

ITEM 2. Amend rule 441—65.28(234) as follows:

Amend subrule **65.28(14)**, paragraph **"b,"** by rescinding and reserving subparagraph **(8)**.

Amend subrule 65.28(18), introductory paragraph, as follows:

65.28(18) Work requirement for able-bodied nonexempt adults without dependents. An individual is exempt from this requirement if the individual is under 18 or over 50 years of age; medically certified as physically or mentally unfit for employment; a parent or other member of a household with responsibility for a dependent child; pregnant; *living in a county that is designated exempt under subrule 65.28(19);* or otherwise exempt from work requirements under the Food Stamp Act.

Further amend subrule **65.28(18)**, paragraph **"a,"** subparagraph **(3)**, as follows:

(3) Participate in and comply with the requirements of a *the pilot* food stamp workfare program *as described under subrule 65.28(19)* ~~or a comparable program established by the state or political subdivision of the state~~, or

Further amend subrule **65.28(18)**, paragraph **"c,"** subparagraph **(3)**, as follows:

(3) Participated in ~~a food stamp~~ *the pilot* workfare program *as described under subrule 65.28(19)* ~~or a comparable program established by the state or political subdivision of the state~~.

Adopt the following **new** subrule 65.28(19) as follows:

65.28(19) Pilot workfare program for able-bodied adults without dependents (ABAWDs). The pilot workfare program is designed to allow ABAWDs who are required to work as an eligibility requirement for receipt of food stamp benefits by subrule 65.28(18) the opportunity to perform public service work in private or public nonprofit organizations in exchange for the value of their monthly food stamp benefits. The pilot workfare program is a component of the food stamp employment and training program set forth in subrule 65.28(7). Participation in the pilot workfare program is voluntary.

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. ABAWDs who participate in the pilot workfare program may meet the requirements of subrule 65.28(18) by working in a job slot for a required number of hours per month. The required number of hours of work shall be the value of the workfare participant's food stamp allotment divided by the federal minimum wage. If the workfare participant is a member of a household of two or more members, the household's monthly food stamp benefit allotment shall be prorated among the household members, and the workfare participant's pro-rata share of the household's allotment shall be divided by the federal minimum wage to determine the number of hours the individual must work.

b. New ABAWDs shall first be offered the opportunity to make a 30-day job search. Participants that complete the 30-day job search shall be offered a job slot in the pilot workfare program at the end of the 30 days. ABAWDs who choose to participate in workfare at any other time shall not be offered the opportunity to make a 30-day job search and shall be placed in a job slot.

c. Workfare job slots shall be located in private or public nonprofit organizations.

d. Workfare shall be offered in selected counties. Selection shall be based on prioritizing counties according to:

(1) The counties with the greatest ABAWD population.

(2) The availability of a service provider in the county.

(3) The total number of individual exemptions the state is allocated under federal law.

(4) The availability of federal funding.

e. Counties in which workfare is not offered are designated to be "exempt" counties.

f. This pilot shall be in effect until September 30, 2001.

ARC 9506A

INSURANCE DIVISION[191]

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 505.8 and 1999 Iowa Acts, chapter 143, section 7, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 10, "Licensing of Insurance Producers," Iowa Administrative Code.

The amendment proposes rules governing the qualifications and procedures for licensing of car rental companies and their counter employees that desire to sell insurance to car rental customers. The rules implement 1999 Iowa Acts, chapter 143, which imposed a license requirement on all car rental companies that wished to sell insurance to car rental customers. There are currently no rules in place to govern this process or give guidance to persons who wish to become licensed.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 21, 1999. Written comments should be submitted to Rosanne Mead, Assistant Commissioner, Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be transmitted by fax to (515)281-3059 or by E-mail to rosanne.mead@comm6.state.ia.us.

This amendment is intended to implement Iowa Code chapter 522A [1999 Iowa Acts, chapter 143].

Amend 191—Chapter 10 by adding a **new** Division I heading "Licensing of Insurance Producers" for rules **191—10.1(522)** to **191—10.50** and adopting the following **new** division:

DIVISION II

LICENSING OF CAR RENTAL COMPANIES AND EMPLOYEES

(Effective March 1, 2000)

191—10.51(522A) Purpose. The purpose of these rules is to govern the qualifications and procedures for the licensing of car rental companies and counter employees and to set out the requirements, procedures and fees relating to the qualification and licensure of car rental companies and counter employees.

191—10.52(522A) Definitions.

"Counter employee" means a person at least 18 years of age employed by a rental company that offers the products described in this chapter.

"Counter Employee Application" means the form used by an individual to apply for a counter employee license.

"Division" means the Iowa insurance division.

"Filed" means received at the Iowa insurance division.

"Limited Licensee Application" means the form used by a rental company to apply for a limited license.

"Rental company" means any person or entity in the business of primarily providing vehicles intended for the private transportation of passengers to the public under a rental agreement for a period not to exceed 90 days.

"Vehicle" means a motor vehicle under Iowa Code section 321.1 used for the private transportation of passengers, including passenger vans, minivans and sport utility vehicles or used for the transportation of cargo with a gross vehicle weight of less than 26,001 pounds and not requiring the operator to possess a commercial driver's license, including cargo vans, pickup trucks and trucks.

191—10.53(522A) Requirement to hold a license.

10.53(1) A rental company that desires to offer or sell insurance in connection with the rental of a vehicle must file an application with the division and receive a license as a limited licensee.

10.53(2) A counter employee who desires to offer or sell insurance products must file an application with the division and receive a license as a counter employee.

191—10.54(522A) Limited licensee application process.

10.54(1) To obtain a limited licensee license, a person or entity must file a complete limited licensee license application with the division and pay a fee of $50 for a three-year license.

10.54(2) If the application is approved, the division will issue a limited licensee license.

191—10.55(522A) Counter employee licenses.

10.55(1) A person may not obtain a counter employee license unless that person is employed by a limited licensee.

10.55(2) To obtain a counter employee license, a person must file with the division a completed counter employee license application.

10.55(3) All persons who desire to obtain a counter employee license must first successfully complete an examination.

INSURANCE DIVISION[191](cont'd)

10.55(4) Examinations shall be administered by the limited licensee that employs the counter employee.

10.55(5) If the application is approved, the division will issue a three-year counter employee license. Applications are deemed approved if not disapproved by the division within 30 days of receipt at the division.

10.55(6) The counter employee license will automatically terminate when the counter employee ceases employment with a limited licensee.

191—10.56(522A) Duties of limited licensees.

10.56(1) A limited licensee is responsible for the training, examination and payment of license fees for all persons who desire to obtain a counter employee license with the limited licensee.

10.56(2) A limited licensee must obtain and administer an examination for all counter employee candidates. The content of the examination and the manner of its administration must be approved by the division.

10.56(3) The limited licensee must develop a system for exam content security.

10.56(4) The limited licensee must administer the counter employee examination under controlled conditions, approved by the division, that ensure that each candidate completes the examination without outside assistance or interference.

10.56(5) The limited licensee must notify the division of the termination of employment of any of its licensed counter employees. The limited licensee must file reports of terminations semiannually on July 1 and on January 1.

191—10.57(522A) License renewal.

10.57(1) All limited licensee and counter employee licenses will be issued with an expiration date of December 31 and must be renewed triennially.

10.57(2) A single renewal form for use in renewing the limited licensee's license and the licenses of all of its counter employees will be mailed to the limited licensee at its last-known address as shown on division records.

10.57(3) The limited licensee must complete and return the renewal form to the division on or before December 31 of the renewal year or all licenses listed on the renewal form will expire.

10.57(4) The fee for renewal of a limited licensee license is $50 and the fee to renew each individual counter employee license is $50.

191—10.58(522A) Limitation on fees. A limited licensee will not be required to pay more than $1,000 in license or renewal fees in any one calendar year.

191—10.59(522A) Change in name or address.

10.59(1) Limited licensees must file written notification with the division of a change in name or address within 30 days of the change. This requirement applies to any change in any locations at which the limited licensee is doing business.

10.59(2) Limited licensees must file written notification with the division of a change in name or address of licensed counter employees. If the change of name is by a court order, a copy of the order must be included with the request. The limited licensee must file reports of name and address changes semiannually on July 1 and on January 1.

191—10.60(522A) Violations and penalties.

10.60(1) A rental company or licensed counter employee that sells insurance in violation of this chapter shall be deemed to be in violation of Iowa Code section 522A and subject to the penalties provided in Iowa Code section 522A.3.

10.60(2) A limited licensee or counter employee who commits an unfair or deceptive trade practice in violation of Iowa Code chapter 507B, or in violation of administrative rules adopted which implement that chapter, is subject to the penalties provided for in Iowa Code chapter 507B.

191—10.61(522A) Reporting of actions. A limited licensee shall report to the division any final criminal or administrative action taken against the limited licensee in another jurisdiction or taken by another Iowa governmental agency within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other similar legal document.

Rules 10.51(522A) to 10.61(522A) are intended to implement Iowa Code chapter 522A [1999 Iowa Acts, chapter 143].

ARC 9509A

IOWA FINANCE AUTHORITY[265]

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(1)"b" and 16.5(17) and Executive Order 11, the Iowa Finance Authority proposes to amend Chapter 1, "General," Iowa Administrative Code.

The purpose of the proposed rule is to satisfy the requirements of Executive Order 11 which requires state agencies to adopt a general waiver rule for rules promulgated by the agency, in this case the Iowa Finance Authority (Authority).

The Authority does not intend to waive the requirements of this rule in order to ensure fairness in the application of the waiver rule.

Consistent with Executive Order 9, the Authority has considered the regulatory principles identified in this order and finds that this rule will serve an important public need in making the rules of the Authority more flexible in application to specific circumstances. Additionally, the Authority finds that there are no other practical or reasonable methods to vary the terms of the rules used by the Authority except to provide for a general waiver rule.

Rule 1.11(ExecOrd11) will provide for the general requirements for requesting a waiver and describe the procedure the Authority will use to grant a waiver. The rule provides that the granting of a waiver will be in the sole discretion of the Authority's Board.

The Authority intends to adopt this rule Emergency After Notice because of the benefit it confers on the public and the immediate necessity of waiving a rule to allow housing assistance funds to be used in conjunction with the 1999 round of the low-income housing tax credit program.

The Authority will hold a public hearing to receive public comments on this rule on December 22, 1999, at the offices of the Authority, 100 East Grand, Suite 250, Des Moines, Iowa, at 9 a.m., Central time. The Authority will receive written comments on the proposed rule until the close of business on December 21, 1999. Comments may be ad-

IOWA FINANCE AUTHORITY[265](cont'd)

dressed to Loyd Ogle, Iowa Finance Authority, 100 East Grand, Suite 250, Des Moines, Iowa 50309. Comments may be faxed to Loyd Ogle at (515)242-4957. Comments may be E-mailed to Loyd Ogle at Loyd.Ogle@ifa.state.ia.us.

This rule is intended to implement Executive Order 11.

The following amendment is proposed.

Rescind rule 265—1.11(16) and adopt the following **new** rule in lieu thereof:

265—1.11(ExecOrd11) Waiver. This rule outlines a uniform process for the granting of waivers or variances from rules adopted by the authority.

1.11(1) Authority. A waiver or variance from rules adopted by the authority may be granted in accordance with this rule if (a) the authority has exclusive rule-making authority to promulgate the rule from which a waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (b) no statute or rule otherwise controls the granting of a waiver or variance from the rule from which waiver or variance is requested.

1.11(2) Interpretive rules. This uniform waiver and variance rule shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the authority does not possess delegated authority to bind the courts to any extent with its definition.

1.11(3) Compliance with statute. No waiver or variance shall be granted from a requirement that is imposed by statute. Any waiver or variance must be consistent with statute.

1.11(4) Criteria for waiver or variance. The authority may issue an order, in response to a completed petition or on its own motion, granting a waiver or variance from a rule adopted by the authority, in whole or in part, as applied to the circumstances of a specified person if the authority finds that:

a. Application of the rule to the person at issue would result in hardship or injustice to that person; and

b. A waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. A waiver or variance in the specific case would not prejudice the substantial legal rights of any person.

In determining whether a waiver or variance would be consistent with the public interest under paragraph "b," the authority shall consider whether, if the waiver or variance is granted, the public health and safety will be protected by other means that are substantially equivalent to full compliance with the rule.

1.11(5) Authority discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the sole discretion of the authority, upon consideration of all relevant factors.

1.11(6) Mandatory waivers or variances. In response to the timely filing of a completed petition requesting a waiver or variance, the authority shall grant a waiver or variance from a rule, in whole or in part, as applied to the particular circumstances of a specified person, if the authority finds that the application of all or a portion thereof to the circumstances of that specified person would not, to any extent, advance or serve any of the purposes of the rule.

1.11(7) Burden of persuasion. The petitioner shall assume the burden of persuasion when a petition is filed for a waiver or variance from an authority rule.

1.11(8) Special waiver or variance rules not precluded. This uniform waiver and variance rule shall not preclude the authority from granting waivers or variances in other contexts or on the basis of other standards if a statute or other authority rule authorizes the authority to do so and the authority deems it appropriate to do so.

1.11(9) Administrative deadlines. When the rule from which a waiver or variance is sought establishes administrative deadlines, deadlines in bidding documents, deadlines in applications or otherwise, the authority shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons participating in a particular program offered by or service sought or benefit conferred by the authority.

1.11(10) Filing of petition. A petition for a waiver or variance must be submitted in writing to the authority as follows:

a. Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding. The authority may elect not to rule on the waiver petition until the contested case has been resolved.

b. Other. If the petition does not relate to a pending contested case, the petition shall be submitted to the executive director of the authority.

1.11(11) Contents of petition. A petition for waiver or variance shall include the following information where applicable and known to the petitioner:

a. The name, address, and telephone number of the person or entity for whom a waiver or variance is being requested and the case number of any related contested case if pending or closed within the last two years.

b. A description and citation of the specific rule from which a waiver or variance is requested.

c. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.

d. The relevant facts that the petitioner believes would justify a waiver or variance. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver or variance.

e. A history of any prior contacts between the authority and the petitioner. The historical summary shall include a description of all of the following:

(1) A list of all of the programs, contracts, allocations, bond issues, loans, grants or other activities where the petitioner has participated or received a benefit and which are affected by the proposed waiver or variance.

(2) A description of each affected item where the petitioner has participated in or benefited from any of the authority's programs or contracts, including but not limited to allocations, bond issues, grants, or loans held by the petitioner, any notices of noncompliance, foreclosures, other administrative events, whether federal or state, contested case hearings, or investigative reports prepared or issued within the last five years from the date of the petition relating to the program, allocation, bond issue, or loan.

f. Any information known to the petitioner regarding the authority's treatment of similar cases.

g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.

h. The name, address and telephone number of any person or entity who would be adversely affected by the granting of a petition.

IOWA FINANCE AUTHORITY[265](cont'd)

i. The name, address and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver or variance.

1.11(12) Additional information. If the petition for waiver or variance is not filed in a contested case and prior to issuing an order granting or denying a waiver or variance, the authority may request additional information from the petitioner relative to the petition and circumstances relating to the request for waiver or variance. The request may be in the form of written questions or oral interview. The authority may interview or direct written questions to other persons in connection with the waiver or variance requested. If the petition was not filed in a contested case, the authority may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the authority's executive director, a committee of the authority's board, or a quorum of the authority's board to consider the petition for waiver or variance.

1.11(13) Notice. The authority shall acknowledge a petition upon receipt. The authority shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the authority may give notice to other persons. To accomplish this notice provision, the authority may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the authority attesting that notice has been provided.

1.11(14) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A as amended by 1998 Iowa Acts, chapter 1202, regarding contested case hearings shall apply to any petition for a waiver or variance of rule filed within a contested case and shall otherwise apply to authority proceedings for a waiver or variance only when the authority so provides by rule or order or is required by statute to do so.

1.11(15) Ruling. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver or variance if one is issued.

1.11(16) Conditions. The authority may condition the granting of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

1.11(17) Time for ruling. The authority shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the authority shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

1.11(18) When deemed denied. Failure of the authority to grant or deny a petition within the required time period shall be deemed a denial of that petition by the authority.

1.11(19) Service of order. Within seven days of its issuance, any order issued under this uniform rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

1.11(20) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)"d" as amended by 1998 Iowa Acts, chapter 1202, the authority shall maintain a record of all orders granting and denying waivers and variances under this uniform rule. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the authority's office.

1.11(21) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The authority may at any time cancel a waiver or variance upon appropriate notice and hearing if the authority finds that the facts as stated in the petition are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute or rule, or the petitioner has failed to comply with the conditions of the order.

1.11(22) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

1.11(23) Defense. After the authority issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked. The order shall only be effective to the person to whom it is issued. The order is not assignable, and it shall not inure to the benefit of the heirs or successors in interest of the person first obtaining the waiver.

1.11(24) Appeals. Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and the authority's rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

ARC 9514A

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 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

This amendment increases the current horsepower restriction on Lake Icaria in Adams County from 200 to 300 horsepower. The Adams County Conservation Board has petitioned the Department to increase the horsepower limit due to the newer manufactured boats with modern engines and higher horsepower ratings.

Any interested person may make written suggestions or comments on the proposed amendment on or before December 21, 1999. Such written materials should be directed to the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to con-

NATURAL RESOURCE COMMISSION[571](cont'd)

vey their views orally should contact the Law Enforcement Bureau at (515)281-4515 or at the Law Enforcement Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on December 22, 1999, at 9 a.m. in the Fourth Floor West 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 amendment.

This amendment is intended to implement Iowa Code section 462A.26.

The following amendment is proposed.

Amend rule 571—40.20(462A), introductory paragraph, as follows:

571—40.20(462A) Lake Icaria, Adams County—watercraft use. Motorboats of outboard or inboard-outdrive type with power not to exceed ~~200~~ *300* horsepower shall be permitted on Lake Icaria. The following rules shall govern vessel operation on Lake Icaria in Adams County.

ARC 9503A

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

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 455G.4(3)"a" and 455G.11(1)"c," the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to rescind Chapter 10, "Eligibility for Insurance," and adopt a new Chapter 10, "Restructure of Insurance Board and Transfer of Assets and Liabilities of Insurance Fund," and to amend Chapter 11, "Remedial or Insurance Claims," Iowa Administrative Code.

The proposed amendments are intended to implement a legislative change. 1998 Iowa Acts, chapter 1068, amended Iowa Code section 455G.11 to mandate the privatization of the underground storage tank insurance board and underground storage tank insurance fund.

Chapter 10 is rescinded and new Chapter 10 adopted which implements changes in Iowa Code section 455G.11 to comply with 1998 Iowa Acts, chapter 1068.

The title of Chapter 11 is amended to eliminate its reference to insurance claims. The reference to insurance claims is no longer pertinent due to the privatization of the underground storage tank insurance fund. Several subrules in Chapter 11 are rescinded because they are no longer pertinent due to the privatization of the underground storage tank insurance fund.

Public comments concerning the proposed amendments will be accepted until 4 p.m. on December 21, 1999. Interested persons may submit written or oral comments by contacting the Office of the Deputy Commissioner of Insurance, Division of Insurance, 330 Maple Street, Des Moines, Iowa 50319; telephone (515)281-5705.

These amendments do not mandate additional combined expenditures exceeding $100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services.

The business plan, articles of incorporation, and bylaws of Petroleum Marketers Mutual Insurance Company are available for inspection at the office of the Commissioner of Insurance during normal business hours.

These amendments are intended to implement Iowa Code section 455G.11.

The following amendments are proposed.

ITEM 1. Rescind 591—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10
RESTRUCTURING OF INSURANCE BOARD AND TRANSFER OF ASSETS AND LIABILITIES OF INSURANCE FUND

591—10.1(455G) Restructuring of insurance board. Effective March 1, 2000, the underground storage tank insurance board shall be restructured as Petroleum Marketers Mutual Insurance Company, a mutual insurance company, privately owned and operated by its insureds, organized to provide an allowable mechanism to demonstrate financial responsibility as required in 40 CFR, Parts 280 and 281.

591—10.2(455G) Transfer of insurance fund assets and liabilities. Effective March 1, 2000, the comprehensive petroleum underground storage tank fund board shall transfer all assets and liabilities of the underground storage tank insurance fund to Petroleum Marketers Mutual Insurance Company. The method of transfer shall be pursuant to a memorandum of understanding by and between the board and Petroleum Marketers Mutual Insurance Company. Said memorandum of understanding shall be prepared by and executed no later than January 31, 2000.

591—10.3(455G) Approval of new insurance fund. The action to be taken pursuant to this chapter is contingent upon Petroleum Marketers Mutual Insurance Company receiving certification from the commissioner of insurance.

ITEM 2. Amend **591—Chapter 11**, title, as follows:

CHAPTER 11
REMEDIAL ~~OR INSURANCE~~ CLAIMS

ITEM 3. Rescind and reserve subrules **11.1(2)** and **11.1(4)**.

ITEM 4. Amend rule 591—11.2(455G) as follows:

591—11.2(455G) Investigation of claims—remedial, *and* retroactive ~~and financial responsibility~~.

11.2(1) All remedial~~,~~ *and* retroactive ~~and financial responsibility~~ claims shall be investigated and overall fund liability estimated.

11.2(2) Costs which are not reasonable, necessary or eligible shall not be paid. The budget for the work shall be submitted prior to the initiation of the work for approval by the board or its designee. Failure to obtain prior approval shall invalidate the board's and the owner's or operator's obligations as provided for under Iowa Code section 455G.12A.

11.2(3) Owner or operator compliance with regulatory and program requirements shall be evaluated as part of the investigation. The failure to meet regulatory and program

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

standards shall not bar recovery hereunder. However, failure to meet regulatory and program requirements which exist at the time of payment may result in cost recovery claims as provided under Iowa Code section 455G.13.

11.2(4) Cause of loss and determination of responsible parties shall be ascertained as a part of the investigation process. Independent environmental consultants may be retained to assist in the determination of the cause of the release and for the application of coverage.

~~**11.2(5)** Other financial responsibility in effect at the time a claim is made shall be reviewed. If other coverage that covers environmental damage is in effect at the time a claim is made, the UST financial responsibility program under Iowa Code section 455G.11 shall be excess.~~

11.2(~~6~~) *(5)* Subrogation and cost recovery opportunities shall be pursued against any responsible party, as deemed appropriate by the board to do so.

~~**11.2(7)** The administrator may retain, subject to board bidding requirements, an outside groundwater professional to assist in the evaluation of any financial responsibility claim presented under Iowa Code section 455G.11, up to $3,000. Any expense in excess of that amount must be approved by the board at their next regularly scheduled meeting.~~

ITEM 5. Rescind and reserve rule **591—11.3(455G)**.

ARC 9502A

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 147.53, the Professional Licensure Division of the Public Health Department hereby gives Notice of Intended Action to adopt Chapter 18, "Waivers or Variances From Administrative Rules," Iowa Administrative Code.

This chapter is being adopted by the division to save duplication in each individual board's administrative rules.

These proposed rules implement Executive Order 11 executed and signed by the Governor on September 14, 1999. The Executive Order establishes rules for waivers or variances from administrative rules.

Any interested person may make written comments on the proposed rules not later than December 22, 1999, addressed to Rosalie Steele, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on December 22, 1999, from 10 to 11 a.m. in the Professional Licensure Conference Room, Lucas State Office Building, Fifth Floor, Des Moines, Iowa. Persons may present their views at the public hearing 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 proposed rules.

The division has determined that the rules will have favorable impact on small business within the meaning of Iowa Code section 17A.4A(2)"b."

The proposed amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 21, 22, 147, and 272C.

The following rules are proposed.

Adopt the following **new** chapter:

CHAPTER 18
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

645—18.1(17A,147,272C) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by all boards in the division of professional licensure.

18.1(1) Board authority. A waiver or variance from rules adopted by a division board may be granted in accordance with this chapter if: (1) the board has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the granting of a waiver or variance from the rule from which waiver or variance is requested.

18.1(2) Interpretive rules. These uniform waiver and variance rules shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the board does not possess delegated authority to bind the courts to any extent with its definition.

645—18.2(17A,147,272C) Compliance with statute. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

645—18.3(17A,147,272C) Criteria for waiver or variance. The board may issue an order, in response to a completed petition or on its own motion, granting a waiver or variance from a rule adopted by the board, in whole or in part, as applied to the circumstances of a specified person if the board finds that:

1. Application of the rule to the person at issue would result in hardship or injustice to that person; and
2. Waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and
3. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person.

In determining whether waiver or variance would be consistent with the public interest under "2" above, the board shall consider whether, if the waiver or variance is granted, the public health and safety will be protected by other means that are substantially equivalent to full compliance with the rule.

18.3(1) Board discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the board, upon consideration of all relevant factors.

18.3(2) Mandatory waivers or variances. In response to the timely filing of a completed petition requesting a waiver or variance, the board shall grant a waiver or variance from a rule, in whole or in part, as applied to the particular circumstances of a specified person, if the board finds that the application of all or a portion thereof to the circumstances of

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

that specified person would not, to any extent, advance or serve any of the purposes of the rule.

18.3(3) Burden of persuasion. The petitioner shall assume the burden of persuasion when a petition is filed for a waiver or variance from a board rule.

18.3(4) Special waiver or variance rules not precluded. These uniform waiver and variance rules shall not preclude the board from granting waivers or variances in other contexts or on the basis of other standards if a statute or other board rule authorizes the board to do so, and the board deems it appropriate to do so.

18.3(5) Administrative deadlines. When the rule from which a waiver or variance is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees.

645—18.4(17A,147,272C) Filing of petition. A petition for a waiver or variance must be submitted in writing to the board, as follows:

18.4(1) License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

18.4(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding.

18.4(3) Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board's administrator.

645—18.5(147,272C) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for whom a waiver or variance is being requested, and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver or variance is requested.
3. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
4. The relevant facts that the petitioner believes would justify a waiver or variance. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver or variance.
5. A history of any prior contacts between the board and the petitioner relating to the regulated activity or license affected by the proposed waiver or variance, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.
6. Any information known to the requester regarding the board's treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.
8. The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver or variance.

645—18.6(17A,147,272C) Additional information. Prior to issuing an order granting or denying a waiver or variance, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive administrator, a committee of the board, or a quorum of the board.

645—18.7(17A,147,272C) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that notice of the pending petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the agency may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the agency attesting that notice has been provided.

645—18.8(17A,147,272C) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver or variance of rule filed within a contested case, and shall otherwise apply to agency proceedings for a waiver or variance only when the board so provides by rule or order or is required to do so by statute.

645—18.9(17A,147,272C) Ruling. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

18.9(1) Conditions. The board may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

18.9(2) Time for ruling. The board shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

18.9(3) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board.

18.9(4) Service of order. Within seven days of its issuance, any order issued under this uniform rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

645—18.10(17A,147,272C) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)"e," the board shall maintain a record of all orders granting and denying waivers and variances under these uniform rules. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the board office.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

645—18.11(17A,147,272C) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver or variance upon appropriate notice and hearing if the board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

645—18.12(17A,147,272C) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

645—18.13(17A,147,272C) Defense. After the board issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

645—18.14(17A,147,272C) Appeals. Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A and board rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

These rules are intended to implement Iowa Code chapters 17A, 21, 22, 147, and 272C.

ARC 9522A

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to adopt a new Chapter 131, "Emergency Medical Services Provider Education/Training/Certification," and to amend Chapter 132, "Emergency Medical Services," Iowa Administrative Code.

The proposed amendments divide Chapter 132, placing the rules regarding education and training into a new Chapter 131 and leaving the rules dealing with EMS service program authorization in Chapter 132. The proposed amendments also adopt the new national standard EMT-I and EMT-P curricula into the training of Iowa's EMS providers. Additionally, the proposed amendments modify the certification renewal requirements of EMS providers to provide more flexibility in obtaining continuing education hours and to encourage EMS providers who were previously certified to reinstate their certification with the goal of increasing members in the volunteer service programs.

The Bureau of EMS has presented these rules at informal meetings and conferences over the last six to eight months as well as in an informational presentation over the Iowa Communications Network on August 24, 1999. The Iowa EMS Advisory Council unanimously endorsed the proposed amendments at its October 13, 1999, meeting.

The Department has provided a specific provision for variances relating to Chapter 132. A party desiring to apply for waiver or variance of a rule in 641—Chapter 132 should utilize the provision in rule 641—132.14(147A).

The Department has not provided specific provisions for a waiver or variance relating to Chapter 131. A party seeking a waiver of or variance to Chapter 131 should do so pursuant to the Department's variance and waiver provisions contained at 641—Chapter 178.

The Department of Public Health will hold a public meeting over the Iowa Communications Network (ICN) on Tuesday, December 21, 1999, from 1 to 2 p.m. Sites participating in the ICN broadcast include the following:

National Guard Armory, 11 East 23rd Street, Spencer, Iowa;

National Guard Armory, 1712 LaClark Road, Carroll, Iowa;

National Guard Armory, 1160 10th Street SW, Mason City, Iowa;

Department of Public Health, ICN Room, Sixth Floor, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa;

National Guard Armory, 195 Radford Road, Dubuque, Iowa;

National Guard Armory, 501 Highway 1 South, Washington, 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 amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Department of Public Health and advise of specific needs.

Any oral or written comments must be received on or before December 21, 1999. Comments should be addressed to Gary Ireland, EMS Bureau Chief, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code chapter 147A.

The following amendments are proposed.

ITEM 1. Adopt the following **new** chapter:

CHAPTER 131
EMERGENCY MEDICAL SERVICES PROVIDER EDUCATION/TRAINING/CERTIFICATION

641—131.1(147A) Definitions. For the purpose of these rules, the following definitions shall apply:

"ACLS" or "advanced cardiac life support" means training and successful course completion in advanced cardiac life support according to American Heart Association standards.

"AED" means automated external defibrillator.

"Automated defibrillator" means any external semiautomated device that determines whether defibrillation is required.

"Basic care" means treatment interventions, appropriate to certification level, that provide minimum care to the patient including, but not limited to, CPR, bandaging, splinting, oxygen administration, spinal immobilization, oral air-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

way insertion and suctioning, antishock garment, vital sign assessment and administration of over-the-counter drugs.

"CEH" means "continuing education hour" which is based upon a minimum of 50 minutes of training per hour.

"Certification period" means the length of time an EMS provider certificate is valid. The certification period shall be for two years from initial issuance, or renewal, unless specified otherwise on the certificate or unless sooner suspended or revoked.

"Certification status" means a condition placed on an individual certificate for identification as active, deceased, denied, dropped, endorsement, expired, failed, hold, idle, inactive, incomplete, pending, probation, retired, revoked, surrendered, suspended, or temporary.

"Continuing education" means training approved by the department which is obtained by a certified emergency medical care provider to maintain, improve, or expand relevant skills and knowledge and to satisfy renewal of certification requirements.

"Course completion date" means the date of the final classroom session of an emergency medical care provider course.

"Course coordinator" means an individual who has been assigned by the training program to coordinate the activities of an emergency medical care provider course.

"CPR" means training and successful course completion in cardiopulmonary resuscitation and obstructed airway procedures according to recognized national standards. This includes one rescuer, two rescuer, and child/infant cardiopulmonary resuscitation and adult and child/infant obstructed airway procedures.

"Critical care paramedic" means a currently certified paramedic specialist who has successfully completed a critical care course of instruction approved by the department and has received endorsement from the department as a critical care paramedic.

"Current course completion card" means written recognition given for training and successful course completion of CPR or ACLS with an expiration date or a recommended renewal date that exceeds the current date.

"Department" means the Iowa department of public health.

"Director" means the director of the Iowa department of public health.

"DOT" means the United States Department of Transportation.

"Emergency medical care" means such medical procedures as:

1. Administration of intravenous solutions.
2. Intubation.
3. Performance of cardiac defibrillation and synchronized cardioversion.
4. Administration of emergency drugs as provided by rule by the department.
5. Any other medical procedure approved by the department, by rule, as appropriate to be performed by emergency medical care providers who have been trained in that procedure.

"Emergency medical care personnel" or "provider" means an individual who has been trained to provide emergency and nonemergency medical care at the first-responder, EMT-basic, EMT-intermediate, EMT-paramedic level or other certification levels adopted by rule by the department and who has been issued a certificate by the department.

"Emergency medical technician-ambulance (EMT-A)" means an individual who has successfully completed, as a minimum, the 1984 United States Department of Transportation's Emergency Medical Technician-Ambulance curriculum, passed the department's approved written and practical examinations, and is currently certified by the department as an EMT-A.

"Emergency medical technician-basic (EMT-B)" means an individual who has successfully completed the current United States Department of Transportation's Emergency Medical Technician-Basic curriculum and department enhancements, passed the department's approved written and practical examinations, and is currently certified by the department as an EMT-B.

"Emergency medical technician-defibrillation (EMT-D)" means an individual who has successfully completed an approved program which specifically addresses manual or automated defibrillation, passed the department's approved written and practical examinations, and is currently certified by the department as an EMT-D.

"Emergency medical technician-intermediate (EMT-I)" means an individual who has successfully completed an EMT-intermediate curriculum approved by the department, passed the department's approved written and practical examinations, and is currently certified by the department as an EMT-I.

"Emergency medical technician-paramedic (EMT-P)" means an individual who has successfully completed the current United States Department of Transportation's EMT-Intermediate curriculum or the 1984 DOT EMT-P curriculum, passed the department's approved written and practical examinations, and is currently certified by the department as an EMT-P.

"Emergency rescue technician (ERT)" means an individual trained in various rescue techniques including, but not limited to, extrication from vehicles and agricultural rescue, and who has successfully completed a curriculum approved by the department in cooperation with the Iowa Fire Service Institute.

"EMS" means emergency medical services.

"EMS advisory council" means a council appointed by the director, pursuant to Iowa Code chapter 147A, to advise the director and develop policy recommendations concerning regulation, administration, and coordination of emergency medical services in the state.

"EMS instructor (EMS-I)" means an individual who has successfully completed an EMS instructor curriculum approved by the department, and is currently certified by the department as an EMS-I.

"First responder (FR)" means an individual who has successfully completed the current United States Department of Transportation's first responder curriculum and department enhancements, passed the department's approved written and practical examinations, and is currently certified by the department as an FR.

"First responder-defibrillation (FR-D)" means an individual who has successfully completed an approved program that specifically addresses defibrillation, passed the department's approved written and practical examinations, and is currently certified by the department as an FR-D.

"Hospital" means any hospital licensed under the provisions of Iowa Code chapter 135B.

"ILEECP" means Iowa law enforcement emergency care provider.

"Intermediate" means an emergency medical technician-intermediate.

"NCA" means North Central Association of Colleges and Schools.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

"Outreach course coordinator" means an individual who has been assigned by the training program to coordinate the activities of an emergency medical care provider course held outside the training program facilities.

"PAD provider" means an individual who has successfully completed the department's PAD provider curriculum, passed the department's approved written and practical examinations, and is currently certified by the department as a PAD provider.

"Paramedic (EMT-P)" means an emergency medical technician-paramedic.

"Paramedic specialist (PS)" means an individual who has successfully completed the current United States Department of Transportation's EMT-Paramedic curriculum or equivalent, passed the department's approved written and practical examinations, and is currently certified by the department as a paramedic specialist.

"Patient" means an individual who is sick, injured, or otherwise incapacitated.

"Physician" means an individual licensed under Iowa Code chapter 148, 150, or 150A.

"Physician assistant (PA)" means an individual licensed pursuant to Iowa Code chapter 148C.

"Physician designee" means a registered nurse licensed under Iowa Code chapter 152, or a physician's assistant licensed under Iowa Code chapter 148C and approved by the board of physician's assistant examiners, who holds a current course completion card in ACLS. The physician designee may act as an intermediary for a supervising physician in directing the actions of advanced emergency medical care personnel in accordance with written policies and protocols.

"Preceptor" means an individual who has been assigned by the training program, clinical facility or service program to supervise students while the students are completing their clinical or field experience. A preceptor must be an emergency medical care provider certified at the level at which the preceptor is providing supervision or higher, or must be licensed as a registered nurse, physician's assistant or physician.

"Primary instructor" means an individual who is responsible for teaching the majority of an emergency medical care provider course.

"Protocols" means written directions and orders established and approved by the service program's medical director that address the procedures to be followed by emergency medical care providers in emergency and nonemergency situations.

"Public access defibrillation (PAD)" means the operation of an automated external defibrillator by a nontraditional provider of emergency medical care.

"Registered nurse (RN)" means an individual licensed pursuant to Iowa Code chapter 152.

"Service program" or "service" means any emergency medical care ambulance service, or nontransport service that has received authorization by the department.

"Service program area" means the geographic area of responsibility served by any given ambulance or nontransport service program.

"Specialty certification" means a nonmedical certification in an area related to emergency medical care including, but not limited to, emergency rescue technician and emergency medical services-instructor.

"Student" means any individual enrolled in a training program and participating in the didactic, clinical, or field experience portions.

"Training program" means an NCA-approved Iowa college, the Iowa law enforcement academy or an Iowa hospital approved by the department to conduct emergency medical care training.

"Training program director" means an appropriate health care professional (full-time educator or practitioner of emergency or critical care) assigned by the training program to direct the operation of the training program.

"Training program medical director" means a physician licensed under Iowa Code chapter 148, 150, or 150A who is responsible for directing an emergency medical care training program.

641—131.2(147A) Emergency medical care providers—requirements for enrollment in training programs. To be enrolled in an EMS training program course leading to certification by the department, an applicant shall:

1. Be at least 17 years of age at the time of enrollment.
2. Have a high school diploma or its equivalent if enrolling in an EMT-I, EMT-P, or paramedic specialist course.
3. Be able to speak, write and read English.
4. Hold a current course completion card in CPR if enrolling in an EMT-B, EMT-I, EMT-P, or paramedic specialist course.
5. Be currently certified, as a minimum, as an EMT-B, if enrolling in an EMT-I, EMT-P, or paramedic specialist course.
6. Be a current EMS provider, RN, PA, or physician and submit a recommendation in writing from an approved EMS training program if enrolling in an EMS instructor course.

641—131.3(147A) Emergency medical care providers—certification, renewal standards, procedures, continuing education, and fees.

131.3(1) Application and examination.

a. Applicants shall complete an EMS Student Registration form at the beginning of the course. EMS Student Registration forms are provided by the department.

b. EMS Student Registration forms shall be forwarded to the department by the training program no later than two weeks after the beginning of the course. Courses that are completed within two weeks are exempt from this requirement.

c. Upon satisfactory completion of the course and all training program requirements, including payment of appropriate fees, the student shall be recommended by the training program to take the state-approved certification examinations. Candidates recommended for state certification are not eligible to continue functioning as a student in the clinical and field setting. State certification must be obtained to perform appropriate skills.

d. The practical examination shall be administered using the standards and forms provided by the department. The training program shall notify the department at least four weeks prior to the administration of a practical examination.

e. To be eligible to take the written examination, the student shall first pass the practical examination.

f. Students eligible to take the state written examination shall submit an EMS Certification Application form to the department. EMS Certification Application forms are provided by the department.

g. When a student's EMS Student Registration or EMS Certification Application is referred to the department for investigation, the student shall not be eligible for clinical or field experience, or certification testing until approved by the department.

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h. The certifying written examinations shall be administered at times and places determined by the department.

i. No oral certification examinations shall be permitted; however, candidates may be eligible for appropriate accommodations. Contact the Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

j. Practical examination fees shall be determined by the training program.

k. The fee for processing each FR, EMT-B, EMT-I, EMT-P, and paramedic specialist written examination is $20, payable to the Iowa Department of Public Health.

l. A student who fails the practical certification examination shall be required to repeat only those stations that were failed and shall have two additional opportunities to attain a passing score. The student may repeat the failed examination stations on the same day as determined by the training program. If a student fails the written examination, the practical examination remains valid for a 12-month period from the date it was successfully completed. Required passing practical scores for FR, EMT-B, EMT-I, EMT-P, or paramedic specialist shall be based on criteria established by the department.

m. A student who fails to attain the appropriate overall score on the written certification examination shall have two additional opportunities to complete the entire examination and attain a passing score. Required passing written scores for FR, EMT-B, EMT-I, EMT-P, or paramedic specialist shall be based on criteria established by the department.

n. A student who fails to pass the written certification examination on the third attempt and who wishes to pursue certification must submit, at a minimum, written verification from an approved training program of successful completion of an appropriate refresher course or equivalent. Students failing the examination on six attempts must repeat the entire EMT training program to be eligible for certification.

o. All examination attempts shall be completed within one year of the initial course completion date. If an individual is unable to complete the testing within one year due to medical reasons, an extension may be granted upon submission of a signed statement from a physician and approval by the department.

p. Examination scores shall be confidential except that they may be released to the training program that provided the training or other appropriate state agencies, or released in a manner which does not permit the identification of an individual.

q. To be eligible to take the practical examination, FR candidates shall have a current course completion card in CPR.

r. Applicants for EMS-I certification shall successfully complete an EMS-Instructor curriculum approved by the department.

s. Applicants for ERT certification shall successfully complete an ERT curriculum approved by the department in cooperation with the Iowa Fire Service Institute.

t. Individuals seeking certification as a public access defibrillation provider shall:

(1) Be an employee or associate of the public or private business agency applying for PAD service program authorization.

(2) Obtain appropriate training approved by the department. PAD provider training shall include as a minimum:

1. Successful course completion in adult CPR, including one rescuer CPR, foreign body airway obstruction, rescue breathing, recovery position, and activating the EMS system.

2. Successful completion of an AED course curriculum approved by the department.

u. Law enforcement personnel seeking certification as a public access defibrillation provider shall meet criteria established in 641—139.6(147A).

v. Payment of all appropriate certification/examination fees shall be made prior to receiving certification.

131.3(2) Multiple certificates and renewal.

a. With the exception of specialty certifications, the department shall consider the highest level of certification attained to be active. Any lower levels of certification shall be considered idle.

b. A lower level certificate may be issued if the individual fails to renew the higher level of certification or voluntarily chooses to move from a higher level to a lower level. To be issued a certificate in these instances, an individual shall:

(1) Complete all applicable continuing education requirements for the lower level during the certification period and submit a written request for the lower level.

(2) Complete and submit to the department an EMS Affirmative Renewal of Certification Application and the applicable fee.

(3) Complete the reinstatement process in 131.3(3)"e" if renewal of the higher level is later requested.

c. A citation and warning, denial, probation, suspension or revocation imposed upon an individual certificate holder by the department shall be considered applicable to all certificates issued to that individual by the department.

131.3(3) Renewal of certification.

a. A certificate shall be valid for two years from issuance unless specified otherwise on the certificate or unless sooner suspended or revoked.

b. All continuing education requirements shall be completed during the certification period prior to the certificate's expiration date. Failure to complete the continuing education requirements prior to the expiration date shall result in an expired certification.

c. The EMS Affirmative Renewal of Certification Application shall be submitted to the department within 90 days prior to the expiration date. Failure to submit a renewal application to the department within 90 days prior to the expiration date (based upon the postmark date) shall cause the current certification to expire. Emergency medical care providers shall not provide emergency medical services on an expired certification.

d. An individual who completes the required continuing education during the certification period, but fails to submit the EMS Affirmative Renewal of Certification Application within 90 days prior to the expiration date, shall be required to submit a late fee of $30 (in addition to the renewal fee) and complete the audit process pursuant to 131.3(4)"j," to obtain renewal of certification.

e. An individual who has not completed the required continuing education during the certification period or who is seeking to reinstate an expired, inactive, or retired certificate shall:

(1) Complete a refresher course or equivalent approved by the department.

(2) Meet all applicable eligibility requirements.

(3) Submit an EMS Reinstatement Application and the applicable fees to the department.

(4) Pass the appropriate practical and written certification examinations.

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f. If an individual is unable to complete the required continuing education during the certification period due to an illness or injury, an extension of certification may be issued upon submission of a signed statement from a physician and approval by the department.

g. An individual may request an inactive or retired status for a certificate. The request must be made to the department in writing. A certification card may be issued to the individual reflecting the inactive or retired status for a fee of $30. Reinstatement of an inactive or retired certificate shall be made pursuant to 131.3(3)"e." A request for inactive or retired status, when accepted in connection with a disciplinary investigation or proceeding, has the same effect as an order of revocation.

h. Upon verification of a previously active EMS provider certification by the department, a portion of the reinstatement requirements pursuant to 131.3(3)"e" may be waived by the department for individuals previously certified who have let their certifications expire. This amnesty reinstatement paragraph shall expire December 31, 2000. The following guidelines for amnesty reinstatement shall apply:

(1) Applications for reinstatement, available from the department, shall be received by the department on or before December 31, 2000.

(2) Reinstatement requirements shall be completed within one year of an approved reinstatement application.

(3) Approved applicants shall successfully complete one of the following appropriate refreshers, approved by the department, including psychomotor and cognitive evaluation:

1. First responder—14 hours.
2. EMT-B—24 hours.
3. EMT-I—48 hours.
4. EMT-P—60 hours.

(4) Pay a reinstatement fee of $30.

(5) A current course completion card in CPR, prior to refresher enrollment, is required of all applicants, and EMT-P candidates shall obtain a current course completion card in ACLS prior to certification.

(6) Upon successful completion of the appropriate refresher and requirements, candidates are eligible to apply for state certification without complying with 131.3(3)"e"(4).

131.3(4) Continuing education renewal standards. To be eligible for renewal through continuing education, the following standards shall apply:

a. The applicant shall sign and submit an Affirmative Renewal of Certification Application provided by the department, and submit the applicable fee within 90 days prior to the certificate's expiration date.

b. The applicant shall complete the continuing education requirements, including current course completion in CPR, during the certification period for the following EMS provider levels:

(1) FR, FR-D—12 hours of approved continuing education.

(2) EMT-A, EMT-B, EMT-D—24 hours of approved continuing education.

(3) EMT-I—36 hours of approved continuing education.

(4) EMT-P—48 hours of approved continuing education.

(5) Paramedic specialist—60 hours of approved continuing education.

(6) EMS-I—Attend at least one EMS-I workshop sponsored by the department.

(7) ERT—It is recommended that at least one hour in each of the following topic areas be completed:

1. Agricultural/industrial rescue.
2. Rescue equipment/techniques.
3. Special hazards.
4. Vehicle rescue.

c. At least 50 percent of the required hours for renewal shall be formal continuing education including, but not limited to, refresher programs, seminars, lecture programs, and conferences. The content shall be based upon the appropriate department curricula for EMS providers and shall include, as a minimum, topics within three or more of the following core curriculum areas:

(1) Airway.
(2) Patient assessment.
(3) Trauma/medical/behavioral emergencies.
(4) Obstetrics/gynecology.
(5) Infants and children.
(6) Patient care record documentation.

d. All EMS providers seeking renewal shall complete, as a minimum, the trauma continuing education requirements pursuant to Iowa Administrative Code 641—Chapter 137.

e. Up to 50 percent of the required continuing education hours may be made up of any of the following:

(1) Nationally recognized courses, e.g., ACLS;
(2) EMS self-study courses;
(3) Medical director or designee case reviews;
(4) Clinical rounds with medical team (grand rounds);
(5) Teaching EMS courses, initial or continuing education;
(6) Working with students as an EMS field preceptor;
(7) Hospital or nursing home clinical performance;
(8) Skills workshops/maintenance (scenario based);
(9) Community public information education projects;
(10) Emergency driver training;
(11) EMS course audits;
(12) Injury prevention initiatives;
(13) EMS service operations, e.g., management programs, continuous quality improvement;
(14) EMS system development meetings to include county, regional and state;
(15) Emergency runs/responses as a volunteer member of an authorized EMS service program (primary attendant).

f. Additional hours may be allowed for any of the following (maximum):

(1) CPR—2 hours;
(2) Disaster drill—4 hours;
(3) Rescue—4 hours;
(4) Hazardous materials—8 hours;
(5) Practical exam evaluator—4 hours;
(6) Topics outside the provider's core curriculum—8 hours.

g. With training program approval, persons who are not enrolled in an emergency medical care provider course may audit those courses for CEHs.

h. Certificate holders must notify the department of a change in address.

i. The certificate holder shall maintain a file containing documentation of continuing education hours accrued during each certification period for four years from the end of each certification period.

j. A group of individual certificate holders will be audited for each certification period and will be required to submit verification of continuing education compliance within 45 days of the request. If audited, the following information must be provided: date of program, program sponsor number, title of program, number of hours approved, and appropriate supervisor signatures if clinical or practical evaluator hours are claimed. Certificate holders audited will be

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chosen in a random manner or at the discretion of the bureau of EMS. Falsifying reports or failure to comply with the audit request may result in formal disciplinary action.

131.3(5) Renewal by testing. To be eligible for renewal by testing, candidates shall meet the following standards:

a. Submit a request to renew by testing to the department six months prior to the certificate's expiration date. Any testing fees will be in addition to renewal fees.

b. Complete a Renewal by Testing Application provided by the department and schedule a test date with an EMS training program.

c. Successfully complete the practical and written examinations.

d. Candidates who are unsuccessful by testing may renew under the continuing education standards in subrule 131.3(4); however, renewal must be completed prior to the certificate's expiration date.

e. Candidates who are unsuccessful by testing or who do not complete the continuing education requirements prior to the expiration date shall reinstate an expired certificate pursuant to 131.3(3)"e" if active certification is sought.

131.3(6) Continuing education approval. The following standards shall be applied when approving continuing education:

a. Required CEHs identified in 131.3(4)"c" and 131.3(4)"d" shall be approved by an authorized EMS training program or the department using a sponsor number assignment system approved by the department.

b. Optional CEHs identified in 131.3(4)"e" and 131.3(4)"f" require no formal sponsor number; however, CEHs awarded shall be verified by an authorized EMS training program, a national EMS continuing education accreditation entity, service program medical director, appropriate community sponsor, or the department. Documentation of CEHs awarded shall include program or event, date and title, number of hours approved, and applicable signatures.

131.3(7) Out-of-state continuing education. Out-of-state continuing education courses will be accepted for CEHs if they meet the criteria in subrule 131.3(4) and have been approved for emergency medical care personnel in the state in which the courses were held. A copy of course completion certificates (or other verifying documentation) shall, upon request, be submitted to the department with the EMS Affirmative Renewal of Certification Application.

131.3(8) Fees. The following fees shall be collected by the department and shall be nonrefundable:

a. FR, EMT-B, EMT-I, EMT-P, and paramedic specialist written examination/certification fee—$20.

b. Renewal of EMT-I, EMT-P, and paramedic specialist certification(s) fee—$10.

c. Endorsement certification fee—$30.

d. Reinstatement fee—$30.

e. Late fee—$30.

f. Inactive or retired certificate—$30.

g. Duplicate/replacement card—$10.

h. Returned check—$20.

131.3(9) Certification through endorsement. An individual currently certified by another state or registrant of the National Registry of EMTs must also possess a current Iowa certificate to be considered certified in this state. The department shall contact the state of certification or the National Registry of EMTs to verify certification or registry and good standing. To receive Iowa certification, the individual shall:

a. Complete and submit the EMS Endorsement Application available from the department.

b. Provide verification of current certification in another state or registration with the National Registry of EMTs.

c. Provide verification of current course completion in CPR. Applicants for EMT-P or paramedic specialist endorsement shall also provide verification of current course completion in ACLS.

d. Pass the appropriate Iowa practical and written certification examinations in accordance with subrule 131.3(1) within one year of the department's approval of the endorsement candidate's application. Current National Registry endorsement candidates are exempt from testing.

e. Meet all other applicable eligibility requirements necessary for Iowa certification pursuant to these rules.

f. Submit all applicable fees to the department.

g. An individual certified through endorsement shall satisfy the renewal and continuing education requirements set forth in subrule 131.3(3) to renew Iowa certification.

131.3(10) Temporary certification through endorsement. Upon written request, the endorsement applicant may be issued a temporary FR or EMT-B certification by the department. Justification for issuance of the temporary certification must accompany the request. Temporary certification shall not exceed six months per application.

641—131.4(147A) Training programs—standards, application, inspection and approval.

131.4(1) Curricula.

a. The training program shall use the following course curricula approved by the department for certification. The department shall determine course length.

(1) EMS provider curricula:

1. PAD—Iowa curriculum.
2. ILEECP—Iowa curriculum.
3. First responder—DOT FR curriculum plus department enhancements.
4. EMT-B—DOT EMT-B curriculum plus department enhancements.
5. EMT-I—Iowa curriculum.
6. EMT-P—DOT EMT-I curriculum.
7. Paramedic specialist—DOT EMT-P curriculum.

(2) Specialty curricula:

1. EMS-I—DOT curriculum plus department enhancements.
2. ERT—Iowa curriculum.

Curriculum enhancements are available from the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075.

b. The training program may waive portions of the required EMS provider training for individuals certified or licensed in other health care professions, including, but not limited to, nursing, physician assistant, respiratory therapist, dentistry, and military. The training program shall document equivalent training and what portions of the course have been waived for equivalency.

131.4(2) Clinical or field experience resources. If clinical or field experience resources are located outside the framework of the training program, written agreements for such resources shall be obtained by the training program.

131.4(3) Facilities.

a. There shall be adequate classroom, laboratory, and practice space to conduct the training program. A library with reference materials on emergency and critical care shall also be available.

b. Opportunities for the student to accomplish the appropriate skill competencies in the clinical environment shall be ensured. The following hospital units shall be avail-

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able for clinical experience for each training program as required in approved curricula pursuant to subrule 131.4(1):

(1) Emergency department;
(2) Intensive care unit or coronary care unit or both;
(3) Operating room and recovery room;
(4) Intravenous or phlebotomy team, or other method to obtain IV experience;
(5) Pediatric unit;
(6) Labor and delivery suite, and newborn nursery; and
(7) Psychiatric unit.

c. Opportunities for the student to accomplish the appropriate skill competencies in the field environment shall be ensured. The training program shall use an appropriate emergency medical care service program to provide field experience as required in approved curricula pursuant to subrule 131.4(1).

d. The training program shall have liability insurance and shall offer liability insurance to students while they are enrolled in a training program.

131.4(4) Staff.

a. The training program medical director shall be a physician licensed under Iowa Code chapter 148, 150, or 150A. It is recommended that the training program medical director complete a medical director workshop sponsored by the department.

b. A training program director shall be appointed who is an appropriate health care professional. This individual shall be a full-time educator or a practitioner in emergency or critical care. Current EMS instructor certification is also recommended, but not mandatory.

c. Course coordinators, outreach course coordinators, and primary instructor(s) used by the training program shall be currently certified as EMS instructors.

d. The instructional staff shall be comprised of physicians, nurses, pharmacists, emergency medical care personnel, or other health care professionals who have appropriate education and experience in emergency and critical care. Current EMS instructor certification is also recommended, but not mandatory.

e. Preceptors shall be assigned in each of the clinical units in which emergency medical care students are obtaining clinical experience and field experience. The preceptors shall supervise student activities to ensure the quality and relevance of the experience. Student activity records shall be kept and reviewed by the immediate supervisor(s) and by the program director and course coordinator.

f. If a training program's medical director resigns, the training program director shall report this to the department and provide a curriculum vitae for the medical director's replacement. A new course shall not be started until a qualified medical director has been appointed.

g. The training program shall maintain records for each instructor used which include, as a minimum, the instructor's qualifications.

h. The training program is responsible for ensuring that each course instructor is experienced in the area being taught and adheres to the course curricula.

i. The training program shall ensure that each practical examination evaluator and mock patient is familiar with the practical examination requirements and procedures. Practical examination evaluators shall attend a workshop sponsored by the department.

131.4(5) Advisory committee. There shall be an advisory committee, which includes training program representatives, and other groups such as affiliated medical facilities, local medical establishments, and ambulance, rescue and first response service programs.

131.4(6) Student records. The training program shall maintain an individual record for each student. Training program policy and department requirements will determine contents. These requirements may include:

a. Application;
b. Current certifications;
c. Student record or transcript of hours and performance (including examinations) in classroom, clinical, and field experience settings.

131.4(7) Selection of students. There may be a selection committee to select students using, as a minimum, the prerequisites outlined in subrule 131.2(1).

131.4(8) Students.

a. Students may perform any procedures and skills at the emergency medical care provider level trained, if they are under the direct supervision of a physician or physician designee, or under the remote supervision of a physician or physician designee, with direct field supervision by an appropriately certified emergency medical care provider.

b. Students shall not be substituted for personnel of any affiliated medical facility or service program, but may be employed while enrolled in the training program.

131.4(9) Financing and administration.

a. There shall be sufficient funding available to the training program to ensure that each class started can be completed.

b. Tuition charged to students shall be accurately stated.

c. Advertising for training programs shall be appropriate.

d. The training program shall provide to each student, within two weeks of the course starting date, a guide that outlines as a minimum:

(1) Course objectives.
(2) Required hours for completion.
(3) Minimum acceptable scores on interim testing.
(4) Attendance requirements.
(5) Grievance procedure.
(6) Disciplinary actions that may be invoked, the grounds for such action, and the process provided.

131.4(10) Training program application, inspection and approval.

a. An applicant seeking initial or renewal training program approval shall use the EMS Training Program Application provided by the department. The application shall include, as a minimum:

(1) Appropriate officials of the applicant;
(2) Evidence of availability of clinical resources;
(3) Evidence of availability of physical facilities;
(4) Evidence of qualified faculty;
(5) Qualifications and major responsibilities of each faculty member;
(6) Policies used for selection, promotion, and graduation of trainees;
(7) Practices followed in safeguarding the health and well-being of trainees, and patients receiving emergency medical care within the scope of the training program; and
(8) Level(s) of EMS certification to be offered.

b. New training programs shall submit a needs assessment which justifies the need for the training program.

c. Applications shall be reviewed in accordance with the current Essentials and Guidelines of an Accredited Educational Program for the Emergency Medical Technician-Paramedic, published by the Commission on Accreditation and Allied Health Education Programs.

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d. An on-site inspection of the applicant's facilities and clinical resources will be performed. The purpose of the inspection is to examine educational objectives, patient care practices, and facilities and administrative practices, and to prepare a written report for review and action by the department.

e. No person shall interfere with the inspection activities of the department or its agents. Interference with or failure to allow an inspection may be cause for disciplinary action regarding training program approval.

f. Representatives of the applicant may be required by the department to meet with the department at the time the application and inspection report are discussed.

g. A written report of department action accompanied by the department inspection reports shall be sent to the applicant.

h. Training program approval shall not exceed five years.

i. The training program shall notify the department, in writing, of any change in ownership or control within 30 days.

j. Out-of-state training entities wishing to conduct initial EMS training courses in Iowa shall apply for training program approval pursuant to 641—131.4(147A).

641—131.5(147A) Continuing education providers—approval, record keeping and inspection.

131.5(1) Continuing education courses for emergency medical care personnel may be approved by the department, EMS training program or a national EMS continuing education accreditation entity.

131.5(2) A training program may conduct continuing education courses (utilizing appropriate instructors) pursuant to subrule 131.3(4).

a. Each training program shall assign a sponsor number to each appropriate continuing education course using an assignment system approved by the department.

b. Course approval shall be made prior to the course's being offered.

c. Each training program shall maintain a participant record that includes, as a minimum:

Name	Address
Certification number	Social security number
Course sponsor number	Course instructor
Date of course	CEHs awarded

d. Each training program shall submit to the department a completed Approved EMS Continuing Education form on a quarterly basis.

131.5(3) Record keeping and record inspection.

a. The department may request additional information or inspect the records of any continuing education provider who is currently approved or who is seeking approval to ensure compliance or to verify the validity of any training program application.

b. No person shall interfere with the inspection activities of the department or its agents. Interference with or failure to allow an inspection may be cause for disciplinary action regarding training program approval.

641—131.6(147A) Complaints and investigations—denial, citation and warning, probation, suspension, or revocation of emergency medical care personnel certificates or renewal.

131.6(1) This rule is not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

131.6(2) The department may deny an application for issuance or renewal of an emergency medical care provider certificate, including specialty certifications, or place on probation, or issue a citation and warning, or suspend or revoke the certificate when it finds that the applicant or certificate holder has committed any of the following acts or offenses:

a. Negligence in performing emergency medical care.

b. Failure to follow the directions of supervising physicians or their designees.

c. Rendering treatment not authorized under Iowa Code chapter 147A.

d. Fraud in procuring certification or renewal.

e. Professional incompetency.

f. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

g. Habitual intoxication or addiction to drugs.

h. Falsification of medical records.

i. Fraud in representation as to skill, ability or certification.

j. Willful or repeated violations of Iowa Code chapter 147A or these rules.

k. Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which relates to the provision of emergency medical care. A certified copy of the record of conviction or plea of guilty is conclusive evidence of the violation.

l. Having certification to practice emergency medical care suspended or revoked, or having other disciplinary action taken by a licensing or certifying authority of another state, territory or country. A certified copy of the record or order of suspension, revocation or disciplinary action is conclusive or prima facie evidence.

m. Practicing the profession while certification is suspended.

n. Violating the disciplinary order or settlement agreement.

o. Falsifying certification renewal reports or failure to comply with the renewal audit request.

641—131.7(147A) Complaints and investigations—denial, citation and warning, probation, suspension, or revocation of training program or continuing education provider approval or renewal.

131.7(1) This rule is not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

131.7(2) The department may deny an application for approval or renewal, or issue a citation and warning, or place on probation, or suspend or revoke the approval or renewal when it finds that the applicant has failed to meet the applicable provisions of these rules or has committed any of the following acts or offenses:

a. Fraud in procuring approval or renewal.

b. Falsification of training or continuing education records.

c. Suspension or revocation of approval to provide emergency medical care training or other disciplinary action taken pursuant to Iowa Code chapter 147A. A certified copy of the record or order of suspension, revocation or disciplinary action is conclusive or prima facie evidence.

641—131.8(147A) Complaints, investigations and appeals.

131.8(1) This rule is not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

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131.8(2) All complaints regarding emergency medical care personnel, training programs or continuing education providers, or those purporting to be or operating as the same, shall be reported to the department in writing. The address is Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

131.8(3) An emergency medical care provider who has knowledge of an emergency medical care provider or service program that has violated Iowa Code chapter 147A, 641—Chapter 132 or these rules, shall report such information to the department.

131.8(4) Complaint investigations may result in the department's issuance of a notice of denial, citation and warning, probation, suspension or revocation.

131.8(5) A determination of mental incompetence by a court of competent jurisdiction automatically suspends a certificate for the duration of the certificate unless the department orders otherwise.

131.8(6) Notice of denial, issuance of a citation and warning, probation, suspension or revocation shall be effected in accordance with the requirements of Iowa Code section 17A.12. Notice to the alleged violator of denial, probation, suspension or revocation shall be served by certified mail, return receipt requested, or by personal service.

131.8(7) Any request for a hearing concerning the denial, citation and warning, probation, suspension or revocation shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice to take action. The address is Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. If the request is made within the 20-day time period, the notice to take action shall be deemed to be suspended pending the hearing. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. If no request for a hearing is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

131.8(8) Upon receipt of a request for hearing, the request shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

131.8(9) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

131.8(10) When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 131.8(11).

131.8(11) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

131.8(12) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings on them.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

131.8(13) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

131.8(14) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

131.8(15) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

131.8(16) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

131.8(17) Final decisions of the department relating to disciplinary proceedings may be transmitted to the appropriate professional associations, the news media or employer.

These rules are intended to implement Iowa Code chapter 147A.

ITEM 2. Amend **641—Chapter 132**, title, as follows:

EMERGENCY MEDICAL SERVICES—
SERVICE PROGRAM AUTHORIZATION

ITEM 3. Amend rule **641—132.1(147A)** as follows:

Adopt the following **new** definitions in alphabetical order:

"Critical care paramedic" means a currently certified paramedic specialist who has successfully completed a critical care course of instruction approved by the department and has received endorsement from the department as a critical care paramedic.

"Emergency medical care personnel" or "provider" means an individual who has been trained to provide emergency and nonemergency medical care at the first-responder, EMT-basic, EMT-intermediate, EMT-paramedic level or other certification levels adopted by rule by the department and who has been issued a certificate by the department.

"ILEECP" means Iowa law enforcement emergency care provider.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

"Paramedic specialist (PS)" means an individual who has successfully completed the current United States Department of Transportation's EMT-Paramedic curriculum or equivalent, passed the department's approved written and practical examinations, and is currently certified by the department as a paramedic specialist.

Amend the following definitions:

"AED" means ~~automatic~~ *automated* external defibrillator.

"Automated defibrillator" means any external ~~automatic or~~ semiautomatic device that determines whether defibrillation is required. ~~Automated defibrillators must meet or exceed design and performance guidelines stipulated by the Association for the Advancement of Medical Instrumentation for automated external defibrillators, published in February 1986.~~

~~"Board" means the state board of medical examiners appointed pursuant to Iowa Code section 147.14, subsection 2.~~

~~"CEHs" means "continuing education hours" which are based upon a minimum of 50 minutes of training per hour.~~

~~"Continuing education" means training approved by the department which is obtained by a certified emergency medical care provider to maintain, improve, or expand relevant skills and knowledge and to satisfy renewal of certification requirements.~~

~~"Course completion date" means the date of the final classroom session of an emergency medical care provider course.~~

~~"Course coordinator" means an individual who has been assigned by the training program to coordinate the activities of an emergency medical care provider course.~~

"CPR" means training and successful course completion in cardiopulmonary resuscitation and obstructed airway procedures according to ~~American Heart Association or American Red Cross~~ *recognized national* standards. This includes one rescuer, two rescuer, and child/infant cardiopulmonary resuscitation and adult and child/infant obstructed airway procedures.

~~"Emergency medical care personnel" or "provider" means any FR, FR-D, EMT-A, EMT-B, EMT-D, EMT-I, or EMT-P currently certified by the department.~~

"Emergency medical technician-ambulance *(EMT-A)*" means an individual who has successfully completed, as a minimum, the 1984 United States Department of Transportation's Emergency Medical Technician-Ambulance curriculum, passed the department's approved written and practical examinations, and is currently certified by the department as an EMT-A.

"Emergency medical technician-basic *(EMT-B)*" means an individual who has successfully completed~~, as a minimum,~~ the *current* ~~1994~~ United States Department of Transportation's Emergency Medical Technician-Basic curriculum *and department enhancements,* ~~(excluding endotracheal intubation),~~ passed the department's approved written and practical examinations, and is currently certified by the department as an EMT-B.

"Emergency medical technician-defibrillation *(EMT-D)*" means an individual who has successfully completed an approved program which specifically addresses manual or automated defibrillation, passed the department's approved written and practical examinations, and is currently certified by the department as an EMT-D.

"Emergency medical technician-intermediate *(EMT-I)*" means an individual who has successfully completed ~~the United States Department of Transportation's~~ *an* EMT-intermediate curriculum ~~(excluding endotracheal intubation)~~ *approved by the department,* passed the department's approved written and practical examinations, and is currently certified by the department as an EMT-I.

"Emergency medical technician-paramedic *(EMT-P)*" means an individual who has successfully completed the *current* United States Department of Transportation's ~~EMT-paramedic~~ *EMT-intermediate* curriculum *or the 1984 DOT EMT-P curriculum,* passed the department's approved written and practical examinations, and is currently certified by the department as an EMT-P.

"Emergency rescue technician *(ERT)*" means an individual trained in various rescue techniques including, but not limited to, extrication from vehicles and agricultural rescue, and who has successfully completed a curriculum approved by the department in cooperation with the Iowa Fire Service Institute.

~~"EMS-I" means emergency medical services instructor.~~

~~"EMS instructor" means an individual who has successfully completed an EMS Instructor curriculum, approved by the department, and is currently certified by the department as an EMS-I.~~

~~"EMT-A" means emergency medical technician-ambulance.~~

~~"EMT-B" means emergency medical technician-basic.~~

~~"EMT-D" means emergency medical technician-defibrillation.~~

~~"EMT-I" means emergency medical technician-intermediate.~~

~~"EMT-P" means emergency medical technician-paramedic.~~

~~"ERT" means emergency rescue technician.~~

"First responder *(FR)*" means an individual who has successfully completed the current United States Department of Transportation's first responder curriculum *and department enhancements,* passed the department's approved written and practical examinations, and is currently certified by the department as an FR.

"First responder-defibrillation *(FR-D)*" means an individual who has successfully completed an approved program that specifically addresses defibrillation, passed the department's approved written and practical examinations, and is currently certified by the department as an FR-D.

~~"FR" means first responder.~~

~~"FR-D" means first responder-defibrillation.~~

~~"Outreach course coordinator" means an individual who has been assigned by the training program to coordinate the activities of an emergency medical care provider course held outside the training program facilities.~~

~~"PA" means physician assistant.~~

~~"PAD" means public access defibrillation.~~

"Physician assistant *(PA)*" means an individual licensed pursuant to Iowa Code chapter 148C.

~~"Primary instructor" means an individual who is responsible for teaching the majority of an initial emergency medical care provider course.~~

"Public access defibrillation *(PAD)*" means the operation of an ~~automatic~~ *automated* external defibrillator by a nontraditional provider of emergency medical care.

"Registered nurse *(RN)*" means an individual licensed pursuant to Iowa Code chapter 152.

~~"RN" means a registered nurse.~~

~~"Specialty certification" means a nonmedical certification in an area related to emergency medical care including, but not limited to, emergency rescue technician and emergency medical services instructor.~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~"Training program" means an area community college, law enforcement academy or hospital approved by the department to conduct emergency medical care training.~~

~~"Training program director" means an appropriate health care professional (full-time educator or practitioner of emergency or critical care) assigned by the training program to direct the operation of the training program.~~

~~"Training program medical director" means any physician licensed under Iowa Code chapter 148, 150, or 150A who is responsible for directing an emergency medical care training program.~~

ITEM 4. Rescind subrule 132.2(4) and adopt the following new subrule in lieu thereof:

132.2(4) Adoption by reference.

a. Scope of Practice for Iowa EMS Providers (October 1999) is incorporated and adopted by reference for EMS providers. For any differences that may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

b. The Scope of Practice for Iowa EMS Providers is available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 5. Rescind and reserve rules **641—132.3(147A)** to **641—132.6(147A)**.

ITEM 6. Amend subrule 132.7(6) as follows:

132.7(6) Conditional service program authorization. Any service that is unable to meet the staffing requirement to receive full authorization that wishes to provide emergency medical care shall apply to the department. The service shall:

a. to e. No change.

f. If an ambulance service, provide as a minimum, one EMT-B and one licensed driver, who holds a current course completion card in CPR, on each primary response vehicle call (see Table ~~2~~ *1*). The service shall document each driver's training in emergency driving techniques and in the use of the service's communications equipment.

g. If a nontransporting service, have, as a minimum, a written mutual aid agreement with at least one ground ambulance service to ensure coverage when no certified personnel are available (see Table ~~3~~ *2*). Simultaneous dispatching may be used in lieu of a written mutual aid agreement.

ITEM 7. Amend subrule 132.8(1) as follows:

132.8(1) Service programs shall:

a. No change.

b. Provide on each primary response vehicle call, as appropriate to the service program's level of authorization, the following:

(1) Fully authorized basic care and EMT-B ground ambulance service programs shall provide, as a minimum, one EMT-B and a licensed driver (see Table ~~2~~ *1*). The service shall document each driver's training in emergency driving techniques and in the use of the service's communications equipment. Fully authorized EMT-I ambulance services shall provide, as a minimum, one EMT-I and one EMT-B. Fully authorized EMT-P ambulance services shall provide, as a minimum, one EMT-P and one EMT-B (see Table ~~2~~ *1*).

(2) Fully authorized nontransporting service programs shall provide, as a minimum, one appropriately certified emergency medical care provider at the level of service authorization (see Table ~~3~~ *2*).

(3) Nontransporting service programs that may also want to transport patients shall:

1. Apply to the department for authorization to transport patients on an occasional basis.
2. Use a vehicle that complies with subrule 132.8(4).
3. Provide staffing in accordance with 132.7(6)"f."

TABLE ~~2~~ *1*: AMBULANCE SERVICE STAFFING

	Level of Authorization			
	Basic Care	EMT-B	EMT-I	EMT-P
Full authorization Minimum staffing	1-EMT-B 1-Licensed Driver	1-EMT-B 1-Licensed Driver	1-EMT-I 1-EMT-B	1-EMT-P 1-EMT-B
Conditional authorization Minimum staffing	Not Applicable	Not Applicable	1-EMT-B 1-Licensed Driver	1-EMT-B 1-Licensed Driver

TABLE ~~3~~ *2*: NONTRANSPORTING SERVICE STAFFING

	Level of Authorization				
	Basic Care	First Responder	EMT-B	EMT-I	EMT-P
Full authorization Minimum staffing	Not Applicable	1-FR	1-EMT-B	1-EMT-I	1-EMT-P
Conditional authorization Minimum staffing	Not Applicable	Mutual aid agreement with a transporting service	Mutual aid agreement with a transporting service	Mutual aid agreement with a transporting service	Mutual aid agreement with a transporting service

(4) and (5) No change.

c. to p. No change.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~q. Provide appropriate patient care skills by level of authorization (see Tables 4 and 5).~~

~~TABLE 4: AMBULANCE LEVEL SKILLS~~

~~BASIC LEVEL~~	*~~EMT-B LEVEL~~*	*~~EMT-I LEVEL~~*	*~~EMT-P LEVEL~~*
~~CPR, oxygen, bandaging, splinting, traction splint, vital sign assessment, antishock garment, spinal immobilization, oral airway insertion and suctioning~~	~~Skills identified in 132.2(4)"b" including defibrillation esophageal/tracheal/double-lumen airway IV maintenance* patient-assisted meds *optional~~	~~Skills identified in 132.2(4)"c" including: IV initiation EOA EGTA~~	~~Skills identified in 132.2(4)"d" including: Pharmacologic agents endotracheal intubation~~

~~TABLE 5: NONTRANSPORT LEVEL SKILLS~~

~~FR-BASIC~~	*~~FR~~*	*~~EMT-B~~*	*~~EMT-I~~*	*~~EMT-P~~*
~~CPR oxygen bandaging splinting~~	~~Skills identified in 132.2(4)"a" including: AED esophageal airway~~	~~Skills identified in 132.2(4)"b" including: defibrillation esophageal airway Pt. assisted meds~~	~~Skills identified in 132.2(4)"c" including: IV initiation EOA EGTA~~	~~Skills identified in 132.2(4)"d" including: Pharmacologic agents endotracheal intubation~~

ITEM 8. Amend rule 641—132.10(147A) by adopting the following **new** subrule:

132.10(16) This rule is not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

ITEM 9. Rescind and reserve rules **641—132.11(147A)** to **641—132.13(147A)**.

REVENUE AND FINANCE DEPARTMENT

Notice of Electric and Natural Gas Delivery Tax Rates and Municipal Electric and Natural Gas Transfer Replacement Tax Rates for Each Competitive Service Area

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue and Finance hereby gives notice of the electric delivery tax rate, the municipal electric transfer replacement tax rate, the natural gas delivery tax rate, and the municipal natural gas transfer replacement tax rate for each competitive service area in the state. These rates will be used in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 1999 by each taxpayer to determine the tax due for each taxpayer in the 2000-2001 fiscal year.

1999 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3226	Akron Municipal Utilities	0.00008338
3201	Algona Municipal Utilities	0.00018526
3205	Alta Municipal Power Plant	0.00008347
3207	Ames Municipal Electric System	0.00000191
3209	Atlantic Municipal Utilities	0.00021087
3211	Bancroft Municipal Utilities	0.00092096
3213	Bellevue Municipal Utilities	0.00015474
3228	Bigelow Municipal Electric Utility	0.00276419
3229	Bloomfield Municipal Electric Utility	0.00002962
3216	Buffalo Municipal Electric System	0.00000360
3221	Cedar Falls Municipal Elec. Utility	0.00039541
3242	Corning Municipal Utilities	0.01801136
3243	Danville Municipal Electric Utility	0.00000413
3244	Denison Municipal Utilities	0.00001595
3256	Graettinger Municipal Light Plant	0.00041679
3258	Grand Junction Municipal Utilities	0.00000484
3263	Harlan Municipal Utilities	0.00137185
3267	Hopkinton Municipal Utilities	0.00000930
3271	Indianola Municipal Utilities	0.00001349
3233	Lake View Municipal Utilities	0.00020820
3274	Lamoni Municipal Utilities	0.00149442
3276	LaPorte City Utilities	0.00000943
3282	Manilla Municipal Elec. Utilities	0.00009776
3285	Maquoketa Municipal Electric	0.00005867
3293	Muscatine Municipal Utilities	0.00010393
3297	New Hampton Municipal Light Plant	0.00007134
3298	New London Municipal Utility	0.00068919
3304	Ogden Municipal Utilities	0.00006342
3307	Osage Municipal Utilities	0.00005151
3309	Panora Municipal Electric Utility	0.00010276
3311	City of Pella	0.00007554
3318	Rock Rapids Municipal Utilities	0.00000479
3321	Sioux Center Municipal Utilities	0.00000526
3326	State Center Municipal Light Plant	0.00034439
3327	Story City Municipal Electric Utility	0.00012153
3328	Sumner Municipal Light Plant	0.00018038
3330	Tipton Municipal Utilities	0.00150664
3332	Traer Municipal Utilities	0.00053468
3337	Villisca Municipal Power Plant	0.00024543
3338	Waverly Light & Power	0.00085019
3342	Webster City Municipal Utilities	0.00036928
3345	West Bend Municipal Power Plant	0.00109707
3346	West Liberty Municipal Electric Util.	0.00001182
3347	West Point Municipal Utility System	0.00010420
3351	Winterset Municipal Utilities	0.00132862
3237	Coon Rapids Municipal Utilities	0.00060914
3277	Laurens Municipal Utilities	0.00031838
3291	Milford Municipal Utilities	0.00010477
3324	Spencer Municipal Utilities	0.00011681
3245	Denver Municipal Electric Utility	0.00020566
3227	Anthon Municipal Electric Utility	0.00018573
3217	Burt Municipal Electric Utility	0.00000190
3236	Coggon Municipal Light Plant	0.00110589
3252	Fontanelle Municipal Utilities	0.00035339
3230	City of Fredericksburg	0.00000301
3231	Glidden Municipal Electric Utility	0.00000235
3232	Guttenberg Municipal Electric	0.00003664
3284	Mapleton Municipal Utilities	0.00012802

REVENUE AND FINANCE DEPARTMENT(cont'd)

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3288	McGregor Municipal Utilities	0.00000795
3234	Onawa Municipal Utilities	0.00013391
3315	Primghar Municipal Light Plant	0.00002288
3323	Southern Minnesota Mun. Power	0.00000000
3068	City of Afton	0.00000000
3069	Alta Vista Municipal Utilities	0.00000000
3070	Alton Municipal Light & Power	0.00000000
3071	Anita Municipal Utilities	0.00000000
3072	City of Aplington	0.00000000
3073	Auburn Municipal Utility	0.00000000
3074	Aurelia Mun. Electric Utility	0.00013421
3075	Breda Mun. Electric System	0.00000000
3076	Brooklyn Municipal Utilities	0.00158875
3077	Callendar Electric	0.00000000
3078	Carlisle Municipal Utilities	0.00000000
3079	Cascade Municipal Utilities	0.00128082
3080	Corwith Municipal Utilities	0.00000000
3081	Dayton Light & Power	0.00000000
3082	City of Dike	0.00000000
3083	Durant Municipal Electric Plant	0.00000000
3084	Dysart Municipal Utilities	0.00000000
3085	Earlville Municipal Utilities	0.00143608
3086	Eldridge Electric & Water Utility	0.00069488
3087	Ellsworth Municipal Utilities	0.00000000
3088	City of Estherville	0.00000000
3089	City of Fairbank	0.00000000
3090	City of Farnhamville	0.00000000
3091	Fonda Municipal Electric	0.00000000
3092	Forest City Municipal Utilities	0.00000000
3093	Gowrie Municipal Utilities	0.00154214
3094	Grafton Municipal Utilities	0.00000000
3095	Greenfield Municipal Utilities	0.00129803
3096	Grundy Center Light & Power	0.00019513
3097	Hartley Municipal Utilities	0.00000000
3098	Hawarden Municipal Utility	0.00000000
3099	Hinton Municipal Electric/Water	0.00012448
3100	Hudson Municipal Utilities	0.00000000
3101	Independence Light & Power	0.00000000
3102	Keosauqua Light & Power	0.00000000
3103	Kimballton Municipal Utilities	0.00000000
3104	Lake Mills Municipal Utilities	0.00000000
3105	Lake Park Municipal Utilities	0.00000000
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00000000
3108	City of Lehigh	0.00000000
3109	Lenox Mun. Light & Power	0.00038178
3110	Livermore Municipal Utilities	0.00000000
3111	Long Grove Mun. Elec./Water	0.00000000
3112	Manning Municipal Electric	0.00025917
3113	City of Marathon	0.00000000
3114	Montezuma Municipal Light & Power	0.00000000
3115	Mount Pleasant Municipal Utilities	0.00000000
3116	Neola Light & Water System	0.00000000
3117	Orange City Municipal Utilities	0.00000000
3118	Orient Municipal Utilities	0.00000000
3119	Paton Municipal Utilities	0.00000000
3120	Paullina Municipal Utilities	0.00000000
3121	Pocahontas Municipal Utilities	0.00000000
3122	Preston Municipal Utilities	0.00000000
3123	Readlyn Municipal Utilities	0.00000000
3124	Remsen Municipal Utilities	0.00000000
3125	City of Renwick	0.00000000
3126	Rockford Municipal Light Plant	0.00000000
3127	Sabula Municipal Utilities	0.00000000
3128	Sanborn Municipal Light & Plant	0.00000000
3129	City of Sergeant Bluff	0.00000000
3130	Shelby Municipal Utilities	0.00000000
3131	Sibley Municipal Utilities	0.00000000
3132	Stanhope Municipal Utilities	0.00000000
3133	Stanton Municipal Utilities	0.00000000
3134	Stratford Municipal Utilities	0.00000000
3135	Strawberry Point Electric Utility	0.00000000
3136	Stuart Municipal Utilities	0.00136949
3137	Vinton Municipal Utilities	0.00000000
3138	Wall Lake Municipal Utilities	0.00000000
3139	City of Westfield	0.00000000
3140	Whittemore Municipal Utilities	0.00000000
3141	Wilton Muncipal Light & Power	0.00000000
3142	Woodbine Municipal Utilities	0.00000000
3143	City of Woolstock	0.00000000
3144	Geneseo Municipal Utilities	0.00000000

CO. #	IOU's-ELECTRIC	DELIVERY TAX RATE
7002	Amana Society Service Co.	0.00049316
7003	Interstate Power	0.00110989
7004	IES Utilities	0.00258565
7007	MidAmerican Energy	0.00272878
7009	Nebraska Public Power District	0.00000000
7010	Northwestern Public Service Co.	0.00000000
7011	Omaha Public Power District	0.00151957
7013	Union Electric	0.00000000

CO. #	REC's	DELIVERY TAX RATE
4200	Southwest Iowa Service Coop	0.00282446
4203	Allamakee Clayton Electric Coop	0.00093586
4208	Atchison-Holt Electric Coop	0.00097519
4214	Boone Valley Electric Coop	0.00073665
4246	East-Central Iowa REC	0.00228158
4218	Butler County REC	0.00139333
4219	Calhoun County Electric Coop	0.00148399
4220	Cass Electric Coop	0.00004561
4223	Heartland Power Coop	0.00077206
4224	Central Iowa Power Coop	0.00000000
4225	Chariton Valley Electric Coop	0.00114908
4235	Clarke Electric Coop	0.00322550
4240	Corn Belt Power Coop	0.00000000
4247	Eastern Iowa Light & Power	0.00112128
4249	Farmers Electric Coop - Kalona	0.00043783
4250	Farmers Electric Coop - Greenfield	0.00231454
4253	Franklin Rural Electric Coop	0.00087766
4255	Glidden Rural Electric Coop	0.00126577
4259	Grundy County REC	0.00119498
4260	Grundy Electric Cooperative	0.00055899
4261	Guthrie County REC	0.00206785
4262	Hancock County REC	0.00125847
4265	Harrison County REC	0.00144633
4266	Hawkeye Tri-County Electric Coop	0.00077057
4268	Humboldt County REC	0.00118956
4279	Linn County REC	0.00229813
4280	Lyon Rural Electric Coop	0.00082636
4286	Maquoketa Valley Electric Coop	0.00214822
4287	Marshall County Rural Electric Coop	0.00244469
4295	Nebraska Elec. G & T Coop	0.00000000
4299	Nishnabotna Valley REC	0.00095242
4336	United Electric Coop	0.00099729
4294	NW Electric Power Coop	0.00000000
4301	Northwest Iowa Power Coop	0.00000000
4300	North West Rural Electric Coop	0.00075730
4308	Osceola Electric Coop	0.00060425

REVENUE AND FINANCE DEPARTMENT(cont'd)

CO. #	REC's	DELIVERY TAX RATE
4310	Pella Cooperative Electric	0.00215419
4313	Pleasant Hill Community Line	0.00034801
4316	Rideta Electric Coop	0.00306233
4319	S.E. Iowa Coop Electric Assn.	0.00084683
4320	Sac County Rural Electric Coop	0.00104825
4348	Western Iowa Power Coop	0.00103895
4322	Southern Iowa Electric Coop	0.00165227
4329	T.I.P. Rural Electric Coop	0.00224833
4352	Woodbury County Rural Electric Coop	0.00130464
4353	Wright County Rural Electric Coop	0.00047555
4251	Federated Rural Electric Association	0.00050230
4254	Freeborn-Mower Cooperative Services	0.03647965
4333	Tri County Electric Coop	0.00133788
4273	Iowa Lakes Electric Coop	0.00099200
4290	Midland Power Cooperative	0.00188969

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5058	Sac City Municipal Gas	0.00000000
5059	Sanborn Municipal Gas	0.00000000
5060	Sioux Center Municipal Gas	0.00000000
5061	Tipton Municipal Gas	0.00000000
5062	Titonka Municipal Gas	0.00000000
5063	Waukee Municipal Gas	0.00000000
5064	Wellman Municipal Gas	0.00000000
5065	Whittemore Municipal Gas	0.00000000
5066	Woodbine Gas	0.00000000

CO. #	IOU's-GAS	DELIVERY TAX RATE
7003	Interstate Power	0.01583867
7004	IES Utilities	0.01285848
7007	MidAmerican Energy	0.01103529

1999 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5204	Allerton Gas	0.01644277
5335	United Cities Gas	0.00640727
5340	Wayland Municipal Gas	0.00319456
5349	Winfield Municipal Gas	0.00045468
5275	Lamoni Municipal Gas	0.09200463
5281	Manilla Municipal Gas	0.00409584
5283	Manning Municipal Gas	0.00013942
5306	Osage Municipal Gas	0.00003370
5241	Corning Municipal Gas	0.00000103
5238	Coon Rapids Municipal Gas	0.00002167
5344	West Bend Municipal Gas	0.00202550
5317	Rock Rapids Municipal Gas	0.00007831
5312	Peoples Natural Gas	0.01001893
5215	Brighton Gas	0.01228388
5021	Bedford Municipal Gas	0.00000000
5022	City of Bloomfield	0.00000000
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00000000
5026	City of Clearfield	0.00000000
5027	Emmetsburg Municipal Gas	0.00000000
5028	City of Everly	0.00000000
5029	City of Fairbank	0.00000000
5030	Gilmore City Municipal Gas	0.00000000
5031	Graettinger Municipal Gas	0.00000000
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.00000000
5034	Hartley Municipal Gas	0.00000000
5035	Hawarden Municipal Gas	0.00000000
5036	Lake Park Municipal Gas	0.00000000
5037	Lenox Municipal Gas	0.00000000
5038	Lineville City Natural Gas	0.00000000
5039	Lorimor Municipal Gas	0.00000000
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.00000000
5043	Prescott Municipal Gas	0.00000000
5044	Preston Municipal Gas	0.00000000
5055	Remsen Municipal Gas	0.00000000
5056	Rolfe Municipal Gas	0.00000000
5057	Sabula Municipal Gas	0.00000000

1999 MUNICIPAL ELECTRIC TRANSFER REPLACEMENT TAX RATES

CO. #	COMPANY	REPLACEMENT TAX RATE
3226	Akron Municipal Utilities	*
3201	Algona Municipal Utilities	0.00293197
3205	Alta Municipal Power Plant	0.00050313
3069	Alta Vista Municipal Utilities	0.00000000
3070	Alton Municipal Light & Power	0.00099011
3207	Ames Municipal Electric System	0.00204172
3071	Anita Municipal Utilities	0.00000000
3227	Anthon Municipal Electric Utility	0.00897552
3209	Atlantic Municipal Utilities	0.00200080
3073	Auburn Municipal Utility	0.01817379
3074	Aurelia Municipal Electric Utility	0.00082800
3211	Bancroft Municipal Utilities	0.00469683
3213	Bellevue Municipal Utilities	*
3229	Bloomfield Municipal Electric Utility	0.00960945
3075	Breda Municipal Electric System	0.00145084
3076	Brooklyn Municipal Utilities	0.00000000
3216	Buffalo Municipal Electric System	0.00000000
3217	Burt Municipal Electric Utility	0.00133247
3077	Callendar Electric	0.00663377
3078	Carlisle Municipal Utilities	0.00000000
3079	Cascade Municipal Utilities	0.00000000
3221	Cedar Falls Mun. Electric Utility	0.00347879
3068	City of Afton	0.00534896
3072	City of Aplington	0.00932747
3082	City of Dike	0.00903644
3088	City of Estherville	0.01025112
3089	City of Fairbank	0.00192946
3090	City of Farnhamville	0.00000000
3230	City of Fredericksburg	0.28552756
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.01273352
3108	City of Lehigh	0.00737058
3113	City of Marathon	0.00441951
3311	City of Pella	0.00440924
3125	City of Renwick	0.00000000
3129	City of Sergeant Bluff	0.00438538
3139	City of Westfield	0.01687451
3143	City of Woolstock	*
3236	Coggon Municipal Light Plant	0.00000000
3237	Coon Rapids Municipal Utilities	0.00148140
3242	Corning Municipal Utilities	0.00045860

REVENUE AND FINANCE DEPARTMENT(cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
3080	Corwith Municipal Utilities	0.00000000
3243	Danville Municipal Electric Utility	0.00000000
3081	Dayton Light & Power	0.00107779
3244	Denison Municipal Utilities	0.00110193
3245	Denver Municipal Electric Utility	0.00749078
3083	Durant Municipal Electric Plant	0.00000000
3084	Dysart Municipal Utilities	0.00486571
3085	Earlville Municipal Utilities	0.00000000
3086	Eldridge Electric & Water Utility	0.00067116
3087	Ellsworth Municipal Utilities	0.00333007
3091	Fonda Municipal Electric	0.01032729
3252	Fontanelle Municipal Utilities	0.00000000
3092	Forest City Municipal Utilities	0.00155335
3231	Glidden Municipal Electric Utility	0.00630292
3093	Gowrie Municipal Utilities	0.00113260
3256	Graettinger Municipal Light Plant	0.00075081
3094	Grafton Municipal Utilities	*
3258	Grand Junction Municipal Utilities	0.00128529
3095	Greenfield Municipal Utilities	0.00233420
3096	Grundy Center Light & Power	0.00051749
3232	Guttenberg Municipal Electric	0.00492069
3263	Harlan Municipal Utilities	0.00245373
3097	Hartley Municipal Utilities	0.00534836
3098	Hawarden Municipal Utility	0.03013552
3099	Hinton Municipal Electric/Water	0.00395425
3267	Hopkinton Municipal Utilities	0.00000000
3100	Hudson Municipal Utilities	0.01916147
3101	Independence Light & Power	0.00216110
3271	Indianola Municipal Utilities	0.00133110
3102	Keosauqua Light & Power	0.00000000
3103	Kimballton Municipal Utilities	*
3104	Lake Mills Municipal Utilities	*
3105	Lake Park Municipal Utilities	0.00150900
3233	Lake View Municipal Utilities	0.00853505
3274	Lamoni Municipal Utilities	0.00241434
3276	LaPorte City Utilities	0.00000000
3277	Laurens Municipal Utilities	0.00185558
3109	Lenox Municipal Light & Power	0.00000000
3110	Livermore Municipal Utilities	0.00000000
3111	Long Grove Mun. Elec./Water	0.00000000
3282	Manilla Municipal Elec. Utilities	0.00233044
3112	Manning Municipal Electric	0.00041510
3284	Mapleton Municipal Utilities	0.00560412
3285	Maquoketa Municipal Electric	0.00163896
3288	McGregor Municipal Utilities	0.00086192
3291	Milford Municipal Utilities	0.00000000
3114	Montezuma Municipal Light & Power	0.00145721
3115	Mount Pleasant Municipal Utilities	0.00000000
3293	Muscatine Municipal Utilities	0.00000000
3116	Neola Light & Water System	0.00000000
3297	New Hampton Municipal Light Plant	0.00144440
3298	New London Municipal Utility	0.00000000
3304	Ogden Municipal Utilities	0.00262418
3234	Onawa Municipal Utilities	0.00166194
3117	Orange City Municipal Utilities	*
3118	Orient Municipal Utilities	0.00297683
3307	Osage Municipal Utilities	0.00056091
3309	Panora Municipal Electric Utility	*
3119	Paton Municipal Utilities	0.00000000
3120	Paullina Municipal Utilities	0.00943023
3121	Pocahontas Municipal Utilities	0.00319992
3122	Preston Municipal Utilities	0.00960376
3315	Primghar Municipal Light Plant	0.00265043
3123	Readlyn Municipal Utilities	0.00000000
3124	Remsen Municipal Utilities	*
3318	Rock Rapids Municipal Utilities	0.00441493
3126	Rockford Municipal Light Plant	0.00000000
3127	Sabula Municipal Utilities	0.00248757
3128	Sanborn Municipal Light & Plant	0.00501327
3130	Shelby Municipal Utilities	*
3131	Sibley Municipal Utilities	0.01113968
3321	Sioux Center Municipal Utilities	0.00208828
3324	Spencer Municipal Utilities	0.00640878
3132	Stanhope Municipal Utilities	0.01186855
3133	Stanton Municipal Utilities	0.00000000
3326	State Center Municipal Light Plant	0.00000000
3327	Story City Municipal Electric Utility	0.00000000
3134	Stratford Municipal Utilities	0.00000000
3135	Strawberry Point Electric Utility	0.00463795
3136	Stuart Municipal Utilities	0.00000000
3328	Sumner Municipal Light Plant	0.00104078
3330	Tipton Municipal Utilities	0.00368853
3332	Traer Municipal Utilities	0.00000000
3337	Villisca Municipal Power Plant	0.00000000
3137	Vinton Municipal Utilities	0.00514324
3138	Wall Lake Municipal Utilities	0.00086612
3338	Waverly Light & Power	0.00400465
3342	Webster City Municipal Utilities	0.00128907
3345	West Bend Municipal Power Plant	0.00152661
3346	West Liberty Municipal Electric Util.	0.00350430
3347	West Point Municipal Utility System	0.00000000
3140	Whittemore Municipal Utilities	*
3141	Wilton Muncipal Light & Power	0.00000000
3351	Winterset Municipal Utilities	0.00000000
3142	Woodbine Municipal Utilities	0.00030165

* No rate provided to the Department by the Municipal

1999 MUNICIPAL NATURAL GAS TRANSFER REPLACEMENT TAX RATES

CO. #	COMPANY	REPLACEMENT TAX RATE
5340	Wayland Municipal Gas	*
5349	Winfield Municipal Gas	0.00000000
5275	Lamoni Municipal Gas	0.40243789
5281	Manilla Municipal Gas	1.19044059
5283	Manning Municipal Gas	0.00668021
5306	Osage Municipal Gas	0.01213957
5241	Corning Municipal Gas	0.00000000
5238	Coon Rapids Municipal Gas	0.00182201
5344	West Bend Municipal Gas	0.41487227
5317	Rock Rapids Municipal Gas	0.00048310
5215	Brighton Gas	0.00000000
5021	Bedford Municipal Gas	1.23419498
5022	City of Bloomfield	0.00044741
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.01183321
5026	City of Clearfield	*
5027	Emmetsburg Municipal Gas	0.41392249
5028	City of Everly	0.00000000
5029	City of Fairbank	0.00000000
5030	Gilmore City Municipal Gas	0.30526744
5031	Graettinger Municipal Gas	0.00142043
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.60496754
5034	Hartley Municipal Gas	0.00000000

REVENUE AND FINANCE DEPARTMENT(cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
5035	Hawarden Municipal Gas	0.06545121
5036	Lake Park Municipal Gas	0.03003025
5037	Lenox Municipal Gas	0.00000000
5038	Lineville City Natural Gas	0.00000000
5039	Lorimor Municipal Gas	0.00570660
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.02094478
5043	Prescott Municipal Gas	0.00000000
5044	Preston Municipal Gas	0.08508487
5055	Remsen Municipal Gas	0.15748331
5056	Rolfe Municipal Gas	0.06268578
5057	Sabula Municipal Gas	0.00979036
5058	Sac City Municipal Gas	0.10503676
5059	Sanborn Municipal Gas	0.02934310
5060	Sioux Center Municipal Gas	0.01486044
5061	Tipton Municipal Gas	0.03312586
5062	Titonka Municipal Gas	*
5063	Waukee Municipal Gas	0.02466113
5064	Wellman Municipal Gas	*
5065	Whittemore Municipal Gas	*
5066	Woodbine Gas	0.25535122

* No rate provided to the Department by the Municipal

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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 421.17(19) and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 71, "Assessment Practices and Equalization," Chapter 73, "Property Tax Credit and Rent Reimbursement," Chapter 74, "Mobile, Modular, and Manufactured Home Tax," Chapter 75, "Property Tax Administration," Chapter 77, "Determination of Value of Utility Companies," Chapter 78, "Property Tax Exemptions," Chapter 79, "Real Estate Transfer Tax and Declarations of Value," and Chapter 80, "Property Tax Credits and Exemptions," Iowa Administrative Code.

Item 1 adds Iowa Code chapter 499B, "Horizontal Property (Condominiums)," to the parenthetical implementation for rule 701—71.1(405,427A,428,441).

Item 2 specifies that condominiums are to be classified as residential real estate through the 2004 assessment year if used for human habitation pursuant to a horizontal property regime declaration and recorded prior to January 1, 1999.

Items 3, 6, 13, 16, 20, 22, 24, and 29 amend implementation clauses.

Item 4 changes the time limit for the county treasurer to make an omitted assessment from four to two years.

Item 5 authorizes the Director of Revenue and Finance to make omitted assessments within two years of the date the assessment should have been made.

Item 7 deletes the requirement that the claimant reside in Iowa during the entire base year (January-December) to qualify for the tax credit or rent reimbursement. It also provides that if a property is occupied by more than one eligible person, each person may file a claim based on each person's income and each person's share of the property taxes or rent paid.

Item 8 allows the Department of Revenue and Finance to release information contained on a rent reimbursement claim to the Department of Inspections and Appeals.

Item 9 redefines "household" to include only the claimant and the claimant's spouse and excludes related persons living with them.

Items 7, 10, and 12 provide that the income ceiling for the rent reimbursement, property tax credit, special assessment credit, and mobile home reduced tax rate will be adjusted upward each year to account for inflation.

Item 11 permits a claim to be filed in behalf of a deceased claimant even though the claimant died during the base year.

Item 12 deletes the requirement that the claimant for a mobile home reduced tax rate intend to occupy the home for six months or more during the fiscal year in which the taxes are payable. The claimant need only occupy the home at the time the claim is filed.

Item 14 permits the county treasurer to hold the annual tax sale on a date other than the third Monday in June. Also, it permits the county board of supervisors to refund erroneous or illegal taxes collected within two years of the date the tax was paid.

Item 15 redefines "utility company" to include cities that own or operate telephone services.

Items 17, 18, 19, and 30 change Iowa Code references resulting from the Code Editor's renumbering of the property tax exemptions contained in Iowa Code section 427.1.

Item 21 provides that the real estate transfer tax be paid in each county in which property is located if a sale includes parcels of property located in more than one county. Previously, it had to be paid in only one county.

Item 23 requires a declaration of value to be filed in each county where property is located if the real estate conveyed consists of parcels located in more than one county.

Items 25, 26, and 28 reflect Iowa Code reference changes resulting from the movement of military service tax property tax exemption provisions from Iowa Code chapter 427 to 426A.

Item 27 provides that members of the Iowa national guard and reservists with 20 years of service after January 28, 1973, are eligible for the military service property tax exemption. Also, they are eligible if activated for federal duty for a minimum of 90 days.

Item 31 provides a property tax exemption for storm shelters located in mobile home parks.

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 January 2, 2000, to the Policy Section, Compliance Division, Department of Reve-

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

nue 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 January 21, 2000. 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 January 14, 2000.

These amendments are intended to implement 1999 Iowa Acts, House Files 417, 755, 757, 758, and 769 and Senate Files 53, 136, 392, 462, and 473.

The following amendments are proposed.

ITEM 1. Amend rule 701—71.1(405,427A,428,441), parenthetical implementation, as follows:

701—71.1(405,427A,428,441,*499B*) Classification of real estate.

ITEM 2. Amend subrules 71.1(4) and 71.1(5) as follows:

71.1(4) Residential real estate. Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods. Residential real estate located on agricultural land shall include only buildings as defined in this subrule. Buildings for human habitation that are used as commercial ventures, including but not limited to hotels, motels, rest homes, condominiums, and structures containing three or more separate living quarters shall not be considered residential real estate. However, regardless of the number of separate living quarters, condominiums not used as commercial ventures, multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be considered residential real estate. Effective January 1, 2000, property shall be classified as residential real estate if a majority of the condominiums are or will be used for residential purposes and have been sold, are available for sale, or are being rented, but the primary intent of the owner is to sell the units. For example, a building containing 25 condominiums of which 22 have been sold, are available for sale, or are being rented, but the primary intent of the owner is to sell the units, shall be classified as residential real estate. If more than one building is included in the horizontal property regime, the number of condominiums shall be combined to determine the majority use. *Condominiums shall be classified as residential real estate through the 2004 assessment year if used or intended for use for human habitation pursuant to a horizontal property regime declaration recorded prior to January 1, 1999, or included in a development plan approved by a city or county in an extension of a horizontal property regime declared prior to January 1, 1999.*

71.1(5) Commercial real estate. Commercial real estate shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services or merchandise is stored or offered for sale at wholesale or retail. Commercial realty shall also include hotels, motels, rest homes, condominiums, structures consisting of three or more separate living quarters and any other buildings for human habitation that are used as a commercial venture. Commercial real estate shall also include data processing equipment as defined in Iowa Code section 427A.1(1)"j," except data processing equipment used in the manufacturing process. However, regardless of the number of separate living quarters or any commercial use of the property, single- and two-family dwellings, multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings used primarily for human habitation and owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be classified as residential real estate, as shall condominiums not used as commercial ventures. Effective January 1, 2000, property shall be classified as commercial real estate if a majority of the condominiums are being used as a business or used for residential purposes and not sold, not available for sale, or are rented and the primary intent of the owner is to continue renting rather than sell the units. For example, a building containing 25 condominiums of which 22 are being used as businesses or used for residential purposes and not sold, not available for sale, or are rented and the primary intent of the owner is to continue renting rather than sell the units, is to be classified as commercial real estate. If more than one building is included in the horizontal property regime, the number of condominiums shall be combined to determine the majority use. *Condominiums shall be classified as residential real estate through the 2004 assessment year if used or intended for use for human habitation pursuant to a horizontal property regime declaration recorded prior to January 1, 1999, or included in a development plan approved by a city or county in an extension of a horizontal property regime declared prior to January 1, 1999.*

ITEM 3. Amend rule **701—71.1(405,427A,428,441)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 405.1, 427A.1, 428.4, 441.21, ~~and~~ 441.22, *and 499B.11 as amended by 1999 Iowa Acts, chapter 187.*

ITEM 4. Amend paragraph **71.25(2)"c"** as follows:

c. County treasurer. The county treasurer may make an omitted assessment within ~~four~~ *two* years from the date the tax list which should have contained the assessment should have been delivered to the county treasurer. For example, for the ~~1985~~ *1999* assessment year, the tax list is to be delivered to the county treasurer on or before June 30, ~~1986~~ *2000*. Thus, the county treasurer may make an omitted assessment for the ~~1985~~ *1999* assessment year at any time on or before June 30, ~~1990~~ *2002*. ~~However, the~~ *The* county treasurer may make an omitted assessment of a building even if taxes levied against the land upon which the building is located have been paid or legally discharged. See Okland v. Bilyeu, 359

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

N.W.2d 412, 417 (Iowa 1984). The county treasurer may not make an omitted assessment if the omitted property is no longer owned by the person who owned the property on January 1 of the year the original assessment should have been made.

ITEM 5. Amend subrule **71.25(2)** by adopting the following **new** paragraph **"d"**:

d. Director of revenue and finance. The director of revenue and finance may make an omitted assessment of any property assessable by the director at any time within two years from the date the assessment should have been made.

ITEM 6. Amend rule **701—71.25(441,443)**, implementation clause, as follows:

This rule is intended to implement Iowa Code *chapter 440 and* ~~section~~ *sections* 443.6 *through 443.15 as amended by 1999 Iowa Acts, chapter 174.*

ITEM 7. Amend rule 701—73.1(425) as follows:

701—73.1(425) Eligible claimants. The property tax credit and rent reimbursement programs are available to claimants who: (1) were at least 23 years of age or a head of household on December 31 of the base year, (2) were not or will not be claimed as a dependent on another person's federal or state income tax return for the base year in the case of a claimant who is not disabled or at least 65 years of age, (3) did not have household income *in excess* of ~~$16,500~~ *the indexed amount determined pursuant to Iowa Code section 425.23(4)* ~~or more~~ during the base year, *and* (4) ~~were domiciled in Iowa during the entire base year, and (5)~~ are domiciled in Iowa at the time the claim is filed or were at the time of the claimant's death.

In the case of a claim for rent reimbursement, the claimant must have occupied and rented the property during any part of the base year. In the case of a claim for property tax credit, the claimant must have occupied the property during any part of the fiscal year beginning July 1 of the base year.

If a homestead is occupied by two or more eligible claimants, each person may file a claim based upon each person's income and each person's share of the rent paid or property taxes due.

The computed credit or reimbursement shall be determined in accordance with the applicable schedule provided in Iowa Code section 425.23(1) *as adjusted by the indexed amount determined in section 425.23(4).*

This rule is intended to implement Iowa Code section 425.17(2) *as amended by 1999 Iowa Acts, chapter 152* and ~~Iowa Code~~ section 425.23~~(1) as amended by 1998 Iowa Acts, House File 2513~~, and is effective for property tax credit and rent reimbursement claims filed on or after January 1, ~~1999~~ *2000.*

ITEM 8. Amend rule 701—73.10(425) as follows:

701—73.10(425) Confidential information. Income tax information contained on a property tax credit ~~or rent reimbursement~~ claim form is confidential except that the information may be conveyed by the department of revenue and finance to county treasurers for purposes of eligibility verification for tax credit claims. *Information contained on a rent reimbursement claim form is confidential except that the information may be released to an employee of the department of inspections and appeals to assist in the performance of an audit or investigation.* See rule 701—6.3(17A).

This rule is intended to implement Iowa Code section 425.28 *as amended by 1999 Iowa Acts, chapter 139.*

ITEM 9. Amend rule 701—73.14(425) as follows:

701—73.14(425) Household. Household includes the claimant~~,~~ *and* the claimant's spouse ~~and any person related to the claimant or spouse by blood, marriage or adoption and~~ *if* living with the claimant at any time during the base year. "Living with" does not include a temporary visit. *Only one claimant per household is entitled to a credit or reimbursement.*

This rule is intended to implement Iowa Code section 425.17*(5) as amended by 1999 Iowa Acts, chapter 152, and section 425.22.*

ITEM 10. Amend subrule 73.27(3) as follows:

73.27(3) Special assessment credit qualifications. No special assessment credit claim shall be allowed pursuant to Iowa Code section 425.23(3) unless at the time the application for credit is filed the property upon which the levy is made includes a homestead dwelling as defined in Iowa Code section 425.17(4) and the claimant's household income does not exceed ~~$8,500~~ *the indexed amount determined pursuant to Iowa Code section 425.23(4).*

ITEM 11. Amend rule 701—73.29(425) as follows:

701—73.29(425) Deceased claimant. A claim for property tax credit or rent reimbursement may be filed on behalf of a deceased person by the person's spouse, attorney, guardian or the executor or administrator of the person's estate ~~provided such person's death occurred subsequent to the base year.~~

This rule is intended to implement Iowa Code ~~sections~~ *section* 425.17~~(5)~~ *(2) as amended by 1999 Iowa Acts, chapter 152,* and *section* 425.18.

ITEM 12. Amend subrules 74.4(2) and 74.4(3) as follows:

74.4(2) Income. In determining eligibility for the reduced tax rate, the claimant's income and that of the claimant's spouse shall be the income received during the base year, or the income tax accounting period ending during the base year, and must be less than ~~$16,500~~ *the indexed amount determined pursuant to Iowa Code section 435.22(2).* The base year is the calendar year immediately preceding the year in which the claim is filed.

74.4(3) Claims. Claims for the reduced tax rate must be filed with the county treasurer on or before June 1 immediately preceding the fiscal year during which the taxes are due ~~and must contain an affidavit that the claimant intends to occupy the home for six months or more during the fiscal year.~~ The county treasurer may extend the time for filing a claim for reduced tax rate through September 30 of the same year. The director of revenue and finance may also extend the time for filing a claim through December 31 if good cause exists. Late reduced tax rate claims will be reimbursed by the director directly to the claimant upon proof of tax payment. The claimant must own and occupy the home at the time the claim for credit is filed, *or if deceased at the time of the claimant's death,* or if a late claim, ~~own and occupy the home~~ on June 1 of the claim year. The claim forms shall be provided by the department of revenue and finance.

ITEM 13. Amend rule **701—74.4(435)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 435.22 as amended by ~~1998~~ *1999* Iowa Acts, ~~House File 2513~~ *chapter 152,* and is effective for reduced tax rate claims filed on or after January 1, ~~1999~~ *2000.*

ITEM 14. Adopt the following **new** rules:

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

701—75.6(446) Tax sale. The county treasurer shall hold the annual tax sale on the third Monday in June. If, for good cause, the treasurer is unable to hold the tax sale on that date, the treasurer may designate a different date in June for the sale.

This rule is intended to implement Iowa Code section 446.7 as amended by 1999 Iowa Acts, chapter 4, section 1.

701—75.7(445) Refund of tax. The board of supervisors shall order the county treasurer to refund taxes found to have been erroneously or illegally collected. A claim for refund must be presented to the board within two years of the date the tax was due or if appealed within two years of the final decision.

This rule is intended to implement Iowa Code section 445.60 as amended by 1999 Iowa Acts, chapter 174, section 6.

ITEM 15. Amend subrule 77.1(1) as follows:

77.1(1) The term "utility company" shall mean and include all persons engaged in the operating of gasworks, waterworks, telephones, including telecommunication companies *and cities that own or operate a municipal utility providing local exchange services pursuant to Iowa Code chapter 476*, pipelines, electric transmission lines, and electric light or power plants, as set forth in Iowa Code chapters 428, 433, 437, and 438.

ITEM 16. Amend rule **701—77.1(428,433,437,438)**, implementation clause, as follows:

This rule is intended to implement Iowa Code chapters 428, ~~433,~~ 437, and 438*; section 433.12 as amended by 1999 Iowa Acts, chapter 63;* and Iowa Code section 476.1D(10) ~~as amended by 1995 Iowa Acts, House File 518~~.

ITEM 17. Amend subrule 78.1(1) as follows:

78.1(1) The assessor shall determine the taxable status of all property. If an application for exemption is required to be filed under Iowa Code subsection 427.1~~(23)~~ *(14)*, the assessor shall consider the information contained in the application in determining the taxable status of the property. The assessor may also request from any property owner or claimant any additional information necessary to the determination of the taxable status of the property. However, the assessor shall not base the determination of the taxable status of property solely on the statement of objects or purposes of the organization, institution, or society seeking an exemption. The use of the property rather than the objects or purposes of the organization, institution, or society shall be the controlling factor in determining the taxable status of property. (Evangelical Lutheran G.S. Society v. Board of Review of Des Moines, 200 N.W.2d 509; Northwest Community Hospital v. Board of Review of Des Moines, 229 N.W.2d 738.)

ITEM 18. Amend subrule **78.4(1)**, introductory paragraph and paragraph **"e,"** to read as follows:

78.4(1) Each society or organization seeking an exemption under Iowa Code section 427.1~~(6)~~ *(5)*, 427.1~~(9)~~ *(8)*, or 427.1~~(34)~~ *(21)* shall file with the appropriate assessor a statement containing the following information:

e. If the exemption is sought under Iowa Code subsection 427.1~~(9)~~ *(8)*, the appropriate objects of the society or organization.

ITEM 19. Amend subrules 78.4(2), 78.4(3), and 78.4(4) as follows:

78.4(2) The statement of objects and uses required by Iowa Code subsection 427.1~~(23)~~ *(14)* shall be filed only on forms prescribed by the director of revenue and finance and made available by assessors.

78.4(3) Applications for exemptions required under Iowa Code subsection 427.1~~(23)~~ *(14)* must be filed with the assessor not later than ~~July 1~~ *April 15* of the year for which the exemption is requested.

78.4(4) If a properly completed application is not filed by ~~July 1~~ *April 15* of the assessment year for which the exemption would apply, no exemption shall be allowed against the property. (1964 O.A.G. 437.)

ITEM 20. Amend rule **701—78.4(427)**, implementation clause, as follows:

This rule is intended to implement Iowa Code subsection 427.1~~(23)~~ *(14) as amended by 1999 Iowa Acts, chapter 151, section 41*.

ITEM 21. Amend rule 701—79.1(428A) by adopting the following **new** subrule:

79.1(6) Multiple parcels. If the real estate conveyance contains multiple parcels, the tax is to be paid to each county in which the property is located based on the consideration paid for each property.

ITEM 22. Amend rule **701—79.1(428A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code chapter 428A *as amended by 1999 Iowa Acts, chapter 175*.

ITEM 23. Amend rule 701—79.5(428A) by adopting the following **new** subrule:

79.5(6) Multiple parcels. Separate declarations of value are to be submitted to each county recorder if the real estate conveyed consists of parcels located in more than one county. The consideration paid for each property must be separately stated on the declaration of value or the recorder shall refuse to record the instrument of conveyance.

ITEM 24. Amend rule **701—79.5(428A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 428A.1, 428A.2, and 428A.4 *as amended by 1999 Iowa Acts, chapter 175*.

ITEM 25. Amend rule 701—80.2(426A,427), parenthetical implementation, as follows:

701—80.2(426A,~~427~~) Military service tax exemption.

ITEM 26. Amend subrule **80.2(1)**, paragraph **"a,"** as follows:

a. No military service tax exemption shall be allowed unless the first application for the military service tax exemption is signed by the owner of the property or the owner's qualified designee and filed with the city or county assessor on or before July 1 of the current assessment year (1970 O.A.G. 437). Once filed, the claim for exemption is applicable to subsequent years and no further filing shall be required provided the claimant or the claimant's spouse owns the property on July 1 of each year. The assessor, county auditor, and county board of supervisors shall act on the claim in accordance with Iowa Code section 427.6 *as amended by 1999 Iowa Acts, chapter 151, section 88*. A claim filed after July 1 of any calendar year applies to the following assessment year.

ITEM 27. Amend paragraph **80.2(2)"c"** as follows:

c. ~~In order to be eligible for a military service tax exemption, the veteran must have served on active duty for purposes other than training. A person whose active duty service consisted solely of training shall not be eligible for the~~

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~~exemption. (Jones v. Iowa State Tax Commission, 247 Iowa 530,74 N.W.2d 563, 567-1956; 1980 O.A.G. 80-10-7)~~ *Former members of the United States armed forces must have served on active duty during one of the war or conflict time periods enumerated in 1999 Iowa Acts, chapter 180, section 2. There is no minimum number of days a former member of the armed forces of the United States must have served on active duty. Former members of the Iowa national guard and reserve forces of the United States need not have performed any active duty if they served at least 20 years after January 28, 1973. Otherwise, they must have been activated for federal duty, for purposes other than training, for a minimum of 90 days. Also, it is not a requirement for a member of the Iowa national guard or a reservist to have performed service within a designated war or conflict time period.*

ITEM 28. Amend subrule **80.2(2)**, paragraphs **"e"** and **"g,"** to read as follows:

e. As used in Iowa Code subsection 427.4(3) *as amended by 1999 Iowa Acts, chapter 151*, the term minor child means a person less than 18 years of age or less than 21 years of age and enrolled as a full-time student at an educational institution.

g. The person claiming a military service tax exemption must be an Iowa resident. However, the veteran need not be an Iowa resident if such person's exemption is claimed by a qualified individual enumerated in Iowa Code section 427.4 *as amended by 1999 Iowa Acts, chapter 151*. (1942 O.A.G. 140)

ITEM 29. Amend rule **701—80.2(426A,427)**, implementation clause, as follows:

This rule is intended to implement Iowa Code chapter 426A and sections 427.3 to 427.6 as amended by ~~1997~~ *1999* Iowa Acts, ~~House Files 266 and 726~~ *chapters 151 and 180*.

ITEM 30. Amend rule 701—80.4(427) as follows:

701—80.4(427) Low-rent housing for the elderly and persons with disabilities.

80.4(1) As used in Iowa Code subsection 427.1(~~34~~) *(21)*, the term "nonprofit organization" means an organization, no part of the net income of which is distributable to its members, directors or officers.

80.4(2) As used in Iowa Code subsection 427.1(~~34~~) *(21)*, the term "low-rent housing" means housing the rent for which is less than that being received or which could be received for similar properties on the open market in the same assessing jurisdiction. Federal rent subsidies received by the occupant shall be excluded in determining whether the rental fee charged meets this definition.

80.4(3) As used in Iowa Code subsection 427.1(~~34~~) *(21)*, the term "elderly" means any person at least 62 years of age.

80.4(4) As used in Iowa Code subsection 427.1(~~34~~) *(21)*, the term "persons with physical or mental disabilities" means a person whose physical or mental condition is such that the person is unable to engage in substantial gainful employment.

80.4(5) The exemption granted in Iowa Code subsection 427.1(~~34~~) *(21)* extends only to property which is both owned and operated by a nonprofit organization. Property either owned or operated by a private person is not eligible for exemption under Iowa Code subsection 427.1(~~34~~) *(21)*.

80.4(6) The income of persons living in housing eligible for exemption under Iowa Code subsection 427.1(~~34~~) *(21)* shall not be considered in determining the property's taxable status.

80.4(7) An organization seeking an exemption under Iowa Code subsection 427.1(~~34~~) *(21)* shall file a statement with the local assessor pursuant to Iowa Code subsection 427.1(~~23~~) *(14)*.

80.4(8) The exemption authorized by Iowa Code subsection 427.1(~~34~~) *(21)* extends only until the original low-rent housing development mortgage on the property is paid in full or expires. If an additional mortgage has been secured, the exemption shall extend only until the original mortgage is paid in full or otherwise discharged.

80.4(9) In complying with the requirements of Iowa Code subsection 427.1(~~23~~) *(14)*, the provisions of rule 701—78.4(427) shall apply.

80.4(10) In determining the taxable status of property for which an exemption is claimed under Iowa Code subsection 427.1(~~34~~) *(21)*, the appropriate assessor shall follow rules 701—78.1(427,441) to 701—78.5(427).

80.4(11) If only a portion of a structure is used to provide low-rent housing units to the elderly and persons with disabilities, the exemption for the property on which the structure is located shall be limited to that portion of the structure so used. The valuation exempted shall bear the same relationship to the total value of the property as the area of the structure used to provide low-rent housing for the elderly and persons with disabilities bears to the total area of the structure unless a better method for determining the exempt valuation is available. *The valuation of the land shall be exempted in the same proportion.*

80.4(12) The property tax exemption provided in Iowa Code subsection 427.1(~~34~~)*(21)* shall be based upon occupancy by elderly or persons with disabilities as of July 1 of the assessment year. However, nothing in this subrule shall prevent the taxation of such property in accordance with the provisions of Iowa Code section 427.19.

This rule is intended to implement Iowa Code subsections 427.1(~~23~~)*(14)* and 427.1(~~34~~)*(21)* ~~*as amended by 1996 Iowa Acts, chapter 1129*~~.

ITEM 31. Adopt the following **new** rule:

701—80.14(427) Mobile home park storm shelter.

80.14(1) Application for exemption. An application for exemption must be filed with the assessing authority by April 15 of the first year the exemption is requested. Applications for exemption are not required in subsequent years if the property remains eligible for exemption.

80.14(2) Eligibility for exemption. The structure must be located in a mobile home park as defined in Iowa Code section 435.1.

80.14(3) Valuation exempted. If the structure is used exclusively as a storm shelter, it shall be fully exempt from taxation. If not used exclusively as a storm shelter, the exemption shall be limited to 25 percent of the structure's valuation.

This rule is intended to implement Iowa Code section 427.1 as amended by 1999 Iowa Acts, chapter 186, section 3.

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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 107, "Local Option Sales and Service Tax," and Chapter 108, "Local Option School Infrastructure Sales and Service Tax," Iowa Administrative Code.

Item 1 proposes new rule 701—107.2(422B) and Item 11 amends 701— 108.5(422E) to provide that the sales of natural gas, electricity and electrical services that are subject to Iowa use tax are also subject to local option taxes. The new rule 701—107.2(422B) in Item 1 also restructures the rule and includes new repeal dates and the notice requirements by the county auditor to the director. Item 2 amends rule 701—107.8(422B) by restructuring the rule and adding a new subrule to include new nexus requirements for imposition of all local option taxes. Item 3 amends rule 701—107.9(422B) by providing that the sales of natural gas, electricity and electrical services that are subject to Iowa use tax are also subject to local option taxes. This amendment also provides that the sales of certain equipment to contractors are exempt from local option tax. Items 4 and 13 amend rule 701—107.10(422B) and 701—108.7(422E) by providing the new date by which an adjustment for local option overpayment must be made. The amendment of 701—107.10(422B) in Item 4 also provides that a certified census may be used in the distribution formula for local option tax. Item 5 amends rule 701—107.14(422B) by setting forth the new requirements of city residency for a county to qualify for imposing local option tax. Items 14 and 15 amend 701—Chapter 108 by adopting new rules 701—108.8(422E) and 701—108.9(422E) which implement the law governing construction contractor refunds and the authority granted under Iowa Code chapter 28E agreements, respectively. Item 8 amends subrules 108.2(3), 108.2(5), and 108.2(6) for the implementation of repeal dates and notice by county auditor requirements, and sets forth that sales of natural gas, electricity and electrical services that are subject to Iowa use tax are also subject to local option taxes. All of the items in this amendment are intended to implement amendments made to Iowa Code chapters 422B and 422E as amended by 1999 Iowa Acts, chapters 151 and 156 which relate to local option taxes.

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 January 2, 2000, 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 January 21, 2000. 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 January 14, 2000.

These amendments are intended to implement 1999 Iowa Acts, chapters 151 and 156.

The following amendments are proposed.

ITEM 1. Rescind rule 701—107.2(422B) and adopt the following **new** rule in lieu thereof:

701—107.2(422B) Local option sales and service tax.

107.2(1) Imposition and jurisdiction. Only a county may impose a tax upon the gross receipts of sales of tangible personal property sold within the county and upon the gross receipts from services rendered, furnished, or performed within the county. The local option sales and service tax may not be imposed by a city except under the circumstances described in rule 107.14(422B). However, the tax may be imposed by a county for transactions in a specified city. The tax may not be imposed on any transaction not subject to state sales tax. Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric services are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option sales and service tax also include local excise tax, and all rules governing the administration and collection of local option sales and service tax are also applicable to local excise tax. With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax. The local sales and service tax may be imposed at any rate of not more than 1 percent. See rule 701— 14.2(422,423) for a tax schedule setting out the combined rate for a state sales tax of 5 percent and a local sales tax of 1 percent. Frequency of deposit and quarterly reports of local option tax with the department of revenue and finance is governed by the retail sales tax provisions found in Iowa Code section 422.52. Local option tax collections shall not be included in the computation of the total tax to determine the frequency of filing under Iowa Code section 422.52.

The local option sales and service tax can be imposed upon the unincorporated area of any county only if a majority of those voting in the area favor its imposition. The tax can be imposed upon any incorporated area within a county only if a majority of those voting in that area favor its imposi-

tion. All cities within a county contiguous to each other must be treated as part of one incorporated area, and tax can be imposed in such an incorporated area only if the majority of persons voting in the total area covered by the contiguous cities favor imposition of the tax. For the purposes of this rule, the local option sales and service tax can only be imposed in those areas specified in the ordinance of a county board of supervisors which imposes the tax.

107.2(2) Procedures for implementing and repealing the tax.

a. Implementing the tax. The ballot proposition imposing the tax shall specify the type and rate of the tax and other items set forth in Iowa Code section 422B.1. Effective April 1, 2000, the date of imposition of the tax must occur on either January 1 or July 1, but cannot be earlier than 90 days from the date of the election in which a majority of those voting on the tax favored its imposition. Within 10 days of the favorable election, the county auditor must give written notice of the election by sending a copy of the abstract of ballot from the favorable elections to the director of revenue and finance. For the purposes of this rule, the "abstract of ballot" is defined as abstract of votes as provided in 721—21.800(4).

b. Repeal of the tax. A county that has imposed a local option tax may have the tax repealed. Repeal of the tax in an unincorporated area or an incorporated city area may occur either by the board of supervisors' acting upon its own motion or by the board's acting on a motion submitted by the governing body of an incorporated area asking for the repeal. The repeal is effective on the later of the date of the adoption of the motion of repeal or the earliest date set forth in Iowa Code section 422B.9(1).

Effective April 1, 2000, tax shall only be repealed on June 30, or December 31, but not sooner than 90 days following the favorable election if one is held. If the tax has been imposed prior to April 1, 2000, and at the time of election a date for the repeal was specified on the ballot, the tax may be repealed on that date despite the dates previously set forth.

This rule is intended to implement Iowa Code sections 422B.1 and 422B.8 as amended by 1999 Iowa Acts, chapter 151, section 31, and Iowa Code section 422B.9 as amended by 1999 Iowa Acts, chapter 156.

ITEM 2. Amend rule 701—107.8(422B) as follows:

701—107.8(422B) Contacts with county necessary to impose collection obligation upon a retailer.

107.8(1) Nexus requirements for retailers prior to July 1, 1999. Before any retailer can be required to collect the local option sales or service tax, certain minimal connections must exist between the county imposing the tax and the retailer. These connections are required by the due process clause of the Fourteenth Amendment and the commerce clause of the United States Constitution. Basically, for due process purposes, the retailer must be purposefully directing its activities at the county's residents in such a way that the retailer is availing itself of an economic market in the county. Maintaining any sort of office, sending any solicitor or salesperson, whether independent contractor or employee, transporting property which the retailer sells into the county in the retailer's own vehicle, or continuous solicitation of business within a county, are nonexclusive examples of purposefully directed activities for which the obligation to collect local option sales tax can be imposed upon a retailer. Quill Corporation v. North Dakota, 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992). An Iowa retailer's physical presence within a county is no longer necessary to require the retailer to collect the county's local option tax. However, a retailer located outside the state of Iowa that does not have a physical presence in the county imposing the local option tax cannot be required, under the commerce clause of the United States Constitution, to collect this state's local option sales tax; Quill, supra. Such physical presence in the county exists if it occurs through the retailer's presence or by the presence of independent contractors who act on behalf of the retailer. A retailer that sells to a purchaser that possesses a valid direct pay permit issued by the department need not collect local option sales or service tax from the purchaser. Instead, the purchaser must remit tax directly to the department. However, a retailer should obtain a valid exemption certificate from the purchaser for the tax not collected. For further details regarding direct pay permits see rule 701—12.3(422) and for further details regarding exemption certificates see rule 701—15.3(422,423).

EXAMPLES A to E. No change.

The "connections" with a county described in this rule are not to be confused with the concepts of "sale" and "delivery" mentioned in rule 107.3(422B) above. A retailer may have connections with a county imposing a local option sales tax significant to the point that the county can, constitutionally, require the retailer to collect its tax if the retailer sells goods or performs taxable services within the county. However, if the retailer neither sells goods nor performs services within that county, the retailer cannot be forced to collect a tax there. Conversely, if a retailer delivers (and thus sells) goods in a county imposing a local option sales tax, but does not have the connections described in this rule with that county, then the retailer cannot be made to collect that county's local option tax even if it is making sales of goods there. It is only very rarely, if ever, that a retailer would be performing services within a county but would not have the connections with that county necessary to require the retailer to collect its tax.

107.8(2) Nexus requirements for retailers effective on and after July 1, 1999. Effective on and after July 1, 1999, to be obligated to collect a local option tax imposed by a jurisdiction, a retailer must have physical presence within that local option jurisdiction and "delivery," as defined in rule 107.3(422B), must occur within the jurisdiction. A retailer is considered to have physical presence within a local option tax jurisdiction if the retailer has, among other things, an employee or a representative or a site owned, leased or rented within the jurisdiction. For additional information see the definition of "retailer" as provided in Iowa Code sections 422.42(13) and 423.1(8). See rule 701—30.1(423) for a list of other activities which will create nexus for local option tax purposes.

Rules 107.1(422B) to 107.8(422B) are intended to implement Iowa Code section 422.53 ~~as amended by 1997 Iowa Acts, House File 266,~~ and Iowa Code chapter 422B *as amended by 1999 Iowa Acts, chapter 156.*

ITEM 3. Amend rule 701—107.9(422B) as follows:

701—107.9(422B) Sales not subject to local option tax, including transactions subject to Iowa use tax. The local option sales and service tax is imposed upon the same basis as the Iowa state sales and service tax, with ~~seven~~ *eight* exceptions:

1. to 7. No change.

8. Certain construction-related equipment and other items are exempt.

The general application of this exception is as follows: The gross receipts from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attach-

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ments that are customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts, and that are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures are exempt from local option sales tax.

The following definitions apply to this rule:

"Directly used" includes equipment used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. To determine if equipment is "directly used," one must first ensure that the equipment is used during the specified activity and not before that process has begun or after it has ended. If the machinery or equipment is used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, to be "directly used," it must constitute an integral and essential part of such activity as distinguished from a use in such an activity that is incidental, merely convenient, or is remote. The fact that machinery or equipment is essential or necessary to new construction, reconstruction, alterations, expansion, or remodeling of real property or structures does not mean that it is also "directly used" in such an activity. Machinery or equipment may be necessary to one of these previously mentioned activities, but so remote from it that it is not directly used in the activity.

In determining whether machinery or equipment is used directly, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment whose direct use is unarguable. The closer the machinery or equipment whose direct use is questionable is to the machinery or equipment whose direct use is not questionable, the more likely it is that the former is directly used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

2. The proximity in time of the use of machinery or equipment whose direct use is questionable to the use of machinery whose direct use is not questionable. The closer in time the use, the more likely that the questionable machinery or equipment's use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in the activities at issue.

"Equipment" means tangible personal property (other than a machine) directly and primarily used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. "Equipment" may be characterized as property which performs a specialized function, which, of itself, has no moving parts, or if it does possess moving parts, its source of power is external to it.

"Primarily used" includes machinery and equipment utilized in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. Machinery or equipment is "primarily used" in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures if more than 50 percent of the total time the machinery or equipment is used in the activity at issue (new construction, reconstruction, alterations, expansion, or remodeling of real property or structures). If a unit of machinery or equipment is used more than 50 percent of the time for the activity at issue and the balance of time for other business purposes, the exemption applies. If a unit of machinery or equipment is used 50 percent or more of the time for business purposes and not being used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, the exemption does not apply.

"Real property" includes the earth, the ground, a building, structure and other tangible personal property incorporated into the ground or a building that becomes a part of the ground, structure or the building if removal of the property from the ground or building will substantially damage the property, ground, or building or substantially diminish the value of the property, ground, or building. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. Mid-American Growers, Inc. v. Dept. of Revenue, 493 N.E.2d 1097 (Ill. App. Ct. 1986). Instead, a building or structure that is affixed to the ground is considered to be real property. Fence posts embedded in concrete and electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. A test which can be applied to differentiate between equipment and real property is the following: If property is sold to a contractor, and the retailer would be required to consider the property "building material" and charge the contractor sales tax upon the purchase of this building material, then sale of the property is not exempt from local option tax.

"Replacement parts" means those parts essential to any repair or reconstruction necessary to self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of such equipment or equipment's exempt use in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. "Replacement parts" does not include attachments and accessories not essential to the operation of the machinery or equipment itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air-conditioning units, cabs, deluxe seats, and tools or utility boxes.

"Self-propelled building equipment" has the same meaning as that in 701—subrule 17.9(5), paragraph "c," where the term is defined as an implement which is capable of movement from one place to another under its own power. "Self-propelled building equipment" includes, but is not limited to, skid-loaders, earthmovers and tractors.

Since the local option tax is imposed only on the same basis and not on any greater basis than the Iowa sales and service tax, local option tax is not imposed on any transactions subject to Iowa use tax, including use tax applicable to vehicles subject to registration or subject only to the issuance of a certificate of title. *However, effective May 1, 1999, if a transaction involves the use of natural gas, natural gas service, electricity, or electric service, then local excise tax is imposed on the same basis as Iowa use tax under Iowa Code chapter 423. Local excise tax is to be collected and administered in the same manner as local option sales and service tax. Except as otherwise provided in this chapter, all rules governing local option sales and service tax also apply to local excise tax.* Also, exemptions which are applicable only

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to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax.

When tangible personal property is sold within a local option sales tax jurisdiction and the seller is obligated to transport it to a point outside Iowa or to transfer it to a common carrier or to the mails or parcel post for subsequent movement to a point outside Iowa, gross receipts from the sale are exempt from local option sales tax provided the property is not returned to any point within Iowa except solely in the course of interstate commerce or transportation. (Iowa Code subsection 422.45(46).) Property sold in a local option sales tax jurisdiction for subsequent transport to a point outside the jurisdiction but otherwise within the borders of Iowa is not exempt from tax.

Any limitation upon the right of a subdivision of the state to impose a sales or service tax upon a transaction is not applicable to the local option sales and service tax if the statute which contains the limitation has an effective date prior to July 1, 1985. As a nonexclusive example, a county is not prohibited from imposing a local option sales tax upon the gross receipts from sales of cigarettes or tobacco products which are subject to state sales tax.

This rule is intended to implement Iowa Code section 422B.8 *as amended by 1999 Iowa Acts, chapter 151, section 30.*

ITEM 4. Amend rule 701—107.10(422B) as follows:

701—107.10(422B) Local option sales and service tax payments to local governments. For periods after July 1, 1997, when a local sales and service tax is imposed, the director of revenue and finance within 15 days of the beginning of each fiscal year shall send to each city or county where the local option tax is imposed, an estimate of the tax moneys each city or county will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months. The director shall remit 95 percent of the estimated monthly tax receipts for the city or county to the city or county on or before August 31 of the fiscal year and the last day of each month thereafter. The director shall remit a final payment of the remainder of tax money due to the city or county for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment. *Effective May 20, 1999, the adjustment for an overpayment which resulted in a previous year will be reflected beginning with the November payment.* The shares are to be remitted to the board of supervisors if the tax is imposed in the unincorporated areas of the county, and to each city where the tax is imposed.

Each county's account is to be proportionately distributed to participating governments 75 percent on the basis of the most recent certified federal census population, and 25 percent on the basis of the sum of property tax dollars levied by participating boards of supervisors or by cities for the three years from July 1, 1982, through June 30, 1985.

"The most recent certified federal census" is the final count from the most recent decennial census conducted by the United States Department of Commerce, Bureau of the Census, as modified by subsequent certifications from the United States Bureau of the Census. *If a subsequent certified census occurs which modifies the "most recent certified federal census" for a participating jurisdiction, then the formula set forth in this rule for computations for distribution of the tax shall reflect any population adjustments reported by the subsequent certified census.*

The "sum of property tax dollars levied" by boards of supervisors or city councils for the three years from July 1, 1982, through June 30, 1985, is the amount obtained by using data from county tax rate reports and city tax rate reports compiled by the office of management.

Division of the amount from each county's account to be distributed is done with these steps.

1. The total amount in the county's account to be distributed is first divided into two parts. One part is equal to 75 percent of the total amount to be distributed. The second part is the remainder to be distributed.

2. The part comprised of 75 percent of the total receipts to be distributed is further divided into an amount for each participating city or unincorporated area. This division is based upon the most recent certified federal census population *and any subsequent certified census.* Population for each participating city and unincorporated area is determined separately and totaled. The population for each sales tax imposing city or unincorporated area is divided by the total population to produce a percentage for each city or the unincorporated area. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each government's percentage is multiplied by 75 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

There are two types of certified federal censuses. The first is the usual decennial census, which is always conducted throughout the entire area of any county imposing a local option sales tax.

The second type of certified federal census is the "interim" or "subsequent" census which is conducted between decennial censuses. An interim or subsequent census is not necessarily conducted within an entire county but may be used to count increases or decreases in only one or some of the jurisdictions within that county, for instance, one particular municipality. If an interim census is conducted within only certain participating jurisdictions of a county where a local option sales tax is imposed, the changes in population which that census reflects must be included within both the numerator and the denominator of the fraction which is used to compute the participating jurisdiction's share of the revenue from the county's account which is based on county population. See 1996 O.A.G. 10-22-96 (Miller to Richards). See also Example 3 of this rule for a demonstration of how an interim census can affect a population distribution formula.

3. The remaining 25 percent of the amount to be distributed is further divided based upon property taxes levied. The sum of property tax dollars to be used is the amount levied for the three years from July 1, 1982, through June 30, 1985. Property taxes levied by participating cities or the board of supervisors, if the local sales tax is imposed in unincorporated areas, are to be determined separately then totaled. The property tax amount for each sales tax imposing city and the board of supervisors, if the sales tax is imposed in unincorporated areas, is divided by the totaled property tax to produce a percentage. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each percentage is multiplied by 25 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

4. For each participating city, or the board of supervisors if unincorporated areas of the county participate, the amount determined in "3" is added to the amount found in "2." This amount is then to be remitted to the appropriate local government.

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

In order to illustrate the division of local option sales and ~~services~~ *service* tax receipts, the following examples are provided. The numbers are shown in an attempt to reflect reality but are hypothetical.

EXAMPLES 1 to 3. No change.

Rule 107.10(422B) is intended to implement Iowa Code section 422B.10 as amended by ~~1997~~ *1999* Iowa Acts, ~~House File 729~~ *chapter 151, section 34 and chapter 156, section 14.*

ITEM 5. Amend rule 701—107.14(422B) as follows:

701—107.14(422B) Local option sales and service tax imposed by a city.

107.14(1) On or before January 1, 1998, a city may impose by ordinance of its council a local sales and service tax if all of the following circumstances exist:

a. The city's corporate boundaries include areas of two Iowa counties.

b. All the residents of the city live in one county as determined by the latest federal census preceding the election described in paragraph "c" immediately below. *Effective May 20, 1999, at least 85 percent of the residents of the city must live in one county to qualify.*

c. The county in which the city's residents reside has held an election on the questions of the imposition of a local sales and ~~services~~ *service* tax and a majority of those voting on the question in the city favored its imposition. *Effective May 20, 1999, the city residents must live in the county and have held an election on the question of the imposition of the local sales and service tax and a majority of those voting on the question in the city favored its imposition.*

d. The city has entered into an agreement on the distribution of the sales and ~~services~~ *service* tax revenues collected from the area where the city tax is imposed with the county where such area is located.

107.14(2) Imposition of the tax is subject to the following restrictions:

a. The tax shall only be imposed in the area of the city located in the county where none of its residents reside. *Effective May 20, 1999, the tax shall only be imposed in the area of the city located in the county where not more than 15 percent of the city's residents reside.*

b. The tax shall be at the same rate and become effective at the same time as the county tax imposed in the other area of the city.

c. The tax once imposed shall continue to be imposed until the county-imposed tax is reduced or increased in rate or repealed, and then the city-imposed tax shall also be reduced or increased in rate or repealed in the same amount and be effective on the same date.

d. The tax shall be imposed on the same basis as provided in rule 107.9(422B).

e. The city shall assist the department of revenue and finance to identify the businesses in the area which are to collect the city-imposed tax. The process shall be ongoing as long as the city tax is imposed.

f. The agreement on the distribution of the revenue collected from the city-imposed tax shall provide that 50 percent of such revenue shall be remitted to the county in which the part of the city where the city tax is imposed is located.

This rule is intended to implement Iowa Code chapter 422B *as amended by 1999 Iowa Acts, chapter 156, sections 5 and 6.*

ITEM 6. Amend **701—Chapter 108** by changing "77GA,HF2282" to "422E" wherever it appears.

ITEM 7. Amend rule **701—108.1(422E)**, implementation clause, as follows:

This rule is intended to implement ~~1998 Iowa Acts, House File 2282~~ *Iowa Code chapter 422E.*

ITEM 8. Amend rule 701—108.2(422E) as follows:

Amend subrules 108.2(3), 108.2(5) and 108.2(6) as follows:

108.2(3) Tax rate, election, and repeal. The maximum rate of tax imposed under this rule shall be 1 percent. The tax shall be imposed without regard to any other local sales and service tax authorized under the Iowa Code. The rate of tax may be increased up to 1 percent, decreased, or repealed after an election in which a majority of those voting are in favor of the question of rate change or repeal of the tax. However, the tax cannot be repealed before the tax has been in effect for one year.

The election for a change in the tax rate or repeal of the tax may be called and held under the same conditions as previously set forth for the election imposing the tax. The election may be held not sooner than 60 days following the publication of the notice of the ballot proposition.

Local option school infrastructure sales and service tax is automatically repealed at the expiration of ten years from the date of imposition or a shorter period provided in the ballot proposition.

A local option school infrastructure sales and service tax cannot be repealed or reduced in rate if bond obligations are outstanding unless sufficient funds to pay the principal, interest, and premium, if any, on the outstanding obligation at and prior to maturity have been properly set aside and pledged for that purpose.

For elections held on or after April 1, 2000, the tax may only be imposed with an effective date of either January 1 or July 1, but not sooner than 90 days following the favorable election.

For elections held on or after April 1, 2000, this tax shall be repealed on either June 30 or December 31, but not sooner than 90 days following a favorable election if one is held. If a tax has been imposed prior to April 1, 2000, and at the time of the election a date for repeal was specified on the ballot, the tax may be repealed on that date despite the previously mentioned dates set forth.

108.2(5) Notice of election results. The county ~~board of supervisors~~ *auditor* must give written notice by certified mail to the director of the results of an election in which a majority of those voting on the question favors the imposition, repeal, or change in the rate of the tax, within ten days of the date of the election. *This written notice must consist of a copy of the abstract of ballot from the favorable election. For the purposes of this rule, "abstract of ballot" means abstract of votes as set forth in 721—21.803(4).*

108.2(6) Administration of the tax. The local option school infrastructure sales and service tax is to be imposed on the gross receipts of sales of tangible personal property sold within the local option jurisdiction and upon the gross receipts from services rendered, furnished, or performed within the local option jurisdiction. This tax may only be imposed by a county in the manner set forth previously in this rule. The tax may not be imposed on any transaction not subject to state sales tax. *Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric service are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this*

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

chapter, all references to local option school infrastructure tax also include local excise tax and all rules governing the administration and collection of local option school infrastructure tax are also applicable to local excise tax. For further details, see 701—108.5(~~77GA, HF2282~~ *422E*). *With the exception of the natural gas and electric related transactions previously mentioned,* ~~There~~ *there* is no local option use tax. See rule 701—14.2(422,423) for a tax table setting forth the combined rate for a state sales tax of 5 percent and the local sales tax rate of 1 percent. Frequency of deposits and quarterly reports of local option tax filed with the department of revenue and finance are governed by the retail sales tax provisions found in Iowa Code section 422.52. Local option tax collections shall not be included in the computation of the total tax to determine the frequency of the filing under Iowa Code section 422.52.

~~A~~ *Prior to April 1, 2000, a* local option school infrastructure tax cannot be imposed until 40 days after there has been a favorable election to impose the tax. All local option school infrastructure tax must be imposed ~~either~~ January 1, April 1, July 1, or October 1. The tax can be repealed only on March 31, June 30, September 30, or December 31. However, this tax must not be repealed before the tax has been in effect for one year. *For imposition and repeal date restrictions on or after April 1, 2000, see subrule 108.2(3).*

This rule is intended to implement ~~1998 Iowa Acts, House File 2282, sections 1 and 2~~ *Iowa Code section 422E.2 as amended by 1999 Iowa Acts, chapters 151 and 156.*

ITEM 9. Amend rule **701—108.3(422E)**, implementation clause, as follows:

This rule is intended to implement ~~1998 Iowa Acts, House File 2282, section 3~~ *Iowa Code section 422E.3.*

ITEM 10. Amend rule **701—108.4(422E)**, implementation clause, as follows:

This rule is intended to implement ~~1998 Iowa Acts, House File 2282~~ *Iowa Code chapter 422E.*

ITEM 11. Amend rule 701—108.5(422E) as follows:

701—108.5(422E) Sales not subject to local option tax, including transactions subject to Iowa use tax. The local option sales and service tax for school infrastructure is imposed upon the same basis as the Iowa state sales and service tax. However, like the local option sales and service tax set forth in Iowa Code chapter 422B and department rule 701—107.9(422B), there are sales and services that are subject to Iowa state sales tax, but such sales or services are not subject to local option sales and service tax. Department rule 701—107.9(422B), which governs the sales not subject to local option sales and service tax pursuant to Iowa Code section 422B.8, is incorporated by reference into this chapter and will govern the local option sales and service tax for school infrastructure tax with the following exception:

For transactions prior to May 1, 1999, ~~The~~ *the* gross receipts from the sale of natural gas or electricity in a city or county which are subject to a franchise or user fee are not exempt from the local option school infrastructure sales and service tax.

Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric service are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option school infrastructure tax also include local excise tax, and all rules governing the administration and collection of local option school infrastructure tax are also applicable to local excise tax. With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax.

This rule is intended to implement ~~1998 Iowa Acts, House File 2282, section 3~~ *Iowa Code section 422E.1 as amended by 1999 Iowa Acts, chapter 151, section 36, and Iowa Code section 422E.3 as amended by 1999 Iowa Acts, chapter 151, sections 37 and 38.*

ITEM 12. Amend rule **701—108.6(422E)**, implementation clause, as follows:

This rule is intended to implement ~~1998 Iowa Acts, House File 2282, section 3~~ *Iowa Code section 422E.3.*

ITEM 13. Amend rule 701—108.7(422E) as follows:

Amend the introductory paragraph as follows:

701—108.7(422E) Local option school infrastructure tax payments to school districts. The director of revenue and finance within 15 days of the beginning of each fiscal year shall send to each school district where the local option school infrastructure tax is imposed, an estimate of the tax moneys each school district will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months. The director shall remit 95 percent of the estimated monthly tax receipts for the school district to the school district on or before August 31 of the fiscal year and the last day of each month thereafter. The director shall remit a final payment of the remainder of tax money due for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment. *Effective on or after May 20, 1999, an adjustment for an overpayment that has resulted during the previous fiscal year will be reflected beginning with the November payment.*

Amend the implementation clause as follows:

This rule is intended to implement ~~1998 Iowa Acts, House File 2282, section 3~~ *Iowa Code section 422E.3 as amended by 1999 Iowa Acts, chapter 156, section 19.*

ITEM 14. Amend 701—Chapter 108 by adopting the following **new** rule:

701—108.8(422E) Construction contract refunds. Effective May 20, 1999, and retroactively applied to July 1, 1998, construction contractors may apply to the department for a refund of local option school infrastructure tax paid on goods, wares, or merchandise if the following conditions are met:

1. The goods, wares or merchandise are incorporated into an improvement to real estate in fulfillment of a written contract fully executed prior to the date of the imposition or increase in rate of the local option school infrastructure tax. The refund shall not apply to equipment transferred in fulfillment of a mixed contract.
2. The local option school infrastructure tax must have been effective in the jurisdiction on or after July 1, 1998.
3. The contractor has paid to the department or to a retailer the full amount of the state and local option tax.
4. The claim is filed on forms provided by the department and is filed within six months of the date the tax is paid.

The refund shall be paid by the department from the appropriate school district's account in the local sales and services tax fund.

The penalty provisions contained in Iowa Code section 422B.11(3) apply regarding erroneous application for refund of tax under this chapter.

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

This rule is intended to implement Iowa Code section 422E.3 as amended by 1999 Iowa Acts, chapter 156, section 19.

ITEM 15. Amend 701—Chapter 108 by adopting the following new rule:

701—108.9(422E) 28E agreements. A school district which has imposed the tax under this chapter has the authority to enter into an agreement authorized and defined in Iowa Code chapter 28E with one or more cities whose boundaries encompass all or a part of the area of the school district. Such an agreement will set forth a designated amount of revenues from the tax imposed under this chapter that a city or each city may receive. A city or cities entering into an Iowa Code chapter 28E agreements is authorized to expend its designated portion of taxes imposed under this chapter for any valid purpose permitted and defined under this chapter as a school infrastructure purpose or for any purpose authorized by the governing body of the city.

Effective May 20, 1999, and for taxes imposed under this chapter on or after July 1, 1998, a county whose boundaries encompass all or a part of an area of a school district may enter into an Iowa Code chapter 28E agreement with that school district. The terms of the Iowa Code chapter 28E agreement will designate a portion of tax revenues received from the tax imposed under this chapter that a county is entitled to receive. A county entering into an Iowa Code chapter 28E agreement with a school district in which tax under this chapter has been imposed is authorized to expend its designated portion of such tax revenues to provide property tax relief within the boundaries of the school district located in the county.

Effective May 20, 1999, and for taxes imposed under this chapter on or after July 1, 1998, a school district where local option school infrastructure tax is imposed is also authorized to enter into an Iowa Code chapter 28E agreement with another school district which is located partially or entirely in or is contiguous to the county where the tax is imposed. The school district shall only expend its designated portion of the local option school infrastructure revenues for infrastructure purposes.

This rule is intended to implement Iowa Code section 422E.4 as amended by 1999 Iowa Acts, chapter 156, section 20.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Michael K. Guttau, and Auditor of State Richard D. Johnson have established today the following rates of interest for public obligations and special assessments. The usury rate for November is 8.00%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants ..... Maximum 6.0%
74A.4 Special Assessments ..... Maximum 9.0%

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective November 12, 1999, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days ..... Minimum 4.70%
32-89 days ..... Minimum 5.00%
90-179 days ..... Minimum 5.10%
180-364 days ..... Minimum 5.20%
One year ..... Minimum 5.30%
Two years or more ..... Minimum 5.65%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

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:

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, 1999 — November 30, 1999	8.00%
December 1, 1999 — December 31, 1999	8.00%

ARC 9490A

CORRECTIONS DEPARTMENT[201]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 904.207, the Department of Corrections hereby amends Chapter 20, "Institutions Administration," Iowa Administrative Code.

These amendments are intended to make several technical corrections as well as two significant changes, which include reducing the capacity level at the Mitchellville program from 60 to 30 and the Newton program from 100 to 80 and extending the length of legal commitment from 60 days up to six months.

This program provides intensive and highly structured treatment designed to divert offenders that have violated the terms and conditions of correctional supervision to prevent long-term incarceration or return to incarceration.

It has been determined by the Department and the Department of Correctional Services and validated by national research that the current maximum length of 60 days is insufficient time to provide the necessary treatment for return to the community. The short-term treatment creates concerns for the risk and threat to public safety.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because of the immediate need for the rule changes.

Because of the risk to public safety, the Department finds that, pursuant to Iowa Code section 17A.5(2)"b"(3), the normal effective date should be waived and these amendments should be effective on November 4, 1999, as they confer a benefit to the public as well as the offenders.

These amendments are also being published herein under Notice of Intended Action as **ARC 9491A** to allow public comment.

These amendments were approved by the Department on November 2, 1999.

These amendments became effective November 4, 1999.

These amendments are intended to implement Iowa Code section 904.207.

The following amendments are adopted.

Amend rule 201—20.18(904) as follows:

201—20.18(904) Violator programs. The department of corrections provides violator programs at two institutions: ~~60~~ *30* female beds at the Iowa correctional institution for women (ICIW) at Mitchellville and ~~100~~ *80* male beds at the correctional release center (CRC) at Newton. These programs ~~require up to a 60-day confinement~~ *provide up to a six-month confinement* for probation, parole, and work release offenders that have violated conditions of supervision and would otherwise have been returned to or sent to prison.

20.18(1) The violator programs provide *up to a six-month* intensive, highly structured~~, six- to eight-week~~ treatment program ~~(maximum 60 days)~~ designed to divert certain offenders from ~~imminent longer~~ *long*-term incarceration.

20.18(2) "Violator" means probationer, parolee, or work releasee not having ~~had their~~ community status revoked but found to have violated conditions of supervision by the appropriate jurisdiction having statutory authority to revoke.

20.18(3) Offenders will be committed to a violator program pursuant to ~~the provision of~~ Iowa Code section 904.207.

20.18(4) All probation offenders committed to a violator program shall be admitted to the Iowa medical and classification center (IMCC) reception unit. Upon admittance to IMCC, the transporting authority shall provide the receiving officer with~~:~~ a court order disposing of the violation~~,~~ *(including commitment to the custody of the director and stating violator program participation is a condition of probation)*~~;~~, mittimus~~;~~, case origination documents~~;~~, indictment or information documents~~;~~, minutes of testimony~~;~~, and judgment entry.

20.18(5) All parole or work release offenders committed to a violator program shall enter the program through the IMCC reception unit.

The violator program shall be a condition of release, and the offender will remain in the custody of the department of corrections under the terms of the offender's original commitment.

20.18(6) Admission standards.

a. Reception process at IMCC, including medical intake screen, will normally be completed within seven days.

b. If further medical testing or treatment is necessary, transfer to the violator program may be delayed until ~~such time as the~~ additional testing or treatment is completed and the offender's health status permits transfer.

c. The department may deny admission to a violator program if the offender is medically unable to complete the program *or if an offender's mental health status prohibits participation.*

d. Offenders will not be allowed any personal property with the exception of clothing being worn at the time of admission to the IMCC reception unit. Other property will not be accepted by the IMCC receiving officer.

20.18(7) Release standards.

a. Upon successful completion of a violator program, offenders will be referred to the sending or supervising judicial district department of correctional services.

b. An offender that does not successfully complete the violator program will be returned to the sending or supervising judicial district department of correctional services for disposition.

20.18(8) An offender placed in a violator program will not be granted all the privileges and rights or may not be subject to certain requirements established in *Iowa Administrative Code* 201—Chapter 20. The following paragraphs establish which rules of *Iowa Administrative Code* 201—Chapter 20 that violators will or will not be subject to:

a. Rule 20.1(904)—Application of rules. Will not apply to violator programs except as otherwise stated.

b. Rule 20.2(904)—Title II definitions. Will apply only where listed in the following applicable rules.

c. Rule 20.3(904)—Visits to inmates. Offenders will not be allowed visits except individuals determined by staff and only in conjunction with participation in the family treatment component. Attorney and clergy visits must be scheduled in advance so as to not conflict with program schedules. Exceptions may be authorized by the warden.

d. Rule 20.4(904)—Mail. Offenders will be allowed mail privileges pursuant to rule 20.4(904) with the following exceptions:

(1) There will be no limit on the amount of incoming mail although program policy may limit the amount of mail that can be stored or maintained in the living area.

(2) Offenders will not receive an allowance and will not be allowed to receive outside source moneys. Therefore, offenders will be provided writing materials and postage for two letters per week.

CORRECTIONS DEPARTMENT[201](cont'd)

(3) Packages and publications will not be allowed.

e. Rule 20.5(904)—Gifts to inmates. Offenders will not be granted any of the privileges of rule 20.5(904).

f. Rule 20.6(904)—Publications. Offenders will not be granted any of the privileges or rights of rule 20.6(904).

g. Rule 20.7(904)—Interviews and statements. ~~Rule 20.7(904)~~ *This rule* may apply only as stated "with prior consent of the warden, *superintendent or designee.*"

h. Rule 20.8(904)—Guests of institution. ~~Rule 20.8(904)~~ *This rule* is *not* ~~nonapplicable~~ *applicable* since this rule has no impact on the violator program.

i. Rule 20.9(904)—Donations. ~~Rule 20.9(904)~~ *This rule* is *not* ~~nonapplicable~~ *applicable* since this rule has no impact on the violator program.

j. Rule 20.11(904,910)—Restitution. ~~Rule 20.11(904, 910)~~ *This rule* will be temporarily suspended while offenders are in the program. Restitution plans will be maintained, and the plan of payment will be reinstated upon release from the program.

k. Rule 20.12(904)—Furloughs. ~~Rule 20.12(904)~~ *This rule* will only apply in family emergency situations in accordance with 20.12(5)"a" and 20.12(6)"a," although the criteria for eligibility ~~is~~ *are* waived, and these furloughs will only be granted at the discretion of the warden/*superintendent or designee* with approval of the *regional* deputy director ~~of institutions~~.

l. Rule 20.13(904)—Board of parole interviews. ~~Rule 20.13(904)~~ *This rule* is *not* ~~nonapplicable~~ *applicable* since this rule has no impact on the violator program.

m. Rule 20.15(910A)—Victim notification. ~~Rule 20.15 (910A)~~ *This rule* will not apply to the violator program.

n. Rule 20.17(904)—Institutional community placement. ~~Rule 20.17(904)~~ *This rule* will not apply to the violator program.

20.18(9) Good conduct time.

a. ~~The provisions of the~~ Iowa Code chapter 903A ~~do~~ *will* not apply to probationers and parolees.

b. ~~The provisions of~~ Iowa Code chapter 903A will apply to work releasees in accordance with work release policies and procedures.

20.18(10) Clothing, transportation, and release moneys. The provisions of Iowa Code section 906.9 will not apply to violator programs.

20.18(11) Any exceptions to these rules must be specifically approved by the warden/superintendent or designee.

This rule is intended to implement Iowa Code section 904.207.

[Filed Emergency 11/4/99, effective 11/4/99]
[Published 12/1/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

ARC 9494A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this amendment November 10, 1999. Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin on October 6, 1999, as **ARC 9382A**.

This amendment revises the statewide average charges for nursing facility care and psychiatric medical institution for children (PMIC) care. The statewide average charge is used to determine whether a person who has established a medical assistance income trust qualifies for Medicaid.

Any person is allowed to establish a medical assistance income trust under Iowa Code section 633.709. For a person whose income exceeds the Medicaid eligibility limit of 300 percent of the Supplemental Security Income (SSI) benefit for one person (currently $1,500) but whose income is below the statewide average charge for the type of medical facility care the person needs, a medical assistance income trust may be used to establish Medicaid eligibility.

The Department is required to update these average statewide charges annually. The Department did update these charges effective July 1, 1999, at which time the average charge to a private pay resident of nursing facility care increased from $2,397 to $2,536. The average charge of a PMIC increased from $4,135 to $4,218.

The Department alternates updating the charges by conducting an actual survey one year and applying actual and projected increases the next year. Increases were projected for the 1999 fiscal year. However, the actual cost reports from facilities received in June showed an increase in costs for nursing facilities and PMICs that was significantly more than the projected rate increases.

In light of this unanticipated increase in costs, a new survey of private charges was completed. This new survey showed that the statewide average charge for nursing facilities was $2,723, and the statewide average charge for PMICs was $4,359. This amendment increases the statewide average charges for nursing facilities and PMICs to these amounts. This will allow individuals who have income below these amounts to qualify for Medicaid using medical assistance income trusts.

This amendment does not include a provision for waivers in specified situations because it confers a benefit and because everyone should be subject to the same amounts. Individuals may request a waiver of the statewide average charge rule under the Department's general rule on exceptions at rule 441—1.8(217).

The Department finds that this amendment confers a benefit on persons in nursing facilities by allowing more persons to receive help with their nursing care. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

This amendment is identical to that published under Notice of Intended Action.

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

This amendment became effective December 1, 1999.

The following amendment is adopted.

Amend subrule **75.24(3)**, paragraph **"b,"** introductory paragraphs and subparagraphs **(1)** and **(6)**, as follows:

b. A trust established for the benefit of an individual if the trust is composed only of pension, social security, and other income to the individual (and accumulated income of the trust), and the state will receive all amounts remaining in the trust upon the death of the individual up to the amount equal to the total medical assistance paid on behalf of the individual.

HUMAN SERVICES DEPARTMENT[441](cont'd)

For disposition of trust amounts pursuant to Iowa Code sections 633.707 to 633.711, the average statewide charges and Medicaid rates for the period from ~~July 1~~ *December 1*, 1999, to June 30, 2000, shall be as follows:

(1) The average statewide charge to a private pay resident of a nursing facility is ~~$2,536~~ *$2,723* per month.

(6) The average statewide charge to a private pay resident of a psychiatric medical institution for children is ~~$4,218~~ *$4,359* per month.

[Filed Emergency After Notice 11/10/99, effective 12/1/99]
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ARC 9508A

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 17A.3(1)"b," 16.5(15) and 16.91(8), the Iowa Finance Authority hereby amends Chapter 9, "Title Guaranty Division," Iowa Administrative Code.

The purpose of new rule 9.20(78GA,ch54) is to provide a procedure for the release of mortgages which have been paid in full, or the security for which has been released from the lien of the mortgage, and which have had no effective release or partial release filed of record by a mortgagee. The objective of the mortgage release certificate is to preserve the integrity of the real estate records of this state so that they reflect the correct status of title to the real property located in Iowa.

The Authority does not intend to grant waivers under the provisions of this rule. The requirements implemented by this rule are established by 1999 Iowa Acts, chapter 54, and may not be waved by the Authority. The real estate records of the state must be of high integrity and reliability. The granting of waivers would cause a question as to the validity of the certificate of release issued by the Division, thereby causing uncertainty as to the validity and enforceability of mortgages purportedly released by the certificate of release. Additionally, the officer or employee of the Division authorized to issue the certificate of release could be subject to undue pressure to grant a waiver of a requirement imposed by law or rule that could imperil the validity of the certificate.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 22, 1999, as **ARC 9362A**. Written comments were received on October 12, 1999. A public hearing was held on October 26, 1999. The comments received addressed issues involving the notice provisions, the extent of the division's liability, consistency of language and whether the Division would be willing to interpret the statute to include any unreleased mortgage in the chain of title.

Based on these comments, the following changes were made to the rule:

- Paragraphs 9.20(4)"h" and 9.20(5)"f" were added and 9.20(8)"a" was amended to address concerns regarding lost addresses or addresses that are unknown.
- Paragraphs 9.20(8)"d," "e," and "f" were amended to be consistent with language in the remaining portions of the rule. In 9.20(8)"d" and "e," the word "person" was changed to "mortgage servicer." In 9.20(8)"f"(3), the words "of a person seeking a certificate" were omitted.
- Subrule 9.20(14), inadvertently omitted from the Notice of Intended Action but included in the draft circulated to the Division's constituents prior to the filing of the Notice of Intended Action, has been added; and Noticed subrules 9.20(14) to 9.20(16) have been renumbered as 9.20(15) to 9.20(17).
- Renumbered subrule 9.20(16) was amended to add a notice provision allowing other parties to the transaction to settle a claim before the Division resolves a claim or defends it.
- Subrule 9.20(18) was added to allow the Division to claim all damages appropriate in satisfaction of a wrongfully released mortgage, and Noticed subrule 9.20(17) was renumbered as 9.20(19).

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Authority finds that the normal effective date of this rule should be waived and this rule should be made effective upon filing on November 12, 1999, as it confers a benefit on the public because it allows the Division to release mortgages and facilitate land transfers in Iowa.

This rule is intended to implement Iowa Code section 16.5(8) and 1999 Iowa Acts, chapter 54.

This rule became effective November 12, 1999.

The following **new** rule is adopted.

265—9.20(78GA,ch54) Mortgage release certificate.

9.20(1) Definitions. As used in this rule, unless the context otherwise requires:

"Authority" means the Iowa finance authority described in Iowa Code chapter 16.

"Certificate" means the certificate of release or partial release of mortgage issued by the division.

"Claim for damages" means a claim for actual money damages against the division caused by the negligent, wrongful or erroneous filing of a certificate while the staff of the division are acting within the scope of their office or employment, under circumstances where the state, if a private person, would be liable to the claimant for such damage.

"Division" means the title guaranty division in the Iowa finance authority.

"Effective release or satisfaction" means a release or satisfaction of mortgage pursuant to Iowa Code chapter 655.

"Mortgage" means a mortgage or mortgage lien on an interest in real property in this state given to secure a loan in an original principal amount of $500,000 or less. Any future advance supported by the mortgage that exceeds the original principal amount of $500,000 shall not be eligible for release under this rule.

"Mortgagee" means the grantee of a mortgage. If a mortgage has been assigned of record, the mortgagee is the last person to whom the mortgage is assigned of record.

"Mortgage servicer" means the mortgagee or a person other than the mortgagee to whom a mortgagor or the mortgagor's successor in interest is instructed by the mortgagee to send payments on a loan secured by the mortgage. A person transmitting a payoff statement for a mortgage is the mortgage servicer for purposes of such mortgage.

"Mortgagor" means the grantor of a mortgage.

"Payoff statement" means a written statement furnished by the mortgage servicer which sets forth all of the following:

1. The unpaid balance of the loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage, or the

amount required to be paid in order to release or partially release the mortgage.

2. Interest on a per-day basis for an amount set forth pursuant to "1" above.

3. The address where payment is to be sent or other specific instructions for making a payment.

4. If, after payment of the unpaid balance of the loan secured by the mortgage, the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee, the legal description of the property that will continue to be subject to the mortgage and the legal description of the property that will be released from the mortgage.

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

"Prior mortgage" means a mortgage for which an effective release or satisfaction has not been filed of record which was either paid in full by someone other than the real estate lender or closer or was paid by the real estate lender or closer under a previous transaction.

"Real estate lender or closer" means a person licensed to regularly lend moneys in Iowa to be secured by a mortgage on real property in this state, a licensed real estate broker, or a licensed attorney.

9.20(2) Request for certificate.

a. A real estate lender or closer may request a certificate from the division by submitting:

(1) A fully and accurately completed request form.

(2) All necessary documents and information to support the certifications made on the request form.

(3) Payment of the filing fee by check or money order made payable to the filing officer of the county in which the certificate is to be recorded in the amount of the filing fee imposed by the filing officer of the county in which the certificate is to be recorded. If duplicate certificates are to be recorded in more than one county, additional checks or money orders payable to the filing officer of such counties shall be submitted.

b. A certificate which is not a full release but is executed and recorded to release part of the security described in a mortgage shall be issued only when the real estate lender or closer has paid the mortgage servicer for the partial release. A certificate shall not be issued for a partial release if the real estate lender or closer is requesting a release pursuant to 1999 Iowa Acts, chapter 54, section 1(7).

c. In the event a person requesting a certificate fails to complete any of the steps or include any of the required information described in this rule, the division may reject the request for a certificate and require the person to refile or amend the request so that it conforms to the provisions of the law or this rule.

9.20(3) Forms.

a. Requests for mortgage release certificates shall be made on forms developed and provided by the division. The forms may be obtained from the division or from the authority's Internet Web site located at http://www.ifahome.com. The real estate lender or closer must use the forms developed and provided by the division; however, it is permissible to use reproductions of the forms, including reproductions placed in a word processing program. A reproduced form must substantially conform to the forms provided by the division. A nonconforming form may be rejected by the division.

b. The forms to request a certificate of release shall identify the mortgage to be released and shall contain sufficient information to identify that the requester is a real estate lender or closer; establish that the time requirements have elapsed; establish the party or parties to receive notice of the request; indicate that the debt secured by the mortgage to be released has been paid and the mortgage was less than $500,000; and, in the case of requests for partial releases, include the legal descriptions of the property that will continue to be subject to the mortgage and the property that will be released from the mortgage.

c. The forms giving notice of the request shall be directed to the last-known mortgage servicer and shall contain sufficient information to identify the mortgage to be released; inform the mortgage servicer what is required to prevent the filing of a certificate of release; establish a time limit for the mortgage servicer to respond; and, in the case of requests for partial releases, include the legal descriptions of the property that will continue to be subject to the mortgage and the property that will be released from the mortgage.

d. The certificate of release form shall contain sufficient information to identify the mortgage released; recite the authority for the certificate; recite that the substantive and procedural requirements as to the amount of debt, payment, notice, or other requirements of the division have been met; and, in the case of partial releases, include the legal descriptions of the property that will continue to be subject to the mortgage and the property that will be released from the mortgage.

e. The notice by publication form shall contain sufficient information to identify the mortgage to be released; inform the mortgage servicer what is required to prevent the filing of a certificate of release; establish a time limit for the mortgage servicer to respond; and, in the case of requests for partial releases, include the legal descriptions of the property that will continue to be subject to the mortgage and the property that will be released from the mortgage.

f. All forms may require real estate lenders or closers to provide other information as may be required by law or this rule.

9.20(4) Certification to the division—mortgages paid by real estate lender or closer. To obtain a certificate for a mortgage which the mortgage lender or closer has paid and an effective release or partial release has not been filed of record, the mortgage lender or closer shall certify to the division in writing on the form provided:

a. That more than 30 days have elapsed since the date the payment was sent.

b. That, as of the date of the request for a certificate, no effective mortgage release or partial release appears of record.

c. That the payoff statement satisfies one of the following:

(1) The statement does not indicate that the mortgage continues to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee; or

(2) The statement contains the legal description of the property to be released from the mortgage and the legal description of the property that will continue to be subject to the mortgage.

d. That payment was made in accordance with the payoff statement, including a statement as to the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(1) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust ac-

count check that was negotiated by the mortgagee or mortgage servicer.

(2) Other documentary evidence satisfactory to the division of payment to the mortgagee or mortgage servicer.

e. That the original principal amount of the mortgage was $500,000 or less.

f. That the information provided to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer and last-known mailing address, the date of the mortgage, the date of recording, the county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.

g. That any documents or other information attached to or included in the form and submitted in support of the request are original documents or are true and accurate reproductions and that the subject matter contained in the documents is true and correct.

h. If the last-known address of the mortgage servicer is unknown and the real estate lender or closer requesting the certificate is unable to locate an address for the last mortgage servicer of record, the real estate lender or closer may attach an affidavit to the request that service by certified mail on the mortgage servicer is not possible because the last-known address of the mortgage servicer is unknown and the real estate lender or closer, after exercising due diligence, is unable to locate an address for the last mortgage servicer of record.

9.20(5) Certification to the division—prior mortgages. To obtain a release of a mortgage that has been paid in full by someone other than the real estate lender or closer, or was paid by the real estate lender or closer under a previous transaction, and an effective release has not been filed of record, the mortgage lender or closer shall certify to the division in writing on the form provided:

a. That the mortgage was paid in full in accordance with one of the following:

(1) By someone other than the real estate lender or closer requesting the certificate.

(2) By the real estate lender or closer under a previous transaction.

b. That, as of the date of the request for a certificate, no effective mortgage release appears of record.

c. That the original principal amount of the mortgage was $500,000 or less.

d. That the information provided to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer and last-known mailing address, the date of the mortgage, the date of recording, the county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.

e. That any documents or other information attached to or included in the form and submitted in support of the request are original documents or are true and accurate reproductions and that the subject matter contained in the documents is true and correct.

f. If the last-known address of the mortgage servicer is unknown and the real estate lender or closer requesting the certificate is unable to locate an address for the last mortgage servicer of record, the real estate lender or closer may attach an affidavit to the request that service by certified mail on the mortgage servicer is not possible because the last-known address of the mortgage servicer is unknown and the real estate lender or closer, after exercising due diligence, is unable to locate an address for the last mortgage servicer of record.

9.20(6) Division determination to give notice—reliance on information submitted.

a. Upon receipt of a request for issuance of a certificate, the division shall determine that an effective release has not been executed and recorded within 30 days after the date payment was sent or otherwise made in accordance with a payoff statement based upon the information submitted by the person seeking the certificate.

b. The division may use discretion in determining whether an effective release has been executed and recorded and shall rely on the information contained in the request in determining whether further inquiry may be required before giving notice of intent to issue a certificate.

c. The division shall not be required to make a physical search of the real property records in the county or counties where the certificate is to be recorded nor will the division be required to obtain any formal report such as a lien search, abstract opinion, or attorney's opinion. The division may, but is not required to, verify the status of an effective release by contacting the officer responsible for maintaining the real property records of the county in which the certificate is to be recorded; however, if such verification is determined to be necessary, the division may rely on information from the filing officer obtained by telephone, facsimile, electronic mail, or other such means.

d. The division shall not be required to verify or research the accuracy or status of a title to any legal descriptions which are requested to be partially released. The division shall rely on the descriptions certified to the division in the request for a certificate of partial release.

9.20(7) Contested case proceeding. In the event a person who is seeking a certificate is aggrieved by the decision of the division not to issue a certificate and wishes to challenge that decision, the person must request a contested case proceeding pursuant to the rules described in 265—Chapter 7. The request for a contested case proceeding must be filed with the division within ten days from the date of the division's decision not to issue a certificate. An aggrieved person must exhaust all administrative remedies before that person may file a proceeding in any court.

9.20(8) Notice of intent to issue certificate and recording.

a. Upon determination that an effective release or partial release has not been executed and recorded within 30 days after the date payment was sent or otherwise made in accordance with a payoff statement, the division shall send written notice of intent to execute a certificate by certified mail to the last-known address of the last mortgage servicer of record. If the real estate lender or closer requesting the certificate has attached an affidavit to the request that service by certified mail on the mortgage servicer is not possible because the last-known address of the mortgage servicer is unknown and the real estate lender or closer is unable to locate an address for the last mortgage servicer of record, the division shall proceed pursuant to paragraph 9.20(8)"e."

b. The notice shall be given by certified mail and the 30-day period shall begin on the date the notice is placed in the custody of the United States Postal Service for delivery to the mortgage servicer.

c. The notice shall state that a certificate shall be recorded by the division after 30 days from the date the notice was mailed unless the mortgage servicer notifies the division of any reason the certificate of release should not be executed and recorded.

d. In the event the notice sent by certified mail to the last-known mortgage servicer of record is returned to the division for the reason that the mortgage servicer is no longer at the address or the certificate of receipt is not returned within 30 days of mailing, the division shall attempt to serve the mortgage servicer pursuant to Iowa Rule of Civil Procedure 56.1.

e. In the event the division is unable to serve the mortgage servicer, the division shall prepare a notice for publication and send it to the real estate lender or closer for publication in a newspaper of general circulation in the county in which the mortgage to be released is recorded. Notice by publication shall be once each week for three consecutive weeks and shall provide for a 20-day period following the last publication for the mortgage servicer to respond to the division. A copy of the notice together with a certificate of publication shall be submitted to the division after the last publication date. Upon receipt of the certified notice and expiration of the time to respond, the division shall file the certificate of release provided that the mortgage servicer has not notified the division of any satisfactory reason the certificate of release should not be executed and recorded. The notice shall also be posted to the authority's Web page.

f. If, prior to executing and recording the certificate of release, the division receives written notification setting forth reasons satisfactory to the division why the certificate of release should not be executed and recorded by the division, the division shall not execute and record the certificate of release. The division may use its discretion in determining whether a satisfactory reason not to record the certificate has been given depending upon the facts. A satisfactory reason not to record the certificate includes, but is not limited to:

(1) Evidence of an unpaid balance under the terms of any loan secured by the mortgage.

(2) Evidence that a release or satisfaction of mortgage pursuant to Iowa Code chapter 655 has been placed of record.

(3) Failure to submit any information requested by the division or required by the law or this rule.

g. In the event the division determines that a certificate should not be recorded, the division shall return the check or money order, which was made payable to the county filing officer, to the real estate lender or closer that requested the certificate.

h. If the division does not receive written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded, the division shall proceed to execute and record the certificate. The certificate shall be delivered, by regular mail, along with proper recording fees, to the filing officer in the county where the subject property is located.

i. If duplicate certificates were requested, the division will also deliver the duplicate certificates to the filing officer of those counties.

j. If duplicate certificates were not requested, the real estate lender or closer may record a certified copy of the certificate in another county with the same effect as the original.

9.20(9) Certificate—mortgages paid by real estate lender or closer. Certificates issued on mortgages paid by the mortgage lender or closer shall contain substantially the following information:

a. That the division sent the 30-day notice required by 1999 Iowa Acts, chapter 54, section 1(2c), and that more than 30 days have elapsed since the date the notice was sent.

b. That the division did not receive written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded.

c. A statement indicating one of the following:

(1) That the mortgage servicer provided a payoff statement that was used to make payment, and it does not indicate that the mortgage continues to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee.

(2) That the mortgage release certificate is a partial release of the mortgage and contains the legal description of the property that will be released from the mortgage and the legal description of the property that will continue to be subject to the mortgage.

d. That payment was made in accordance with the payoff statement including the date the payment was received by the mortgagee or mortgage servicer as evidenced by a bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer or other documentary evidence of payment to the mortgagee or mortgage servicer.

e. That the original principal amount of the mortgage was $500,000 or less.

f. Information to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer, the date of the mortgage, the date of recording, county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.

g. That the person executing the certificate is a duly authorized officer or employee of the division.

9.20(10) Certificate—prior mortgages. Certificates issued on mortgages that have been paid in full by someone other than the real estate lender or closer or were paid by the real estate lender or closer under a previous transaction shall contain substantially the following information:

a. That the division sent the 30-day notice required by 1999 Iowa Acts, chapter 54, section 1(2c), and that more than 30 days have elapsed since the date the notice was sent.

b. That the division did not receive written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded.

c. A statement indicating the mortgage was paid in full in accordance with one of the following:

(1) By someone other than the real estate lender or closer requesting the certificate.

(2) By the real estate lender or closer under a previous transaction.

d. That the original principal amount of the mortgage was $500,000 or less.

e. Information to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer, the date of the mortgage, the date of recording, county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.

f. That the person executing the certificate is a duly authorized officer or employee of the division.

9.20(11) Authority to sign certificate. The board of directors of the division may, by resolution, authorize such personnel within the division as the board should determine to execute and record the certificates pursuant to 1999 Iowa Acts, chapter 54, and this rule.

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9.20(12) Records—return to the division. The certificate of release shall contain instructions to the filing officer(s) to return the document to the division, once file-stamped and entered in the real estate records of the county.

9.20(13) Photocopy. The division shall transmit a copy of the recorded certificate to the real estate lender or closer that requested the certificate.

9.20(14) Effect of filing of the certificate of release. For purposes of a release or partial release of a mortgage, a certificate of release executed under this rule that contains the information and statements required under 1999 Iowa Acts, chapter 54, and this rule is prima facie evidence of the facts contained in such release or partial release, is entitled to be recorded with the county recorder where the mortgage is recorded, operates as a release or partial release of the mortgage described in the certificate of release, and may be relied upon by any person who owns or subsequently acquires an interest in the property released from the mortgage. The county recorder shall rely upon the certificate of release to release the mortgage.

9.20(15) Effect of wrongful or erroneous recording of a certificate of release. A wrongful or erroneous recording of a certificate of release by the division or the authority shall not relieve the mortgagor, or the mortgagor's successors or assigns on the debt, from personal liability on the loan or on other obligations secured by the mortgage.

9.20(16) Liability of the division. In addition to any other remedy provided by law, if the division or the authority wrongfully or erroneously records a certificate of release pursuant to this rule, the division is liable to the mortgagee and mortgage servicer for actual damages sustained due to the recording of the certificate of release. A claim for damages is a tort claim as described in Iowa Code chapter 669 since the claim is for money damages caused by the wrongful or erroneous actions of the staff of the division or the authority. The procedures of Iowa Code chapter 669 shall apply to any claim for damages arising out of 1999 Iowa Acts, chapter 54.

Prior to any such satisfaction or resolution of a claim for wrongful or erroneous filing of a certificate of release, the division will inform the real estate lender or closer that requested the certificate about the proposed terms and allow it a reasonable opportunity to resolve or satisfy the claim on other terms.

9.20(17) Subrogation. Upon payment of a claim relating to the recording of a certificate, the division is subrogated to the rights of the claimant against all persons relating to the claim including, but not limited to, the real estate lender or closer that requested the certificate.

9.20(18) Additional remedies. In addition to any other remedy provided by law, the division may recover from the real estate lender or closer who requested the certificate all expenses incurred, and all damages including punitive or exemplary damages paid to the mortgagee or mortgage service provider, in satisfaction or resolution of a claim for wrongful or erroneous filing of a certificate of release.

9.20(19) Record keeping. The original certificate of release document shall remain in the records of the division or the authority for the minimum period of one year after execution. After this time, records may be stored by electronic or other means. Requests and other documents generated or received under this system shall be indexed in such a manner as to allow their retrieval at a future date.

This rule is intended to implement 1999 Iowa Acts, chapter 54.

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NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 94, "Nonresident Deer Hunting," Iowa Administrative Code.

These amendments allow nonresidents to use handguns to take deer. These regulations are the same as for resident hunters.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 8, 1999, as **ARC 9324A**. A public hearing on the proposed amendments was held September 28, 1999. No public comments were received. No changes were made to the Notice of Intended Action.

The Commission finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator. Making this change effective upon filing will permit this change to be in effect for the regular gun seasons this year.

These amendments are intended to implement Iowa Code sections 481A.38 and 481A.48.

These amendments became effective November 12, 1999.

The following amendments are adopted.

ITEM 1. Amend subrule 94.7(2) as follows:

94.7(2) Regular gun season. Only 10-, 12-, 16-, or 20-gauge shotguns, shooting single slugs only, and flintlock or percussion cap lock muzzleloaded rifles or muskets of not less than .44 nor larger than .775 caliber, shooting single projectiles only, *and handguns as described in 571—subrule 106.7(3),* will be permitted in taking deer during the regular gun season.

ITEM 2. Amend subrule **94.7(4)**, first unnumbered paragraph, as follows:

It shall be unlawful for a person, while hunting deer, to have on their person a ~~handgun except as provided in 94.7(3) or~~ rifle other than a muzzleloading rifle that meets the requirements of 571—subrule 106.7(3).

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NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 106, "Deer Hunting," Iowa Administrative Code.

These rules give the regulations for hunting deer and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking and transportation tag requirements. This amendment allows for the issuance of deer shooting permits in areas where public safety may be an issue.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 8, 1999, as **ARC 9323A**. A public hearing on the proposed amendment was held September 28, 1999. No public comments were received. No changes were made to the Notice of Intended Action.

The Commission finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator. A public safety issue could arise at any time and this amendment should be in effect as soon as possible to handle potential problems.

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

This amendment became effective November 12, 1999.

The following amendment is adopted.

Amend subrule **106.11(4)**, paragraph **"b,"** as follows:

b. Deer shooting permits. Permits for shooting deer outside an established hunting season may be issued to producers of high-value horticultural crops when damage cannot be controlled in a timely manner during the hunting seasons (such as late summer buck rubs in an orchard and winter browsing in a Christmas tree plantation), and to other agricultural producers *and on areas such as airports where public safety may be an issue.*

(1) Deer shooting permits will be issued at no cost to the ~~producer~~ *applicant.*

(2) The ~~producer~~ *applicant* or one or more designees approved by the department may take all the deer specified on the permit.

(3) Permits available to producers of high-value horticultural crops will allow taking deer from August 1 through March 31. Permits issued for August 1 through August 31 shall be valid only for taking antlered deer. Permits issued for September 1 through March 31 may be valid for taking antlered deer, antlerless deer or any deer, depending on the nature of the damage. Permits available to other agricultural producers will allow taking deer from September 1 through October 31.

(4) Permits issued due to public safety concerns may be used for taking any deer, as necessary, to address unpredictable intrusion which could jeopardize public safety. Permits may be issued for an entire year (January 1 through December 31) if the facility involved maintains a deerproof fence.

~~(4)~~ *(5)* The times, dates, place and other restrictions on shooting of deer will be specified on the permit.

~~(5)~~ *(6)* Antlers from all deer recovered must be turned over to the conservation officer to be disposed of according to department rules.

~~(6)~~ *(7)* Shooters must wear blaze orange and comply with all other applicable laws and regulations pertaining to shooting and hunting.

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PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby amends Chapter 73, "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)," Iowa Administrative Code.

The purpose of amending Chapter 73 is to update the language and definitions for consistency with the federal guidelines for the Special Supplemental Nutrition Program for Women, Infants and Children and the insurance program for children entitled HAWK-I. The amendments include changes to the Health Services Application, new requirements for documenting WIC participant income, new provisions for vendor monitoring and disqualification, and civil money penalties for vendor fraud. With the exception of the changes to the health services application, all of the amendments are being adopted to bring Iowa's WIC program into compliance with new or existing federal regulations.

The Health Services Application, a combined application for WIC, Medicaid, and Maternal Health services (Title V) will no longer be mandatory but will be available for use in all WIC clinics. This is being done to accommodate the use of the HAWK-I enrollment form for all WIC participants who are potentially eligible for HAWK-I or Medicaid. Chapter 73 has been modified to reflect this change.

In accordance with new United States Department of Agriculture (USDA) regulations, WIC applicants must now provide written documentation of income. Chapter 73 has been modified to reflect this change.

Chapter 73 is also being modified to reflect changes in federal regulations relating to the WIC vendor management area. A random sample of 10 percent of vendors will be subject to on-site monitoring every year. Additionally, electronic monitoring of vendors will also be used by state WIC staff. The reasons for vendor disqualification and the penalties for vendor fraud have also been strengthened to bring Iowa's WIC program in compliance with federal regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 16, 1999, as **ARC 9133A**. A public hearing was held on June 22, 1999, using 13 Iowa Communications Network (ICN) sites. No comments were received at the public hearing nor were any written comments received. The Department had previously provided a copy of the proposed changes in Chapter 73 to the Iowa Grocery Industry Association. The Department also provided an opportunity for its local contractors, Medicaid staff of the Department of Human Services, and internal staff of the De-

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partment of Public Health to review the revised chapter prior to filing the Notice of Intended Action.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and these amendments should be made effective upon filing. The Department finds this confers a benefit on WIC participants by referring them to the HAWK-I program. In addition, it confers a benefit upon the state by maintaining the program's compliance with federal regulations, allowing the program to disqualify vendors in violation of rules, and impose and collect civil money penalties.

These rules are subject to waiver pursuant to the Department's variance and waiver provisions contained at 641—Chapter 178.

There are two changes from the Notice of Intended Action. The final sentence of subrule 73.8(1), paragraph "b," has been changed from "Under limited circumstances, a permanent proxy may be approved" to "Under limited circumstances, a permanent proxy may be approved by the contract agency." This change was made in order to clarify who may approve a permanent proxy. In 73.19(2) the date "Thursday, March 8, 1999" was corrected to read "Thursday, March 18, 1999" in referencing the Federal Register. The State Board of Health adopted these amendments at their regular board meeting on November 10, 1999.

These amendments became effective upon filing on November 12, 1999.

These amendments are intended to implement Iowa Code section 135.11.

The following amendments are adopted.

ITEM 1. Amend rule 641—73.1(135) as follows:

641—73.1(135) Program explanation. The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is a federal program operated pursuant to agreement with the states. The purpose of the program is to provide supplemental foods and nutrition education to eligible pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate incomes. The WIC program is administered on the federal level by the U.S. Department of Agriculture, Food and ~~Consumer~~ *Nutrition* Service (~~FCS~~ *FNS*). The Iowa department of public health serves as the administering agency for the state of Iowa. The Iowa department of public health enters into contracts with selected local agencies on an annual basis for the provision of WIC services to eligible participants.

ITEM 2. Amend rule 641—73.2(135) as follows:

641—73.2(135) Adoption by reference. Federal regulations found at 7 CFR Part 246 (effective as of February 13, 1985, as amended through January 1, ~~1995~~ *1999*, and any additional amendments) shall be the authority for rules governing the Iowa WIC program and are incorporated by reference herein. The WIC state plan provides policy and procedural guidance in the implementation of these regulations to contract agencies administering WIC programs. The WIC state plan as approved by the United States Department of Agriculture is incorporated here by reference.

ITEM 3. Amend rule **641—73.5(135)** by adopting the following **new** definition in alphabetical order:

"HAWK-I" means healthy and well kids in Iowa and is the health insurance program in Iowa, as authorized in Title XXI of the Social Security Act.

ITEM 4. Amend subrule 73.7(1) as follows:

73.7(1) Application. ~~The combined Health Services Application Form (Form #470-2927) and the~~ *The* WIC Certification ~~Form~~ *Forms* shall be completed by every family at the initial certification. The only exception is the *pre*-certification of Priority II infants, *with referral data,* ~~in the hospital which allows~~ *whose parent/custodian is allowed* a maximum of six weeks to complete *the forms. Certification forms are signed and dated by the applicant or the parent/custodian.* ~~the Health Services Application. The Health Services Application is not completed at subsequent certifications. Certification forms are signed and dated by the applicant or parent/custodian. Health Services Applications are signed and dated by the participant or parent/legal guardian. A copy of both forms shall be maintained in the participant's file.~~

~~If the applicant indicates on the Health Services Application that the applicant wishes to also apply for other programs, the contract agency shall forward the appropriate copy to the indicated agency within two working days.~~

If an individual indicates on the Health Services Application, Form 470-2927, that the individual wishes to also apply for Medicaid, child health, or maternal health services, the contract agency shall forward the appropriate copy to the indicated agency within two working days. If the individual appears to qualify for HAWK-I, the individual will be given the HAWK-I enrollment form.

ITEM 5. Amend subrule **73.7(2)**, paragraph **"b,"** as follows:

b. Applicants must provide the contract agency ~~verbal~~ *written* declaration of their income as part of each certification process. Contract agencies ~~may require written documentation~~ *may verify income* in accord with procedures outlined in the Iowa WIC Policy and Procedure Manual.

ITEM 6. Amend subrule **73.7(3)**, paragraphs **"c"** and **"d,"** as follows:

c. ~~Medical~~ *Blood work* data used for determining nutritional risk shall be collected no more than ~~60~~ *90* days ~~prior to~~ *before or after* the date ~~the~~ *of* certification ~~period begins. Data on infants shall not be more than 30 days old on the date that certification begins~~.

d. Priority II infants *pre*-certified *with referral data* ~~in the hospital~~ require a full certification within six weeks of the infant's birth.

ITEM 7. Amend subrule **73.8(1)**, paragraph **"b,"** as follows:

b. ~~Attendance at monthly distributions clinics. Enrolled participants are required to appear in person and as scheduled to pick up monthly benefit of food checks.~~ *Claiming food checks. Enrolled participants are required to appear in person to claim checks when they have appointments to certify or have nutrition education contacts.* Missed attendance may entitle contract agencies to deny that month's benefit. If a written statement is provided to the contract agency, a proxy may pick up checks not more than twice during a single certification period. *Under limited circumstances, a permanent proxy may be approved by the contract agency.*

ITEM 8. Amend subrule **73.8(2)**, paragraph **"b,"** as follows:

b. Mailing of WIC checks. Mailing of checks to participants is allowed when inclement weather prevents participants from coming to a distribution site. ~~Mailing is also allowed when a client does not claim the checks during the designated check claim period if the participant did not have an appointment for nutrition education or subsequent certifi-~~

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~~cation.~~ Any mailing of WIC checks on a clinic wide basis must have prior approval from the state.

ITEM 9. Amend subrule 73.8(3) as follows:

73.8(3) Responsibilities of department. Provision of foods through retail grocers *and special purpose vendors* is an integral part of the WIC program's function. It is the responsibility of the department to ensure that there are a sufficient number of stores authorized to provide reasonable access for program participants. The department also has an obligation to ensure that both food and administrative funds are expended in the most efficient manner possible. As with all other purchases made by state government, this means that the number of vendors (retail grocers *and special purpose vendors*) may be limited and that all vendors must meet minimum criteria for approval. The department shall be responsible for the following:

a. and b. No change.

c. Developing procedures, forms, and standards for agencies to use in conducting on-site review of vendor applications, monitoring, high-risk vendor monitoring, *compliance buys,* or educational buy monitoring as defined in 73.8(5).

d. Determining when compliance buying activities are necessary to ~~detect~~ *verify* program violations, developing or approving standards and procedures to be used in conducting the activities, and arranging for an appropriate state or private agency to conduct the compliance buying investigation *as required.*

e. No change.

ITEM 10. Amend subrule **73.8(4)"a"(3)**, numbered paragraph **"3,"** as follows:

3. A minimum of four gallons of whole fluid milk and four gallons of either ~~2 percent, 1 percent, or skim~~ *low fat, reduced fat, or fat-free* fluid milk, and two 1 pound packages *each* of two approved varieties of cheese.

ITEM 11. Amend subrule **73.8(4)**, paragraph **"c,"** as follows:

c. Reauthorization. If ownership of an authorized vendor changes during the agreement period, the agreement becomes void. The new owner must file an application and be approved prior to accepting WIC checks. Vendor agreements are valid only for the period of time specified and a vendor may not continue accepting checks past the expiration date unless a new agreement is signed. When a currently authorized vendor makes application for a subsequent agreement, an agreement shall be signed only if the vendor has a score of at least ~~20~~ *40* review points. A vendor that meets the minimum qualifications for new vendors is awarded ~~50~~ *100* review points. Points assessed during the previous ~~12~~ *24* months for administrative and procedural violations under 73.19(2)"b" are then subtracted to determine the final score.

Vendors with a current WIC agreement are not required to complete a new written application each year if the information in their original application is substantially unchanged. The department may request a new application from any vendor prior to offering a new agreement if it has reason to believe the information in the original is no longer correct or the vendor may no longer be eligible for an agreement.

The department shall send the vendor written notice at least 30 days prior to the expiration of the agreement that it does not intend to offer the vendor a new agreement if the minimum review points are not met or if any of the following conditions are in effect:

1. The vendor has failed to submit any of the preceding year's Price Assessment Reports by the specified dates.

2. The vendor has not cashed any WIC checks for at least two consecutive months. *This provision does not apply to special purpose vendors.*

3. Any of the selection criteria listed in 73.8(4)"a" and "b" above are no longer met.

Expiration of a WIC agreement is not subject to appeal. A vendor who is not offered a new agreement by the department has the right to file a new application. If that application is denied, the vendor has the right to appeal.

Contract agencies are responsible for providing training regarding all changes in program regulations and determining that all of the selection criteria are still met prior to signing a new agreement. If the contract agency denies a new agreement, the vendor has the right to appeal without first submitting an application.

ITEM 12. Amend **73.8(4)"e"(10)** as follows:

(10) The vendor's authorizing number is stamped *with the state-issued vendor stamp* on the face of the check prior to its being presented for payment.

ITEM 13. Amend subrule **73.8(5)**, introductory paragraph and paragraphs **"b"** and **"c,"** as follows:

73.8(5) Vendor monitoring. To maintain program integrity and accountability for federal or state program funds, the department and contract agencies shall conduct ongoing monitoring of authorized vendors, both through on-site visits and through indirect means. ~~On-site monitoring of each authorized vendor is performed at least once every two years in accord with procedures established by the department.~~ *A random sample of 10 percent of vendors receives on-site monitoring every year.* ~~On-site monitoring is not required for vendors who close during the two year period or terminate their participation.~~ Vendors that change ownership during the year, or apply ~~midyear~~ *during the contract period,* receive an on-site visit prior to signing an agreement ~~and do not receive a subsequent monitoring visit~~. The types of on-site monitoring are defined as follows:

b. Electronic monitoring is examination of indicators tracked in the vendor computer database. It allows the analysis of data collected via computer from the contract agencies and the state's bank, from which patterns indicating compliance with or deviation from established patterns for Iowa WIC vendors emerge. Data is collected daily and reviewed on an ongoing basis. Trends identified can necessitate another type of monitoring, depending on the nature of each exception.

~~b~~ *c.* High-risk monitoring is used for vendors that have a documented record of problems such as previous violations, participant complaints, or high volume of WIC food check redemption. It includes, but is not limited to, any or all of the following: review of inventory levels, examination of redeemed WIC food checks on hand, *examination of electronic monitoring indicators, volume of WIC redemptions, number of identified errors, participant complaints, and* review of store policies on returned items~~, and review of employee training procedures~~. High-risk monitoring may be performed by the department or by contract agency staff under the direction of the department. Educational buying shall be included whenever possible.

~~c~~ *d.* Compliance ~~investigations~~ *buys* may be used for any vendors. Compliance ~~investigations~~ *buys* include covert activities used to document grounds for suspension from the program and may include purchase of unauthorized items. Compliance ~~investigations~~ *buys* may be performed by the department or another state agency or private company under contract with the department. The department is respon-

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sible for identifying the vendors to be investigated and for approving the protocol to be used by the other agency or company. Upon completion of a compliance ~~investigation~~ *buy* documenting program violations, the department shall issue the vendor a notice of *violation points assessed or* suspension.

The department also monitors vendor performance through in-office review of information. Such information, specifically the total amount of WIC redemptions, ~~total food stamp program redemption volume, and total sales volume,~~ is confidential as provided for in Iowa Code section 22.7(6). This business information could provide an advantage to competitors and would serve no public purpose if made available.

ITEM 14. Amend **73.9(2)"a"(2)** as follows:

(2) Nutrition tailoring. Infants are defined as breastfed, supplemented, or formula-fed. A breastfed infant does not receive any formula from WIC. A supplemented infant may receive up to ~~eight 14 ounce containers~~ *seven pounds* of powdered formula per month. A formula-fed infant receives eight pounds of powdered or 403 ounces of concentrate formula per month. A breastfeeding mother of an infant who does not receive any formula from WIC is eligible to receive an enhanced food package containing additional quantities and types of WIC authorized foods. The mother of a supplemented infant may remain eligible because she is still breastfeeding. Food packages for the mother and infant are tailored appropriately to their feeding patterns.

Federal regulations require the issuance of 20 Kcal per ounce, iron-fortified infant formula (formula containing at least 10 milligrams of iron per liter) to infants under 12 months of age. The provision of cow's milk in lieu of formula is not allowed. Formulas concentrated above 20 Kcal/ounce or specially formulated in other ways can be provided when a physician determines that an infant has a medical condition which contraindicates the use of a formula as described above. *The department reserves the right to add or decline to add formulas to the state's approved list.*

Infant formula that is not fortified with iron to this level (low iron) may be provided without prior approval by the department for documented cases of hemolytic anemia or hemochromatosis. Other requests for low-iron formula will be evaluated by a licensed dietitian at the contract agency on a case-by-case basis.

Juice and infant cereal are provided to infants beginning the month the infant becomes six months of age.

ITEM 15. Amend subrule **73.9(3)**, paragraph **"c,"** as follows:

c. Changes to the approved food list are made once a year, taking effect on October 1. Inquiries from food companies about new *and continuing* products must be received ~~by~~ *annually between November 1 and* February 1 to be guaranteed consideration.

ITEM 16. Amend **73.9(3)"d,"** subparagraphs **(1)** and **(4)**, as follows:

(1) They shall be carried by one of the six largest distributors *to vendors* in the state.

(4) Ready-to-eat cold cereals ~~shall be~~ *are* ranked ~~as one of the top 19 potentially eligible cereals sold through major distributors in this state. Hot cereals shall be ranked as one of the top two eligible cooked cereals. Multiple varieties of a single brand of cereal shall be considered as one brand for the purposes of conducting this ranking.~~ *by the six major distributors to Iowa WIC vendors based on volume of total sales. Hot cereals are ranked in the same way. Multiple varieties of a single brand of cereal shall be considered as one brand for the purposes of constructing this ranking. The state office compiles data from all distributors to develop an overall ranking or ranked list. The top 19 cold cereals and the top 2 hot cereals that qualify are selected. This process includes both name-brand and private-label cereals.*

ITEM 17. Amend **73.9(3)"f,"** subparagraph **(1)**, as follows:

(1) To qualify, brands of unflavored whole, ~~2 percent, 1 percent, or skim~~ *low fat, reduced fat, or fat-free* milk marketed in Iowa must contain or be fortified with vitamins A and D to meet the federal standards. The department reserves the right to disqualify brands that significantly exceed the average price of other brands or which are marketed as providing additional health benefits.

ITEM 18. Amend subrule **73.9(3)**, paragraphs **"g"** and **"h,"** as follows:

g. All brands of dried beans or peas are approved whether packaged or purchased in bulk, *however, no mixes are allowed.*

h. Any brand of peanut butter qualifies as long as it does not contain other ingredients such as jelly. Brands may be either refrigerated or nonrefrigerated. *No peanut butter spreads are permitted.*

ITEM 19. Amend **73.9(3)"l"** by rescinding subparagraph **(7)**.

ITEM 20. Amend subrule **73.19(1)"b,"** item 16 in list, as follows:

16. Altering ~~the food items or quantities of food on~~ a check *(e.g., changing last valid date, food item or quantity).* 10

ITEM 21. Amend **73.19(2)"b,"** third unnumbered paragraph, as follows:

In addition, the accumulation of 45 ~~or more~~ violation points *within the first year or 90 violation points* within ~~an~~ *a single* agreement period is a major violation subject to a one year suspension of the WIC agreement for that vendor.

ITEM 22. Amend subrule **73.19(2)"c,"** numbered paragraph **"1,"** as follows:

1. Accumulation of 45 ~~or more administrative and procedural~~ violation points *within the first year or 90 violation points* within a single agreement period.

ITEM 23. Amend subrule **73.19(2)** by adopting **new** paragraphs **"i"** through **"l"** as follows:

i. The department shall disqualify a vendor who has been disqualified from the food stamp program. The disqualification shall be for the same length of time as the food stamp program disqualification, may begin at a later date than the food stamp program disqualification, and shall not be subject to administrative or judicial review under the WIC program.

j. The department shall permanently disqualify a vendor convicted of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments. A vendor shall not be entitled to receive any compensation for revenues lost as a result of such violation. The department may impose a civil money penalty (CMP) in lieu of a disqualification for this violation when it determines, in its sole discretion, and documents in accordance with the Federal Register,

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Volume 64, Number 52, Thursday, March 18, 1999, paragraph 246.12(k)(8) that:

(1) Disqualification of the vendor would result in inadequate participant access; or

(2) The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

k. The department shall use the civil money penalty formula in accordance with the Federal Register, Volume 64, Number 52, Thursday, March 18, 1999, paragraph 246.12 (k)(8) to determine the CMP.

l. Money received by the state WIC agency as a result of civil money penalties or fines assessed against a vendor and any interest charged in the collection of these penalties and fines shall be considered as program income.

ITEM 24. Amend rule 641—73.23(135) as follows:

641—73.23(135) Grant application procedures for contract agencies. Private, nonprofit or public agencies wishing to provide WIC services shall file a letter of intent to make application to the department no later than April 1 *of the competitive year.* ~~Agencies shall apply to administer WIC programs every three years with an annual continuation application.~~ *Applications shall be to administer WIC services for a specified project period, as defined in the request for proposal, with an annual continuation application.* The contract period shall be from October 1 to September 30 annually. All materials submitted as part of the grant application are considered public records in accordance with Iowa Code chapter 22, after a notice of award is made by the department. Notification of the availability of funds and grant application procedures will be provided in accordance with the department rules found in 641—Chapter 176.

Contract agencies are selected on the basis of the grant applications submitted to the department. *The department will consider only applications from private nonprofit or public agencies.* In the case of competing applications, the contract will be awarded to the agency that scores the highest number of points in the review. ~~The criteria used to score the applications shall be consistent with 7 CFR 246.~~ Copies of review criteria are available from: ~~Bureau~~ Chief, ~~Iowa~~ Bureau of Nutrition and WIC, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, (515)281-4913.

[Filed Emergency After Notice 11/12/99, effective 11/12/99]
[Published 12/1/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

ARC 9504A

DENTAL EXAMINERS BOARD[650]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 25, "Continuing Education," Iowa Administrative Code.

Chapter 25 is being amended to decrease continuing education hours allowed for attendance at convention-type meetings and to clarify the types of subject matter acceptable for continuing education.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 11, 1999, as **ARC 9275A**. A public hearing was held on these amendments on September 8, 1999. No one attended this hearing and only one public comment was received.

In response to public comment, the Board has added in subrule 25.3(4) an effective date of July 1, 2000, the beginning of the compliance period for earning continuing education. Also, in response to public comment, the Board placed the parenthetical language in subrule 25.3(7) in a separate sentence in order to improve the clarity of the subrule.

These amendments are intended to implement Iowa Code section 147.10.

These amendments will become effective on January 5, 2000.

The following amendments are adopted.

ITEM 1. Amend subrule 25.3(4) as follows:

25.3(4) Activity types acceptable for continuing dental education credit may include:

a. Attendance at a multiday convention-type meeting. A multiday, convention-type meeting is held at a national, state or regional level and involves a variety of concurrent educational experiences directly related to the practice of dentistry. *Effective July 1, 2000, attendees* ~~Attendance~~ shall receive ~~five~~ *three* hours of credit with the maximum allowed ~~ten~~ *six* hours of credit per biennium. *Prior to July 1, 2000, attendees shall receive five hours of credit with the maximum allowed ten hours of credit per biennium.* Four hours of credit shall be allowed for presentation of an original table clinic at a convention-type meeting as verified by the sponsor when the subject matter conforms with 25.3(7). ~~Attendance~~ *Attendees* at the table clinic session of a dental or dental hygiene convention shall receive two hours of credit as verified by the sponsor.

b. to e. No change.

ITEM 2. Amend subrule **25.3(7)**, paragraph **"b,"** as follows:

b. Nonacceptable subject matter includes personal development, *business aspects of practice, personnel management,* ~~practice management, communication,~~ government regulations, insurance, collective bargaining, and community service presentations. While desirable, those subjects are not applicable to the dental and dental hygiene skills, knowledge, and competence as expressed in the legislation. Therefore, such courses will receive no credit toward relicensure. The board may deny credit for any course. *Courses in patient treatment record keeping, risk management, and OSHA regulations are acceptable subject matter.*

[Filed 11/12/99, effective 1/5/00]
[Published 12/1/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

ARC 9495A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," appearing in the Iowa Administrative Code.

The Department of Human Services previously adopted rules providing for a Home- and Community-Based Services waiver program for persons with a physical disability who currently reside in a medical institution and who have been residents of a medical institution for a minimum of 30 days. However, implementation of this program required federal approval.

These amendments make changes to the rules that are being required by the Health Care Financing Administration (HCFA) for approval of the waiver. The changes are as follows:

- Community businesses are being added as providers of home and vehicle modifications. HCFA believed the Department would be limiting consumer access by not allowing community businesses as providers.
- Persons who are at the ICF/MR level of care will not be eligible to use this waiver. HCFA would not approve this waiver with the ICF/MR population included, as they do not believe this population should be mixed with the nursing facility population.

The elimination of eligibility for this waiver for persons needing the ICF/MR level of care removes any county funding from this waiver. Therefore, policy regarding securing county approval for slots and county reimbursement is removed from these rules.

- The total monthly cost of waiver services that each waiver consumer may use is being lowered from $1150 per month to $621 per month, as the cost comparison used to justify the waiver can no longer include the costs for ICF/MR level of care. Persons whose service needs are greater than the limit on the total monthly cost of waiver services will not be able to use this waiver.

These amendments do not provide for waiver in specific situations because all foreseeable situations are covered by these amendments and because HCFA required these changes for all applicants and recipients. Any specific situations would be in regard to individuals and could be handled by a waiver under the Department's general rule on exceptions at rule 441—1.8(217).

These amendments were previously Adopted and Filed Emergency and published in the October 6, 1999, Iowa Administrative Bulletin as **ARC 9384A**. Notice of Intended Action to solicit comments on that submission was published in the October 6, 1999, Iowa Administrative Bulletin as **ARC 9383A**.

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These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments November 10, 1999.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective February 1, 2000, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule 77.41(3) as follows:

77.41(3) Home and vehicle modification providers. A home and vehicle modification provider shall be ~~an~~ *either:*

a. An approved HCBS brain injury or mental retardation supported community living service provider ~~and shall meet~~ *that meets all* the following standards:

~~a.~~ *(1)* The provider shall obtain a binding contract with a community business to perform the work at the reimbursement provided by the department without additional charge. The contract shall include, at a minimum, cost, time frame for work completion, employer's liability coverage, and workers' compensation coverage.

~~b.~~ *(2)* The business shall provide physical or structural modifications to homes or vehicles according to service descriptions listed in 441—subrule 78.46(2).

~~c.~~ *(3)* The business, or the business's parent company or corporation, shall have the necessary legal authority to operate in conformity with federal, state and local laws and regulations.

b. A community business that performs the work and meets all the following standards:

(1) The community business shall enter into binding contracts with consumers to perform the work at the reimbursement provided by the department without additional charge. The contract shall include, at a minimum, cost, time frame for work completion, employer's liability coverage, and workers' compensation coverage.

(2) The business shall provide physical or structural modifications to homes or vehicles according to service descriptions listed in 441—subrule 78.46(2).

(3) The business, or the business's parent company or corporation, shall have the necessary legal authority to operate in conformity with federal, state and local laws and regulations.

ITEM 2. Amend rule 441—83.102(249A) as follows:

Amend subrule **83.102(1)**, paragraph **"h,"** as follows:

h. Be in need of ~~intermediate care facility for the mentally retarded (ICF/MR),~~ skilled nursing~~,~~ or intermediate care facility level of care. ~~For those who are in need of ICF/MR level of care and who are currently residing in an ICF/MR facility, the discharge planner must contact the county of financial responsibility for the consumer to determine the county's agreement with referral to the physical disability waiver.~~ Initial decisions on level of care shall be made for the department by the Iowa Foundation for Medical Care (IFMC) within two working days of receipt of medical information. After notice of an adverse decision by IFMC, the Medicaid applicant or recipient or the applicant's or recipient's representative may request reconsideration by IFMC pursuant to subrule 83.109(2). On initial and reconsideration decisions, IFMC determines whether the level of care requirement is met based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2). Adverse decisions by IFMC on reconsiderations may be appealed to the department pursuant to 441—Chapter 7 and rule 441—83.109(249A).

Amend subrule **83.102(2)**, paragraph **"b,"** as follows:

b. The total monthly cost of physical disability waiver services shall not exceed ~~$1150~~ *$621* per month.

Amend the catchwords of subrule 83.102(3) as follows:

83.102(3) ~~State slots~~ *Slots.*

Rescind and reserve subrule **83.102(4)**.

Amend the catchwords of subrule 83.102(5) as follows:

83.102(5) Securing a ~~state~~ slot.

Rescind and reserve subrule **83.102(6)**.

Amend subrule 83.102(7) as follows:

83.102(7) HCBS physical disability waiver waiting lists. When services are denied because the statewide limit for institutionalized persons is reached, a notice of decision denying service based on the limit and stating that the person's name shall be put on a statewide waiting list shall be sent to the person by the department.

When services are denied because the two slots per region for persons already residing in the community at the time of application are filled, a notice of decision denying service based on the limit on those slots and stating that the person's name shall be put on a waiting list by region for one of the community slots shall be sent to the person by the department.

~~When services are denied because the county of legal settlement has not established any slots in the county plan, a notice of decision will be issued denying service stating that the person is not eligible because the county has chosen not to participate in the HCBS physical disabilities waiver. The names of the persons who are not eligible because the county has chosen not to participate shall be placed on a waiting list by county by the department in case the county decides to participate.~~

~~When services are denied because all county of legal settlement slots are filled, a notice of decision will be issued denying service stating that the person is not eligible because all county slots are filled. The names of the persons who are not eligible because all county slots are filled shall be placed on a waiting list by county by the department in case a slot becomes available or the county decides to add additional slots.~~

ITEM 3. Amend subrule **83.107(3)** by rescinding and reserving paragraph **"f."**

ITEM 4. Rescind and reserve rule **441—83.110(249A)**.

[Filed 11/10/99, effective 2/1/00]
[Published 12/1/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

ARC 9496A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 81, "Nursing Facilities," appearing in the Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Council on Human Services adopted these amendments November 10, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on September 22, 1999, as **ARC 9349A.**

These amendments revise the historical cost reporting time periods used for the rebasing of skilled nursing facility rates, provide a methodology for determining costs for facilities that have elected to receive the low Medicare volume prospective payment rate for 1998, change maximum allowable cost caps from percentiles to dollar amounts, and clarify policy regarding the determination of per diem rates for skilled nursing facilities. In addition, an obsolete reference to subrule 79.1(9) in 441—Chapter 81 is deleted.

Current policy requires skilled nursing facility rates to be rebased every three years. The adjustments made through rebasing will serve to reflect changes in the cost of care.

Facilities that have elected to receive the low Medicare volume prospective payment rate for 1998 shall have the Medicare 1998 prospective payment rate plus ancillary costs attributable to skilled patient days and not payable by Medicare used to determine the facility's Medicaid costs per patient day. These facilities are not required to divide routine service costs between skilled patient days and regular nursing facility patient days in the Medicare cost reports, making it impossible to determine the routine service costs attributable to skilled patient days from those reports. Providing this reimbursement methodology will address appeals received at the time of the last rebasing.

Changing maximum allowable cost caps from percentiles to dollar amounts will provide consistency with other cost-based providers. The maximum allowable cost for skilled care shall be $346.20 per day for hospital-based facilities and $163.41 per day for freestanding facilities.

Clarification of the skilled nursing facility rules will provide consistency with changes previously made to the nursing facility rules.

These amendments do not provide for waivers in specified situations because the Department believes that the same data and methodologies should be used for determining reimbursement rates for all skilled nursing facilities. Facilities may request a waiver of any part of the reimbursement methodology under the Department's general rule on exceptions at rule 441—1.8(217).

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective February 1, 2000.

The following amendments are adopted.

ITEM 1. Amend rule 441—79.1(249A) as follows:

Amend subrule **79.1(2)**, Basis of reimbursement provider category of "Nursing facilities: Skilled nursing care providers," as follows:

Provider category	Basis of reimbursement	Upper limit
Nursing facilities:		
2. Skilled nursing care ~~providers, including~~ *provided in*:		
Hospital-based facilities	Prospective reimbursement. See 79.1(9)	Facility base rate per diems used on 6/30/99 inflated by 2% subject to *a* maximum *allowable* payment rate ~~at the sixtieth percentile of costs of all~~ *of $346.20 per day for* hospital-based skilled facilities
Freestanding facilities	Prospective reimbursement. See 79.1(9)	Facility base rate per diems used on 6/30/99 inflated by 2% subject to *a* maximum *allowable* payment rate ~~at the sixty-ninth percentile of costs of all~~ *of $163.41 per day for* freestanding skilled facilities

Amend subrule **79.1(9)**, paragraphs **"a"** and **"d,"** as follows:

a. The base year per diem rate shall be the Medicaid cost per diem as determined using the facility's ~~1995~~ *1998* fiscal year-end *Medicare* cost report. The base per diem rate for facilities enrolled since ~~1995~~ *1998* will be determined using the facility's first finalized *Medicare* cost report. Determination of allowable costs for the base year will be made using Medicare methods in place on December 31, ~~1995~~ *1998*. *For facilities that have elected to receive the low Medicare volume prospective payment rate for 1998, the Medicare 1998 prospective payment rate plus ancillary costs attributable to skilled patient days and not payable by Medicare shall be used to determine the facility's Medicaid costs per patient day.*

A new skilled facility shall be reimbursed at an interim rate determined by Medicare or, for facilities not participating in Medicare, *at* an interim rate determined using Medicare methodology. The initial interim rate shall be either the rate used by Medicare or a per diem (using Medicare methodology) developed using a projected cost statement from the facility. When the facility submits the first cost report to Medicare, the facility shall send a copy to the Medicaid fiscal agent. A new prospective rate shall be established based on this cost report effective the first day of the month in which the cost report is received. ~~The interim~~ *Interim* and ~~prospective rate~~ *final rates* may not exceed the ~~ceiling~~ *maximum allowable costs* established in paragraph "d" below unless the facility meets the requirements in paragraph "e" below.

d. Effective February 1, ~~1997~~ *2000*, ~~a ceiling of~~ *the maximum* allowable cost *for skilled care* shall be ~~established at the sixtieth percentile~~ *$346.20 per day* for hospital-based facilities and ~~the sixty-ninth percentile~~ *$163.41 per day* for freestanding facilities. ~~The allowable cost shall be weighted by Medicaid patient days.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subrule 81.10(1) as follows:

81.10(1) Method of payment. Facilities shall be reimbursed under a cost-related vendor payment program. A per diem rate shall be established based on information submitted according to rule 441—81.6(249A) ~~or 441—subrule 79.1(9)~~. The per diem rate shall be no greater than the maximum reasonable cost determined by the department.

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[Published 12/1/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

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 [110.2, 110.5, 110.7(3), 110.9(3), Division II, Preamble, 110.25 to 110.27, 110.31, 110.35] is being omitted. These rules are identical to those published under Notice as **ARC 9352A**, IAB 9/22/99.

[Filed 11/10/99, effective 2/1/00]
[Published 12/1/99]

[For replacement pages for IAC, see IAC Supplement 12/1/99.]

ARC 9497A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services hereby amends Chapter 110, "Family and Group Day Care Homes," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments November 10, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on September 22, 1999, as **ARC 9352A**.

These amendments implement the following changes to policy governing family and group child care homes:

- Training requirements are revised and clarified. Training choices are expanded for the pilot project counties, and pilot project counties are required to have four hours of their required training in a sponsored group setting. The remaining hours may be received in self-study using a training package approved by the Department.
- Current standards for cardiopulmonary resuscitation and first-aid training are incorporated.
- The four-level child care pilot program is expanded from two counties (Scott and Delaware) to a maximum of two counties per Departmental region, depending on interest. The transition exception for new pilot program counties is extended to January 1, 2002. A report is due to the General Assembly in January of 2000 regarding the feasibility of implementing the project statewide.
- Provider qualifications are revised for Level II, III and IV providers to add the option of equivalent experience instead of experience at lower levels and to clarify it was not the Department's intent that all providers must start at Level I.
- References to "child day care" or "day care" are changed to "child care" to comply with legislative changes.
- Form names and numbers are corrected and updated.

These amendments are identical to those published under Notice of Intended Action.

These amendments do not provide for waivers in specified situations because amendments are required by state legislation that does not allow for any waiver.

These amendments are intended to implement Iowa Code section 234.6 and chapter 237A as amended by 1999 Iowa Acts, chapter 192, division I.

These amendments shall become effective February 1, 2000.

ARC 9498A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 185, "Rehabilitative Treatment Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this amendment on November 10, 1999. Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin on October 6, 1999, as **ARC 9386A**.

This amendment eliminates the requirement that Rehabilitative Treatment and Supportive Service (RTSS) providers submit cost reports as a part of the rate establishment process for RTS services for which a weighted average rate has been established.

Current rules require a new round of cost reports to be submitted by RTSS providers by March 31, 2000, to be used to establish rates for services provided on or after July 1, 2000. The current system is based upon historical costs and the Department and providers are currently involved in the development of a bundled services system to replace the RTSS system with a tentative implementation date of mid to late 2000. The successor system contains a simplified cost reporting system as part of its rate establishment process. Requiring cost reports to be submitted in order to establish rates that may not be used or may only be used for a short time is not desirable.

This amendment does not provide for waivers in specified situations because such a provision is unnecessary. This amendment removes a performance requirement.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 234.6 and 234.38.

This amendment shall become effective February 1, 2000.

The following amendment is adopted.

Amend rule 441—185.112(234) as follows:

Amend the introductory paragraph as follows:

441—185.112(234) ~~Interim determination~~ *Determination* of rates. Rules 441—185.102(234) to 441—185.107(234), 185.109(234) and 185.110(234) shall be held in abeyance for purposes of establishing rates effective ~~during the time period beginning~~ January 1, 1998, ~~to June 30, 2000,~~ unless otherwise provided for in these rules. Rates for a service to be effective on or after February 1, 1998, shall be established based on the payment rate negotiated between the provider and the department. This negotiated rate shall be

HUMAN SERVICES DEPARTMENT[441](cont'd)

based upon the historical and future reasonable and necessary cost of providing that service, other payment-related factors and availability of funding. Negotiated rates may be increased without negotiation if funds are appropriated for an across-the-board increase. A rate in effect as of December 31, 1997, shall continue in effect until a negotiated rate is established in accordance with the requirements of subrules 185.112(1) to 185.112(3), subrule 185.112(6), or subrule 185.112(12) or until the service is terminated in accordance with subrule 185.112(4).

Amend subrule **185.112(1)**, paragraph **"a,"** as follows:

a. On or after January 1, 1998, the department shall begin negotiating payment rates with providers of rehabilitative treatment and supportive services to be effective for services provided on or after February 1, 1998~~, through June 30, 2000~~.

Amend subrule **185.112(6)**, paragraphs **"d"** and **"e,"** as follows:

d. If an existing provider ceases to contract for and provide a service or program for which a zero rate has been established, and decides to again contract for and provide that program or service ~~and has a contract for that service in effect prior to June 30, 2000~~, the rate shall be established in accordance with subrule 185.112(2) and the starting point for negotiations shall be the weighted average rate.

e. If a provider ceases to contract for and provide a service or program after a rate has been established in accordance with subrule 185.112(1) and ~~prior to December 31, 1999,~~ decides to again contract for and provide that program or service, the rate shall be established at the rate in effect when service was interrupted.

Rescind and reserve subrule **185.112(10)**.

[Filed 11/10/99, effective 2/1/00]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

ARC 9524A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

This amendment deletes language requiring the purchase by hospitals of specific equipment for patient care. The revised language gives hospitals discretion in determining equipment purchases in accordance with the needs of the patients.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 25, 1999, as **ARC 9284A**. No public comment was received on this amendment. The amendment is identical to the amendment published under Notice of Intended Action.

This amendment was approved during the November 10, 1999, meeting of the Board of Health.

This amendment will become effective on January 5, 2000.

This amendment is intended to implement Iowa Code chapter 135B.

This amendment is not subject to waiver because hospital rules are considered minimum standards.

The following amendment is adopted.

Amend rule 481—51.22(135B) as follows:

Amend the introductory paragraph as follows:

481—51.22(135B) Equipment for patient care. Hospital equipment shall be selected, maintained and ~~used~~ *utilized* in accordance with the needs of the patients.

Rescind subrules **51.22(1)**, **51.22(2)**, and **51.22(4)** to **51.22(6)**.

[Filed 11/12/99, effective 1/5/00]
[Published 12/1/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

ARC 9523A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals hereby amends Chapter 58, "Intermediate Care Facilities," and rescinds Chapter 59, "Skilled Nursing Facilities," Iowa Administrative Code.

The amendments modify dietary rules by updating language and references relating to the United States Food and Drug Administration's Food Code. In addition, the amendments implement a title change for the chapter which contains standards for nursing facilities and rescind rules pertaining to skilled nursing facilities. Under a change in the federal regulatory system for nursing facilities, all regulations were incorporated into one standard for nursing facilities. Since these standards applicable to all nursing facilities are contained in Chapter 58 rules, Chapter 59 rules are no longer needed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 6, 1999, as **ARC 9387A**. One comment letter was received in support of the adoption of updated language and references relating to the United States Food and Drug Administration's Food Code.

A public hearing was held on October 26, 1999. Four individuals provided comment. As a result of the comments received and clarifications in language requested, the following changes were made to the Notice of Intended Action:

1. The word "food service" has been replaced by "kitchen" in paragraph 58.24(2)"d."

2. The phrase "a dispensing device that has been approved for such use" has been replaced by "refrigerated bulk milk dispensers" in paragraph 58.24(6)"d." A comment was received from the Iowa Health Care Association requesting the use of the 1997 United States Food and Drug Adminstration's Food Code. The Department will continue to refer to the 1999 Food Code as this is the Food Code that is currently in force. In addition, the 1997 Food Code is no longer available for purchase from official sources.

These amendments are subject to waiver pursuant to the Department's variance provisions contained in rule 481—58.2(135C).

These amendments were approved during the November 10, 1999, meeting of the Board of Health.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

These amendments will become effective on January 5, 2000.

These amendments are intended to implement Iowa Code section 135C.14(8).

The following amendments are adopted.

ITEM 1. Amend **481—Chapter 58** by striking the words "intermediate care facility" and inserting in lieu thereof the words "nursing facility" wherever they appear, including the chapter title.

ITEM 2. Amend rule **481—58.1(135C)** by deleting subrule numbers and by adopting the following **new** definitions in alphabetical order:

"Nourishing snack" is defined as a verbal offering of items, single or in combination, from the basic food groups. Adequacy of the "nourishing snack" will be determined both by resident interviews and by evaluation of the overall nutritional status of residents in the facility.

"Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of clostridium botulinum, or in raw shell eggs, the growth of salmonella enteritidis. Potentially hazardous food includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth of bacteria.

"Substantial evening meal" is defined as an offering of three or more menu items at one time, one of which includes a high protein such as meat, fish, eggs or cheese. The meal would represent no less than 20 percent of the day's total nutritional requirements.

ITEM 3. Amend subrule **58.24(1)**, paragraph **"a,"** as follows:

a. There shall be written policies and procedures for the dietetic service department that include staffing, nutrition, ~~and~~ menu planning~~;~~, therapeutic diets~~;~~, preparation~~;~~, service~~;~~, ordering~~;~~, receiving~~;~~, storage~~;~~, sanitation~~;~~, and hygiene of staff. The policies and procedures shall be kept in a notebook and made available for use in the dietetic service department. (III)

ITEM 4. Rescind subrules **58.24(2)** to **58.24(9)** and adopt the following **new** subrules in lieu thereof:

58.24(2) Dietary staffing.

a. The facility shall employ a qualified dietary supervisor who:

(1) Is a qualified dietitian as defined in 58.24(2)"e"; or

(2) Is a graduate of a dietetic technician training program approved by the American Dietetic Association; or

(3) Is a certified dietary manager certified by the certifying board for dietary managers of the Dietary Managers Association (DMA) and maintains that credential through 45 hours of DMA-approved continuing education; or

(4) Has completed a DMA-approved course curriculum necessary to take the certification examination required to become a certified dietary manager; or

(5) Has documented evidence of at least two years' satisfactory work experience in food service supervision and who is in an approved dietary manager association program and will successfully complete the program within 12 months of the date of enrollment; or

(6) Has completed or is in the final 90-hour training course approved by the department. (II, III)

b. The supervisor shall have overall supervisory responsibility for the dietetic service department and shall be employed for a sufficient number of hours to complete management responsibilities that include:

(1) Participating in regular conferences with consultant dietitian, administrator and other department heads; (III)

(2) Writing menus with consultation from the dietitian and seeing that current menus are posted and followed and that menu changes are recorded; (III)

(3) Establishing and maintaining standards for food preparation and service; (II, III)

(4) Participating in selection, orientation, and in-service training of dietary personnel; (II, III)

(5) Supervising activities of dietary personnel; (II, III)

(6) Maintaining up-to-date records of residents identified by name, location and diet order; (III)

(7) Visiting residents to learn individual needs and communicating with other members of the health care team regarding nutritional needs of residents when necessary; (II, III)

(8) Keeping records of repairs of equipment in the dietetic service department. (III)

c. The facility shall employ sufficient supportive personnel to carry out the following functions:

(1) Preparing and serving adequate amounts of food that are handled in a manner to be bacteriologically safe; (II, III)

(2) Washing and sanitizing dishes, pots, pans and equipment at temperatures required by procedures described elsewhere; (II, III)

(3) Serving of therapeutic diets as prescribed by the physician and following the planned menu. (II, III)

d. The facility shall not assign personnel duties simultaneously in the kitchen and laundry, housekeeping, or nursing service except in an emergency situation. If such a situation occurs, proper sanitary and personal hygiene procedure shall be followed as outlined under the rules pertaining to hygiene of staff. (II, III)

e. If the dietetic service supervisor is not a licensed dietitian, a consultant dietitian is required. The consultant dietitian shall be licensed by the state of Iowa pursuant to Iowa Code chapter 152A.

f. Consultants' visits shall be scheduled to be of sufficient duration and at a time convenient to:

(1) Record, in the resident's medical record, any observations, assessments and information pertinent to medical nutrition therapy; (I, II, III)

(2) Work with nursing staff on resident care plans; (III)

(3) Consult with the administrator and others on developing and implementing policies and procedures; (III)

(4) Write or approve general and therapeutic menus; (III)

(5) Work with the dietetic supervisor on developing procedures, recipes and other management tools; (III)

(6) Present planned in-service training and staff development for food service employees and others. Documentation of consultation shall be available for review in the facility by the department. (III)

g. In facilities licensed for more than 15 beds, food service personnel shall be on duty for a minimum of a 12-hour span extending from the preparation of breakfast through supper. (III)

58.24(3) Nutrition and menu planning.

a. Menus shall be planned and followed to meet nutritional needs of each resident in accordance with the physician's orders. (II, III)

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

b. Menus shall be planned and served to include foods and amounts necessary to meet the current Recommended Daily Dietary Allowances, 1989 edition, adopted by the Food and Nutrition Board of the National Research Council, National Academy of Sciences. (II)

The food groups listed below and the food groups for menu planning in the 1998 edition of the Simplified Diet Manual, Iowa State University Press, Ames, Iowa, shall be used as a minimum for planning resident menus.

(1) Milk - two or more cups served as beverage or used in cooking;

(2) Meat group - two or more servings of meat, fish, poultry, eggs, cheese or equivalent; at least four to five ounces edible portion per day;

(3) Vegetable and fruit group - four or more servings (two cups). This shall include a citrus fruit or other fruit and vegetable important for vitamin C daily, a dark green or deep yellow vegetable for vitamin A at least every other day, and other fruits and vegetables, including potatoes;

(4) Bread and cereal group - four or more servings of whole-grain, enriched or restored;

(5) Foods other than those listed shall be included to meet daily energy requirements (calories) to add to the total nutrients and variety of meals.

c. At least three meals or their equivalent shall be served daily, at regular hours comparable to normal mealtimes in the community. (II)

(1) There shall be no more than a 14-hour span between a substantial evening meal and breakfast except as provided in subparagraph (3) below. (II, III)

(2) The facility shall offer snacks at bedtime daily. (II, III)

(3) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast of the following day. The current resident group must agree to this meal span and a nourishing snack must be served. (II)

d. Menus shall include a variety of foods prepared in various ways. The same menu shall not be repeated on the same day of the following week. (III)

e. Menus shall be written at least one week in advance. The current menu shall be located in an accessible place in the dietetic service department for easy use by persons purchasing, preparing and serving food. (III)

f. Records of menus as served shall be filed and maintained for 30 days and shall be available for review by department personnel. When substitutions are necessary, they shall be of similar nutritive value and recorded. (III)

g. A file of tested recipes adjusted to the number of people to be fed in the facility shall be maintained. (III)

h. Alternate foods shall be offered to residents who refuse the food served. (II, III)

58.24(4) Therapeutic diets.

a. Therapeutic diets shall be prescribed by the attending physician. A current therapeutic diet manual shall be readily available to attending physicians, nurses and dietetic service personnel. This manual shall be used as a guide for writing menus for therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and reviewing procedures for preparation and service of food. (III)

b. Personnel responsible for planning, preparing and serving therapeutic diets shall receive instructions on those diets. (III)

58.24(5) Food preparation and service.

a. Methods used to prepare foods shall be those which conserve nutritive value and flavor and meet the taste preferences of the residents. (III)

b. Foods shall be attractively served. (III)

c. Foods shall be cut up, chopped, ground or blended to meet individual needs. (II, III)

d. Self-help devices shall be provided as needed. (II, III)

e. Table service shall be attractive. (III)

f. Plasticware, china and glassware that are unsightly, unsanitary or hazardous because of chips, cracks or loss of glaze shall be discarded. (III)

g. All food that is transported through public corridors shall be covered. (III)

h. All potentially hazardous food or beverages capable of supporting rapid and progressive growth of microorganisms that can cause food infections or food intoxication shall be maintained at temperatures of 41°F or below or at 140°F or above at all times, except during necessary periods of preparation. Frozen food shall be maintained frozen. (I, II, III)

i. Potentially hazardous food that is cooked, cooled and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 165°F for 15 seconds. (I, II, III)

j. Food must be reheated to 165°F within no more than two hours after the heating process begins. (I, II, III)

k. Cooked potentially hazardous food shall be cooled:

(1) Within two hours, from 140°F to 70°F; and

(2) Within four hours, from 70°F to 41°F or less. (I, II, III)

58.24(6) Dietary ordering, receiving, and storage.

a. All food and beverages shall be of wholesome quality and procured from sources approved or considered satisfactory by federal, state and local authorities. Food or beverages from unlabeled, rusty, leaking, broken or damaged containers shall not be served. (I, II, III)

b. A minimum of at least a one-week supply of staple foods and a three-day supply of perishable foods shall be maintained on the premises to meet the planned menu needs until the next food delivery. Supplies shall be appropriate to meet the requirements of the menu. (III)

c. All milk shall be pasteurized. (III)

d. Milk may be served in individual, single-use containers. Milk may be served from refrigerated bulk milk dispensers or from the original container. Milk served from a refrigerated bulk milk dispenser shall be dispensed directly into the glass or other container from which the resident drinks. (II, III)

e. Records which show amount and kind of food purchased shall be retained for three months and shall be made available to the department upon request. (III)

f. Dry or staple items shall be stored at least six inches (15 cm) above the floor in a ventilated room, not subject to sewage or wastewater backflow, and protected from condensation, leakage, rodents or vermin in accordance with the Food Code, 1999 edition. (III)

g. Pesticides, other toxic substances and drugs shall not be stored in the food preparation or storage areas used for food or food preparation equipment and utensils. Soaps, detergents, cleaning compounds or similar substances shall not be stored in food storage rooms or areas. (II)

h. Food storage areas shall be clean at all times. (III)

i. There shall be a reliable thermometer in each refrigerator, freezer and in storerooms used for food. (III)

j. Foods held in refrigerated or other storage areas shall be appropriately covered. Food that was prepared and not

served shall be stored appropriately, clearly identifiable and dated. (III)

58.24(7) Sanitation in food preparation area.

a. Unless otherwise indicated in this chapter or 481—Chapter 61, the sanitary provisions as indicated in Chapters 3, 4 and 7 of the 1999 Food Code, U.S. Public Health Service, Food and Drug Administration, Washington, DC 20204, shall apply.

b. Residents shall not be allowed in the food preparation area. (III)

c. The food preparation area shall not be used as a dining area for residents, staff or food service personnel. (III)

d. All food service areas shall be kept clean, free from litter and rubbish, and protected from rodents, animals, roaches, flies and other insects. (II, III)

e. All utensils, counters, shelves and equipment shall be kept clean, maintained in good repair, and shall be free from breaks, corrosion, cracks and chipped areas. (II, III)

f. There shall be effective written procedures established for cleaning all work and serving areas. (III)

g. A schedule of cleaning duties to be performed daily shall be posted. (III)

h. An exhaust system and hood shall be clean, operational and maintained in good repair. (III)

i. Spillage and breakage shall be cleaned up immediately and disposed of in a sanitary manner. (III)

j. Wastes from the food service that are not disposed of by mechanical means shall be kept in leakproof, nonabsorbent, tightly closed containers when not in immediate use and shall be disposed of frequently. (III)

k. The food service area shall be located so it will not be used as a passageway by residents, guests or non-food service staff. (III)

l. The walls, ceilings and floors of all rooms in which food is prepared and served shall be in good repair, smooth, washable, and shall be kept clean. Walls and floors in wet areas should be moisture-resistant. (III)

m. Ice shall be stored and handled in such a manner as to prevent contamination. Ice scoops should be sanitized daily and kept in a clean container. (III)

n. There shall be no animals or birds in the food preparation area. (III)

o. All utensils used for eating, drinking, and preparing and serving food and drink shall be cleaned and disinfected or discarded after each use. (III)

p. If utensils are washed and rinsed in an automatic dishmachine, one of the following methods shall be used:

(1) When a conventional dishmachine is utilized, the utensils shall be washed in a minimum of 140°F using soap or detergent and sanitized in a hot water rinse of not less than 170°F. (II, III)

(2) When a chemical dishmachine is utilized, the utensils shall be washed in a minimum of 120°F using soap or detergent and sanitized using a chemical sanitizer that is automatically dispensed by the machine and is in a concentration equivalent to 50 parts per million (ppm) available chloride. (II, III)

q. If utensils are washed and rinsed in a three-compartment sink, the utensils shall be thoroughly washed in hot water at a minimum temperature of 110°F using soap or detergent, rinsed in hot water to remove soap or detergent, and sanitized by one of the following methods:

(1) Immersion for at least 30 seconds in clean water at 180°F; (II, III)

(2) Immersion in water containing bactericidal chemical at a minimum concentration as recommended by the manufacturer. (II, III)

r. After sanitation, the utensils shall be allowed to drain and dry in racks or baskets on nonabsorbent surfaces. Drying cloths shall not be used. (III)

s. Procedures for washing and handling dishes shall be followed in order to protect the welfare of the residents and employees. Persons handling dirty dishes shall not handle clean dishes without first washing their hands. (III)

t. A mop and mop pail shall be provided for exclusive use in kitchen and food storage areas. (III)

58.24(8) Hygiene of food service personnel.

a. Food service personnel shall be trained in basic food sanitation techniques, shall be clean and wear clean clothing, including a cap or a hairnet sufficient to contain, cover and restrain hair. Beards, mustaches and sideburns that are not closely cropped and neatly trimmed shall be covered. (III)

b. Food service personnel shall be excluded from duty when affected by skin infections or communicable diseases in accordance with the facility's infection-control policies. (II, III)

c. Employee street clothing stored in the food service area shall be in a closed area. (III)

d. Food preparation sinks shall not be used for hand washing. Separate hand-washing facilities with soap, hot and cold running water, and single-use towels shall be used properly. (II, III)

e. Persons other than food service personnel shall not be allowed in the food preparation area unless required to do so in the performance of their duties. (III)

f. The use of tobacco shall be prohibited in the kitchen. (III)

ITEM 5. Rescind and reserve **481—Chapter 59.**

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INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 505.8(2) and 507B.12, the Insurance Division hereby amends Chapter 16, "Replacement of Life Insurance and Annuities," Iowa Administrative Code.

The new rules adopt, with some modifications, the National Association of Insurance Commissioners (NAIC) revised model regulation governing the replacement of life insurance and annuities. In recognition of numerous computer system modifications underway at insurance companies due to year 2000 changes, the Division has adopted a two-step schedule for implementation of these new rules. Rules 191—16.21(507B) to 16.24(507B) and 191— 16.26(507B) to 16.30(507B) will take effect July 1, 2000. Rule 191—16.25(507B) will take effect January 1, 2001.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 6, 1999, as ARC 9392A. A public hearing was held on October 26, 1999. Several technical amendments were made and two rules were partially rewritten to clarify their intent. In subrule 16.25(6) the

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phrase "When the applicant has existing policies or contracts" has been replaced with the phrase "In connection with a replacement transaction." Subrule 16.27(1) has been changed to make it consistent with other rules in new Division II regarding record retention.

These rules are intended to implement Iowa Code chapter 507B.

The following amendments are adopted.

Amend 191—Chapter 16 by reserving rules **191—16.11** to **191—16.20** in Division I and adopting the following **new** division:

DIVISION II
(Effective July 1, 2000)

191—16.21(507B) Purpose.

16.21(1) The purpose of these rules is:

a. To regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities.

b. To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions by:

(1) Ensuring that purchasers receive information with which a decision can be made in the purchaser's own best interest;

(2) Reducing the opportunity for misrepresentation and incomplete disclosure; and

(3) Establishing penalties for failure to comply with requirements of these rules.

16.21(2) These rules are authorized by Iowa Code section 507B.12 and are intended to implement Iowa Code section 507B.4.

191—16.22(507B) Definitions.

"Commissioner" means the Iowa insurance commissioner.

"Contract" means an individual annuity contract.

"Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

"Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

"Existing policy or contract" means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

"Financed purchase" means the purchase of a new policy involving the actual use of funds obtained by the withdrawal or surrender of, or by borrowing from, values of an existing policy to pay all or part of any premium due on a new policy issued by the same insurer. If a request for withdrawal, surrender, or borrowing involving the policy values of an existing policy is accompanied by direction to pay premiums on a new policy owned by the same policyholder within 13 months before or after the effective date of the new policy and is known by the insurer, it will be deemed prima facie evidence of a financed purchase.

"Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years as defined in Iowa Administrative Code 191—Chapter 14.

"Policy" means an individual life insurance policy.

"Policy summary," for the purposes of these rules, means:

1. For policies or contracts other than universal life policies, a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information: current death benefit; annual contract premium; current cash surrender value; current dividend; application of current dividend; and amount of outstanding loan.

2. For universal life policies, a written statement that shall contain at least the following information: the beginning and end date of the current report period; the policy value at the end of the previous report period and at the end of the current report period; the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders); the current death benefit at the end of the current report period on each life covered by the policy; the net cash surrender value of the policy as of the end of the current report period; and the amount of outstanding loans, if any, as of the end of the current report period.

"Producer" means a person licensed under Iowa Code chapter 522.

"Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

"Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

3. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

4. Reissued with any reduction in cash value; or

5. Used in a financed purchase.

"Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

"Sales material" means a sales illustration and any other written, printed or electronically presented information created, completed or provided by the company or producer that is used in the presentation to the policy or contract owner and which describes the benefits, features and costs of the specific policy or contract which is purchased.

191—16.23(507B) Exemptions.

16.23(1) Unless otherwise specifically included, these rules shall not apply to transactions involving:

a. Credit life insurance.

b. Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single provider in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct-response solicitation shall be subject to the provisions of rule 16.28(507B).

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c. Group life insurance and annuities used to fund formal prepaid funeral contracts.

d. An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner.

e. Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company.

f. Except as noted below, policies or contracts used to fund:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) A plan described by Section 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

(3) A governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under Section 457 of the Internal Revenue Code; or

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

These rules shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pretax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more annuity providers or policy providers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subrule, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single provider in connection with enrolling that individual employee.

g. New coverage provided under a life insurance policy or contract where the cost is borne wholly by the insured's employer or by an association of which the insured is a member.

h. Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed.

i. Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this chapter.

j. Structured settlement annuities.

16.23(2) Registered contracts shall be exempt from the requirements of paragraph 16.26(1)"b" and subrule 16.27(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

191—16.24(507B) Duties of producers.

16.24(1) A producer who initiates an application for a policy or a contract shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the applicant does not have an existing policy or contract, the producer's duties with respect to replacement are complete.

16.24(2) If the applicant does have an existing policy or contract, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A or A1 or other substantially similar form approved by the commissioner.

a. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and that a copy of the notice was left with the applicant.

b. The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

16.24(3) In connection with a replacement transaction, the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. A copy of any electronically presented sales material shall be provided to the policyholder in printed form no later than at the time of policy or contract delivery.

16.24(4) Except as provided in subrule 16.26(3), in connection with a replacement transaction, the producer shall submit to the insurer to which an application for a policy or contract is presented a copy of each document required by this subrule, a statement identifying any preprinted or electronically presented insurer-approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

191—16.25(507B) Duties of all insurers that use producers on or after January 1, 2001.

16.25(1) Each insurer that uses producers shall maintain a system of supervision and control to ensure compliance with the requirements of these rules that shall include at least the following:

a. Informing its producers of the requirements of these rules and incorporating the requirements of these rules into all relevant producer training manuals prepared by the insurer;

b. Providing to each producer a written statement of the insurer's position with respect to the acceptability of replacements including providing guidance to its producer as to the appropriateness of these transactions;

c. Reviewing the appropriateness of each replacement transaction that the producer does not indicate is in accord with paragraph 16.25(1)"b" above;

d. Confirming that the requirements of these rules have been met; and

e. Detecting transactions that are replacements of existing policies or contracts by the existing insurer but that have not been reported as such by the applicant or producer. Compliance with this subrule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters or programs of internal monitoring.

16.25(2) Each insurer that uses producers shall have the capacity to monitor each producer's life insurance policy and

annuity contract replacements for that insurer and shall, upon request, make such records available to the insurance division. The capacity to monitor shall include the ability to produce records for each producer's:

a. Life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;

b. Number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;

c. Annuity contract replacements as a percentage of the producer's total annual annuity contract sales;

d. Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the insurer's monitoring system as required by paragraph "e" of subrule 16.25(1); and

e. Replacements, indexed by replacing producer and existing insurer.

16.25(3) Each insurer that uses producers shall require with or as a part of each application for life insurance or for an annuity a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts.

16.25(4) Each insurer that uses producers shall require with each application for life insurance or for an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Appendix A or A1.

16.25(5) When the applicant has existing policies or contracts, each replacing insurer that uses producers shall be able to produce completed and signed copies of the notice regarding replacements for at least five years after the termination or expiration of the proposed policy or contract.

16.25(6) In connection with a replacement transaction, each replacing insurer that uses producers shall be able to produce copies of any sales material required by subrule 16.24(4), the basic illustration and any supplemental illustrations related to the specific policy or contract which is purchased and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract.

16.25(7) Each insurer that uses producers shall ascertain that the sales material and illustrations required by subrule 16.24(4) meet the requirements of these rules and are complete and accurate for the proposed policy or contract.

16.25(8) If an application does not meet the requirements of these rules, each insurer that uses producers shall notify the producer and applicant and fulfill the outstanding requirements.

16.25(9) Records required to be retained by this rule may be maintained in paper, photographic, microprocessed, magnetic, mechanical or electronic media or by any process which accurately reproduces the actual document.

191—16.26(507B) Duties of replacing insurers that use producers.

16.26(1) Where a replacement is involved in the transaction, the replacing insurer that uses producers shall:

a. Verify that the required forms are received and are in compliance with these rules;

b. Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer;

c. Be able to produce copies of the notification regarding replacement required in subrule 16.24(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of an insurer's state of domicile, whichever is later; and

d. Provide to the policy or contract owner notice of the right to return the policy or contract within 30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract. The notice may be included in Appendix A, A1 or C.

16.26(2) Where a replacement is involved in the transaction and where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount that the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

16.26(3) Where a replacement is involved in the transaction and where an insurer prohibits the use of sales material other than that approved by the insurer, the insurer may, as an alternative to the requirements of subrule 16.24(4) do all of the following:

a. Require of and obtain from the producer a signed statement with each application that:

(1) Represents that the producer used only insurer-approved sales material; and

(2) Represents that copies of all sales material were left with the applicant in accordance with subrule 16.24(3).

b. Provide to the applicant a letter or by verbal communication by a person whose duties are separate from the marketing area of the insurer, within ten days of the issuance of the policy or contract, which shall include:

(1) Information that the producer has represented that copies of all sales material have been left with the applicant in accordance with subrule 16.24(3);

(2) The toll-free number by which the applicant can contact company personnel involved in the compliance function if copies of all sales material were not left with the applicant; and

(3) Information regarding the importance of retaining copies of the sales material for future reference.

c. Be able to produce a copy of the letter or other verification obtained pursuant to this subrule in the policy file for at least five years after the termination or expiration of the policy or contract.

191—16.27(507B) Duties of the existing insurer. Where a replacement is involved in the transaction, the existing insurer shall:

16.27(1) Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later.

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16.27(2) Send a letter to the policy or contract owner notifying the owner of the right to receive information regarding the existing policy or contract values including, if available, an in-force illustration or policy summary if an in-force illustration cannot be produced within five business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five business days of receipt of the request from the policy or contract owner.

16.27(3) Upon receipt of a request to borrow, surrender or withdraw any policy values, send to the applicant a notice, advising the policyowner that the release of policy values may affect the guaranteed elements, nonguaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policyowner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

191—16.28(507B) Duties of insurers with respect to direct-response solicitations.

16.28(1) In the case of an application that is initiated as a result of a direct-response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

16.28(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

a. Provide to applicants or prospective applicants with the policy or contract a notice, as described in Appendix C, or other substantially similar form approved by the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, without having to obtain approval of the form from the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed, postage prepaid envelope with instructions for the return of the signed notice referred to in this subrule; and

b. Comply with the requirements of paragraph 16.26(1)"b," if the applicant furnishes the names of the existing insurers, and the requirements of paragraphs 16.26(1)"c" and "d" and subrule 16.26(2).

191—16.29(507B) Violations and penalties.

16.29(1) Any failure to comply with these rules shall be considered a violation of Iowa Administrative Code rules 191—15.7(507B) and 191—15.8(507B). Examples of violations include but are not limited to:

a. Any deceptive or misleading information set forth in sales material;

b. Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;

c. The intentional incorrect recording of an answer;

d. Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

e. Advising a policy or contract owner to write directly to the insurer in such a way as to attempt to obscure the identity of the replacing producer or insurer.

16.29(2) Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate these rules.

16.29(3) Where it is determined that the requirements of these rules have not been met, the replacing insurer shall provide to the policy owner an in-force illustration if available or policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements in Appendix A, A1 or C.

16.29(4) Violations of these rules shall subject the violators to penalties that may include the revocation or suspension of a producer's or insurer's license, monetary fines, the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred, or any other penalties authorized by Iowa Code chapter 507B or Iowa Administrative Code 191—Chapter 15.

191—16.30(507B) Severability. If any rule or portion of a rule of this division, or its applicability to any person or circumstances, is held invalid by a court, the remainder of this division, or the applicability of its provisions to other persons, shall not be affected.

These rules are intended to implement Iowa Code chapter 507B.

APPENDIX A

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant.

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

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A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interest. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ___ YES ___ NO
2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the contract number if available) and whether each policy will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. [If you request one, an in-force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because _____.

I certify that the responses herein are, to the best of my knowledge, accurate:

_____ _____

Applicant's Signature and Printed Name Date

_____ _____

Producer's Signature and Printed Name Date

I do not want this notice read aloud to me. _____ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:

Are they affordable?
Could they change?
You're older—are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES:

New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid; you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY:

If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
[Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.]

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IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?
Is this a tax-free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

APPENDIX A1—Optional for use when the product being sold is an annuity.

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE POLICIES OR ANNUITY CONTRACTS

This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant.

You are contemplating the purchase of an annuity contract. In some cases this purchase may involve discontinuing or changing an existing life insurance policy or annuity contract. If so, a replacement is occurring.

A replacement occurs when a new contract is purchased and, in connection with the sale, an existing life insurance policy or annuity contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated.

You should carefully consider whether a replacement is in your best interest. You will pay acquisition costs on the new annuity contract and there may be surrender costs deducted from your existing life insurance policy or annuity contract. You may be able to make changes to your existing life insurance policy or annuity contract to meet your insurance needs at less cost. Using existing funds from your existing life insurance policy or annuity contract to purchase a new annuity contract will reduce the value of your existing policy or contract and may reduce the death benefit of your existing policy or contract.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing life insurance policy or annuity contract? ___YES ___ NO

2. Are you considering using funds from your existing life insurance policies or annuity contracts to pay the premium or premiums on the new annuity contract? ___YES ___ NO

   If you answered "yes" to either of the above questions, list each existing life insurance policy or annuity contract you are contemplating replacing (include the name of the insurer, the insured or annuitant, and the policy or contract number if available).

INSURER NAME	CONTRACT OR POLICY #	ANNUITANT OR INSURED
1.		
2.		
3.		

Make sure you know the facts. Contact your existing company or its agent for information about your existing life insurance policy or annuity contract. [If you request one, an in-force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing life insurance policy or annuity contract is being replaced because_____.

I certify that the responses herein are, to the best of my knowledge, accurate:

_____ _____
Applicant's Signature and Printed Name Date

_____ _____
Producer's Signature and Printed Name Date

I do not want this notice read aloud to me. _____ (Applicants must initial only if they do not want the notice read aloud.)

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A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing life insurance policy or annuity contract and the proposed annuity contract. One way to do this is to ask the company or agent that sold you your existing life insurance policy or annuity contract to provide you with information concerning your existing life insurance policy or annuity contract. This may include an illustration of how your existing life insurance policy or annuity contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare life insurance policies or annuity contracts. You should discuss the following with your agent to determine whether replacement of your existing life insurance policy or annuity contract makes sense:

PREMIUMS:

Are they affordable?
Could they change?
How long will you have to pay premiums on the new annuity contract? On the existing life insurance policy or annuity contract?

POLICY VALUES:

Acquisition costs for the existing life insurance policy or annuity contract may have been paid; you may incur costs for the new annuity contract.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new annuity contract?
Does the new annuity provide more or better benefits?

INSURABILITY:

If your health has changed since you bought your existing life insurance policy or annuity contract, the new annuity contract could provide fewer benefits, or you could be turned down.
You may need a medical exam for a new annuity contract.
[Claims on some annuity contracts for up to the first two years can be denied based on inaccurate statements.]

IF YOU ARE KEEPING THE EXISTING LIFE INSURANCE POLICY OR ANNUITY CONTRACT AS WELL AS THE NEW ANNUITY CONTRACT:

How are premiums for both policies and/or contracts being paid?
How will the premiums on your existing life insurance policy or annuity contract be affected?
Will a loan be deducted from death benefits?
What values from the existing life insurance policy or annuity contract are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your existing life insurance policy or annuity contract?
What are the interest rate guarantees for the new annuity contract?
Have you compared the charges and expenses of your existing life insurance policy or annuity contract to the charges and expenses of the new annuity contract?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new annuity contract?
Is this a tax-free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the existing life insurance policy or annuity contract under the federal tax code?
Will the existing insurer be willing to modify the existing life insurance policy or annuity contract?
How does the quality and financial stability of the new company compare with your existing company?

APPENDIX B

NOTICE REGARDING REPLACEMENT
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

INSURANCE DIVISION[191](cont'd)

APPENDIX C

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interest. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ___ YES ___ NO
2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

Please list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the contract number if available) and whether each policy will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. [If you request one, an in-force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

I certify that the responses herein are, to the best of my knowledge, accurate:

_____ _____

Applicant's Signature and Printed Name Date

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:
Are they affordable?
Could they change?
You're older—are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES:
New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid; you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURANCE DIVISION[191](cont'd)

INSURABILITY:

If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.

You may need a medical exam for a new policy.

[Claims on most new policies for up to the first two years can be denied based on inaccurate statements.

Suicide limitations may begin anew on the new coverage.]

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?

How will the premiums on your existing policy be affected?

Will a loan be deducted from death benefits?

What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?

What are the interest rate guarantees for the new contract?

Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?

Is this a tax-free exchange? (See your tax advisor.)

Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?

Will the existing insurer be willing to modify the old policy?

How does the quality and financial stability of the new company compare with your existing company?

ARC 9501A

LIBRARIES AND INFORMATION SERVICES DIVISION[286]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.52, the Commission of Libraries hereby adopts Chapter 8, "Iowa Regional Library System," Iowa Administrative Code.

This chapter describes the organization and operation of the Iowa Regional Library System and establishes Regional Library service standards.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 22, 1999, as **ARC 9350A**. Opportunity for public comment was provided through public hearing. No public comment was received on these rules. These rules are identical to those published under Notice of Intended Action.

These rules were adopted by the Commission of Libraries on October 26, 1999, and shall become effective January 5, 2000.

These rules implement Iowa Code section 256.51(1)"k."

The following **new** chapter is adopted.

CHAPTER 8
IOWA REGIONAL LIBRARY SYSTEM

286—8.1(256) Purpose. This chapter describes the organization and operation of the Iowa regional library system (hereinafter referred to as the regional system or system) consisting of seven regional libraries (hereinafter referred to as the regions or the regional libraries) and establishes regional library service standards.

286—8.2(256) Definitions. The definitions in Iowa Code chapters 17A and 256 and in other chapters of the division's administrative rules apply for terms used throughout this chapter. In addition, the following definitions apply:

"Consultation" means the process of advising librarians, trustees, local government officials, and others on local library management and operations.

"Continuing education" means a lifelong learning process which builds on and modifies previously acquired knowledge, skills, and attitudes of the individual.

"Information services" means providing local library patrons with access to professional reference librarians and to larger reference collections in order to answer local patrons' information questions.

"Interlibrary loan (ILL)" means providing local library patrons with access to materials that are not available in the local collection.

"OCLC" means the not-for-profit organization that cumulates electronic card catalog records from member libraries around the world and makes those records available to all members for the purpose of cataloging, interlibrary loan, and acquisitions.

286—8.3(256) Organization. The regional library system consists of seven regional libraries each located in and serving a different geographic area of the state. Business hours are 8 a.m. to 4:30 p.m., Monday through Friday, excepting legal holidays. The seven regional libraries are:

1. Central Iowa Regional Library System, 8345 University Blvd., Suite E-1, Clive, Iowa 50325, telephone (515)223-7709 (serves libraries in Polk, Marion, Greene, Dallas, Madison, Warren, Boone, Story, Marshall, and Jasper counties);

2. East Central Regional Library System, 222 Third St. SE, Suite 402, Cedar Rapids, Iowa 52401, telephone (319)365-0521 (serves libraries in Linn, Jones, Iowa, Johnson, Cedar, Tama, Benton, Poweshiek, Jackson, and Clinton counties);

3. North Central Regional Library System, 22 North Georgia, Suite 208, Mason City, Iowa 50401, telephone (515)423-6917 (serves libraries in Cerro Gordo, Franklin, Hancock, Humboldt, Wright, Webster, Kossuth, Winnebago, Hamilton, Hardin, Worth, Mitchell, and Floyd counties);

4. Northeastern Iowa Regional Library System, 415 Commercial St., Waterloo, Iowa 50701, telephone (319)233-1200 (serves libraries in Black Hawk, Delaware, Dubuque, Grundy, Butler, Bremer, Howard, Winneshiek, Allamakee, Chickasaw, Buchanan, Fayette, and Clayton counties);

5. Northwest Regional Library System, 529 Pierce St., P.O. Box 1319, Sioux City, Iowa 51102, telephone (712)255-2939 (serves libraries in Woodbury, Lyon, Sioux, Osceola, Dickinson, Emmet, Clay, Palo Alto, O'Brien, Plymouth, Cherokee, Buena Vista, Pocahontas, Ida, Sac, Calhoun, Monona, Crawford, and Carroll counties);

6. Southeastern Library Services, 4209½ West Locust, Davenport, Iowa 52804, telephone (319)386-7848 (serves libraries in Scott, Appanoose, Davis, Wapello, Jefferson, Van Buren, Lee, Monroe, Mahaska, Keokuk, Henry, Des Moines, Muscatine, Louisa, and Washington counties);

7. Southwest Iowa Regional Library System, 310 W. Kanesville, M-4, Council Bluffs, Iowa 51503, telephone (712)328-9218 (serves libraries in Pottawattamie, Harrison, Shelby, Audubon, Guthrie, Cass, Adair, Mills, Fremont, Page, Montgomery, Adams, Union, Taylor, Clarke, Lucas, Ringgold, Decatur, and Wayne counties).

286—8.4(256) Governance.

8.4(1) Regional boards of library trustees. The system consists of seven regional boards of library trustees whose election and representation are prescribed in Iowa Code sections 256.61 and 256.62. Each board of library trustees sets its own meeting schedule and operating procedures.

8.4(2) Minutes. Minutes of meetings of regional boards of library trustees are available for inspection at the administrator's office of each respective regional library during regular business hours.

8.4(3) Iowa regional library system trustees council. Membership of the council is comprised of all the boards of library trustees of the seven regional libraries. The council's purpose is to further the programs of the regional library system and to serve as a clearinghouse, coordinating cooperative actions and programs initiated by the individual regions or by the council itself.

8.4(4) Iowa regional library system trustees executive board. Comprised of two trustees from each of the regional boards of library trustees of the seven regional libraries, the 14-member executive board is responsible for approving the system's budget request, long-range plan, and annual joint plan of service, and pursuing opportunities to enhance system services.

8.4(5) Federated system. The Iowa regional library system is a federated system, meaning that all public libraries within each region's jurisdiction are independent libraries with their own administrative boards of trustees.

286—8.5(256) Services.

8.5(1) Advisory. Regional libraries act in a consultative and advisory capacity, providing support services and encouraging local library development and funding.

8.5(2) Consultation services. Regional libraries:

a. Provide information, technical advice, and professional opinion on all aspects of library management for local library boards, staff, and governmental officials. Requests from local libraries are answered as soon as possible, within an average of two days. Responses are delivered via telephone, fax, E-mail, or by an on-site visit to the local library, depending upon the need and the complexity of the question.

b. Provide training and development opportunities for Iowa's public library trustees on the nature of public library law and governance. These opportunities may take the form of workshops or on-site presentations at local board meetings.

c. Visit new library directors to discuss the responsibilities of the director's position and the effective provision of library service, as well as to acquaint them with services available from the regional library system and from the state library.

d. Provide information and technical advice on the uses of technology in public libraries, including implementing automation systems, converting data to electronic form, acquiring and using the Internet, purchasing new computer hardware and software and using electronic information resources including SILO and online databases.

e. Answer questions regarding statewide programs such as Enrich Iowa, Open Access, Access Plus, SILO, librarian certification, library accreditation, and annual reports, thus enabling library boards and staff to better understand these programs and to participate more effectively.

f. Communicate with libraries on a regular basis via newsletters and electronic media.

8.5(3) Continuing education. Regional libraries:

a. Conduct annual continuing education needs assessments of libraries within each respective region in order to address continuing education needs and to coordinate statewide delivery of continuing education activities for local library personnel.

b. Sponsor continuing education workshops on all aspects of public library governance and management for local library boards and staff.

c. Sponsor training in the use of the Internet and other information technologies for local library boards and staff.

8.5(4) Information services. Regional libraries:

a. Provide backup reference service for local libraries, answering questions from library customers that local library staff are unable to answer with their own resources. Eighty percent of these questions are answered within one week of receipt; all questions are answered or a progress report is supplied to the local library within two weeks of receipt.

b. Train local library staff on reference service including conducting effective reference interviews with customers, evaluating/building a reference collection, using the Internet and other electronic information resources such as SILO to supplement local collections. At least one continuing education workshop on providing reference service is offered each fiscal year.

8.5(5) Interlibrary loan services. Regional libraries:

a. Train local library staff in the effective use of the SILO ILL system. Regional staff visit libraries and offer on-site training within one month of the local library's acquiring Internet access.

b. Answer SILO-related questions from library boards and staff within two working days.

c. Provide access (within two working days) to the OCLC interlibrary loan subsystem in order to facilitate access to materials owned by libraries outside Iowa.

d. Process interlibrary loan requests for those libraries without access to SILO. Regional library staff process all interlibrary loan requests within two working days of receipt.

286—8.6(256) State library of Iowa. The regional library system and the state library work cooperatively to improve library service within the state of Iowa. These agencies are partners in advancing local library service and library development across the state. Chief partnership efforts include, but are not limited to:

1. An annual joint plan of service;

2. Joint sponsorship of continuing education programs for local library boards and staff;

3. Cooperative training of local library boards and staff on state library-administered programs;

4. Effective use of technology; and

5. Planning, in partnership with Iowa's library community, for library service delivery in the future.

286—8.7(256) Planning.

8.7(1) Annual joint plan of service. The joint plan is developed with the state library. The plan includes a description of the system's programs and services. The annual joint plan is submitted to each regional library board of trustees for approval. Upon approval, the plan of service is submitted to the director of the department.

8.7(2) Long-range plan for the regional library system. The long-range plan includes how the system intends to provide programs and services to Iowa's public libraries for the next three to five years. The long-range plan is submitted to each regional library board of trustees for approval. Upon approval, the document is submitted to the director of the department.

These rules are intended to implement Iowa Code section 256.51(1)"k."

[Filed 11/10/99, effective 1/5/00]
[Published 12/1/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

ARC 9493A

MEDICAL EXAMINERS BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby amends Chapter 10, "Medical Examiners," Chapter 11, "Licensure Requirements," and Chapter 12, "Mandatory Reporting and Grounds for Discipline," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 22, 1999, as **ARC 9351A**. These amendments are identical to those published under Notice.

Item 1 allows the Board greater discretion in setting meetings and eliminates reference to examination administration. Examination information is available in 653—Chapter 11. The Board no long administers the examination but contracts for the examinations and their administration. The examinations are computer-based and are offered at several testing centers in Iowa over a period of time by individual appointments. The amendment in Item 1 is intended to implement Iowa Code section 147.76 and chapter 17A.

Item 2 sets forth the mechanism by which the Board defines an equivalent to recording licenses by hand in a book and cross-referencing them with a licensee's license certificate. The Board will maintain a computer record that holds the same information as the book's handwritten record. This information kept on M.D., D.O. and acupuncturist licensees will identify each licensee in the Board's computer records in lieu of a handwritten record book and cross-referenced licenses. The handwritten record book and cross-referenced licenses will cease to be updated when this rule goes into effect. The amendment proposed in Item 2 is intended to implement Iowa Code sections 147.5 and 147.76.

Item 3 avoids a current conflict in the rules that affects only those who have been issued a permanent license for the first time for two months or less. The Board now issues such a license to get a physician into the birth month renewal cycle without issuing a license for longer than two years. As a result, these individuals do not receive the 60-day notice that it is time to renew as provided in 653—subrule 11.30(1). If the original license period is extended to two years and two months for this group of physicians, the problem will be remedied. The amendment makes this change. The amendment in Item 3 is intended to implement Iowa Code section 272C.3.

Item 4 clarifies previous Board policy that has been established in disciplinary action against physicians. The Board has found a number of physicians who have used bad judgment in self-prescribing and prescribing controlled substances to a family member. The Board believes that a family member who is sick enough to warrant controlled substances should have a physician who is responsible for the individual's overall care. If physicians prescribe controlled substances to family members for an acute condition or on an emergency basis, the Board believes that the physician must treat the individual as any other patient; therefore, a physical examination, medical record, and proper documentation are required. The rule delineates a broad definition of immediate family. The amendment proposed in Item 4 is intended to implement Iowa Code sections 147.55, 148.6, and 272C.10.

These amendments will become effective on January 5, 2000.

The following amendments are adopted.

ITEM 1. Amend rule 653—10.6(17A) as follows:

653—10.6(17A) Meetings and examinations. The board shall meet ~~approximately every six weeks and may meet at other times as needed. The board administers physician licensure examinations. Information concerning the dates and location of board meetings or examinations administered by the board may be obtained from the board's office~~ *at least six times per year. Dates and location of board meetings may be obtained from the board's office.*

Except as otherwise provided by statute, all board meetings shall be open and the public shall be permitted to attend the meetings.

ITEM 2. Amend 653—Chapter 11 by adopting the following **new** rule:

653—11.22(147) Licenses. When the board issues a license to practice, it shall record the licensee's name, license number and other identifying information in the board's computer records, in keeping with the intent of Iowa Code section 147.5. These computer files shall be backed up weekly with off-site storage of the backup files. Computer record keeping will be done in lieu of prior technology, a handwritten record book and cross-referenced licenses.

ITEM 3. Amend subrule 11.30(2) as follows:

11.30(2) ~~A~~ *An issued* permanent license ~~issued during a calendar year~~ shall be valid for a period not to exceed two years *and two months* as determined by the board in accordance with the physician's *birth* month and year ~~of birth~~.

ITEM 4. Amend subrule **12.4(19)** by adopting the following **new** paragraphs **"a"** and **"b"**:

a. Self-prescribing or self-dispensing controlled substances.

b. Prescribing or dispensing controlled substances to members of the licensee's immediate family for an extended period of time.

(1) Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for

an acute condition or on an emergency basis when the physician conducts an examination, establishes a medical record, and maintains proper documentation.

(2) Immediate family includes spouse or life-partner, natural or adopted children, grandparent, parent, sibling, or grandchild of the physician; and natural or adopted children, grandparent, parent, sibling, or grandchild of the physician's spouse or life-partner.

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[Published 12/1/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

ARC 9511A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby adopts amendments to Chapter 42, "Boating Accident Reports," Iowa Administrative Code.

These amendments provide for a specific time reporting period for boating accidents to be filed, which is required by Iowa Code section 462A.7(2).

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 8, 1999, as **ARC 9328A**. No comments were received during the comment period and no comments were received at the public hearing held September 29, 1999. No changes were made from the Notice of Intended Action.

These amendments are intended to implement Iowa Code section 462A.7(2).

These amendments will become effective January 5, 2000.

The following amendments are adopted.

ITEM 1. Amend **571—Chapter 42** by striking any reference to Iowa Code chapter 106 and inserting 462A wherever it appears, to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend rule 571—42.2(462A) as follows:

571—42.2 (462A) Procedure. These reports shall be filed ~~in duplicate~~ *in writing within 48 hours of the accident* with the department of natural resources ~~in writing~~ *using forms provided by the department.*

[Filed 11/12/99, effective 1/5/00]
[Published 12/1/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

ARC 9510A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby adopts amendments to Chapter 51, "Game Management Areas," Iowa Administrative Code.

This amendment establishes uniform regulations for shooting ranges located on game management areas.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 8, 1999, as **ARC 9327A**. No comments were received during the comment period and no comments were received at the public hearing held September 29, 1999. No changes were made from the Notice of Intended Action.

This amendment is intended to implement Iowa Code section 481A.6.

This amendment will become effective January 5, 2000.

The following amendment is adopted.

Rescind subrule 51.3(1) and adopt the following **new** subrule:

51.3(1) Restrictions. The use or possession of firearms on certain game management areas is restricted.

a. Target shooting, for the purposes of this rule, is defined as the discharge of a firearm for any reason other than the taking of, or attempting to take, any game birds, game animals, or furbearers.

b. Target shooting shall occur only on the designated and posted shooting range.

c. Any person target shooting with any type of handgun or any type of rifle, or shooting shotgun slugs through a shotgun, must fire through one of the firing tubes, if provided, or at the firing points on the rifle or pistol range.

d. It is a violation of these rules to place any target on the top of the earthen backstop or to fire at any target placed on top of the backstop.

e. The shotgun range, if provided, is restricted to the use of shotguns and the shooting of shotshells only.

f. Target shooting shall occur only between the hours of sunrise and sunset.

g. No alcoholic beverages are allowed on the shooting range or parking area.

h. Target shooting is restricted to legal firearms and shall not be done with any fully automatic pistol, rifle, or shotgun of any kind. No armor-piercing ammunition is permitted.

i. Targets are restricted to paper or cardboard targets or metal silhouette-type targets. No glass, plastic containers, appliances, or other materials may be used. Targets must be removed from the area after use or must be disposed of in trash receptacles if provided.

j. All requirements listed in this rule shall apply to the following shooting ranges.

(1) Badger Creek Area - Madison County.
(2) Banner Mine Area - Warren County.
(3) Bays Branch Area - Guthrie County.
(4) Hawkeye Wildlife Area - Johnson County.
(5) Hull Wildlife Area - Mahaska County.
(6) Mines of Spain - Dubuque County.
(7) Ocheyedan Wildlife Area - Clay County.
(8) Princeton Wildlife Area - Scott County.
(9) Spring Run Wildlife Area - Dickinson County.

NATURAL RESOURCE COMMISSION[571](cont'd)

k. In addition to the requirements listed, the following shooting ranges have specific restrictions.

(1) Lake Darling Recreation Area - Washington County. Hunting, trapping and the use of weapons of any kind, except for the use of bow and arrow to take rough fish and except as provided in 571—subrule 61.6(3) and 571—Chapter 105, are prohibited.

(2) McIntosh Wildlife Area - Cerro Gordo County. The use or possession of firearms, except shotguns shooting shot only, is prohibited.

(3) Oyens Shooting Range - Plymouth County. The range is closed to the public except between 9 a.m. and sunset. Law enforcement firearms training and qualification of local, county, state or federal officers shall have priority over general public use of the range. Shotguns shooting birdshot may be fired outside the firing tubes, but within the designated range area. General shooting by the public shall take place on a first-come, first-served basis.

[Filed 11/12/99, effective 1/5/00]
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ARC 9512A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 81, "Fishing Regulations," Iowa Administrative Code.

The amendments modify Chapter 81 which establishes season dates, territories, daily bag limits, possession limits and length limits for sport fishing.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 8, 1999, as **ARC 9326A**. Public hearings were held on October 4 and October 19, 1999. There are no changes from the Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.67 and 481A.76.

These amendments will become effective January 5, 2000.

The following amendments are adopted.

ITEM 1. Amend rule 571—81.1(481A) as follows:

571—81.1(481A) Seasons, territories, daily bag limits, possession limits, and length limits.

INLAND WATERS OF THE STATE					BOUNDARY RIVERS
KIND OF FISH	OPEN SEASON	DAILY BAG LIMIT	POSSESSION LIMIT	MINIMUM LENGTH LIMITS	MISSISSIPPI RIVER MISSOURI RIVER BIG SIOUX RIVER
Rock Sturgeon	Closed	0	0		Same as inland waters
Paddlefish*	Continuous	2	4	None	Same as inland waters
Yellow Perch	Continuous	25	50	None	Same as inland waters except no bag or possession limit *in the Mississippi and Missouri Rivers.*
Trout	Continuous	5	10	None*	Same as inland waters
Catfish*	Continuous	8 Lakes 15 Streams	30	None	Same as inland waters except no bag or possession limit in Mississippi River
Black Bass (Largemouth Bass) (Smallmouth Bass) (Spotted Bass)	Continuous	3 In Aggregate	6	See below*	Continuous open season; aggregate daily bag limit 5, aggregate possession limit 10. See below*
Combined Walleye, Sauger and Saugeye	Continuous*	5*	10*	None*	Continuous open season; aggregate daily bag limit 10 (no more than 6 walleye), aggregate possession limit 20 (no more than 12 walleye), *except aggregate daily bag limit 4, aggregate possession limit 8, in the Big Sioux River.* See below*
Northern Pike	Continuous*	3	6	None	Continuous open season; daily bag limit 5; possession limit 10, *except daily bag limit 6, possession limit 12, in the Big Sioux River.*
Muskellunge or Hybrid Muskellunge	Continuous	1	1	~~36"~~ *40"*	Same as inland waters
All other fish species	Continuous	None	None	None	Same as inland waters

NATURAL RESOURCE COMMISSION[571](cont'd)

	INLAND WATERS OF THE STATE				BOUNDARY RIVERS
KIND OF FISH	OPEN SEASON	DAILY BAG LIMIT	POSSESSION LIMIT	MINIMUM LENGTH LIMITS	MISSISSIPPI RIVER MISSOURI RIVER BIG SIOUX RIVER
Frogs (except Bullfrogs)	Continuous	48	96	None	Same as inland waters
Bullfrogs (Rana Catesbeiana)	Continuous	12	12	None	Same as inland waters

* Also see 81.2(481A), Exceptions.

ITEM 2. Amend subrule 81.2(2) as follows:

81.2(2) Black bass. A 15-inch minimum length limit shall apply on black bass in all public lakes except as otherwise posted. On federal flood control reservoirs, a 15-inch minimum length limit shall apply on black bass at Coralville, Rathbun, Saylorville, and Red Rock. All black bass caught from Lake Wapello, Davis County, and Brown's Lake, Jackson County, must be immediately released alive. A 22-inch minimum length limit shall apply on black bass in Green Valley Lake, Union County. A 12-inch minimum length limit shall apply on black bass in all interior streams, river impoundments, ~~border rivers,~~ and *the Missouri River including* chutes and backwaters of ~~border rivers~~ *the Missouri River* where intermittent or constant flow from the ~~border~~ river occurs~~,~~. ~~except that a~~ *A* 14-inch minimum length limit shall apply to the Mississippi River *including chutes and backwaters where intermittent or constant flow from the river occurs.* All black bass caught from the following stream segments must be immediately released alive:

1. through 4. No change.

ITEM 3. Amend subrule 81.2(5) as follows:

81.2(5) Special trout regulations. A 14-inch minimum length limit shall apply on brown trout, rainbow trout, and brook trout in Spring Branch Creek, Delaware County, from the spring source to County Highway D5X as posted, and on brown trout only in portions of Bloody Run Creek, Clayton County, where posted. *All trout caught from the posted portion of Waterloo Creek, Allamakee County, Hewitt and Ensign Creeks (Ensign Hollow), Clayton County, and South Pine Creek, Winneshiek County, and all brown trout caught from French Creek, Allamakee County, must be immediately released alive.* Fishing in the posted area of ~~Bloody Run Creek,~~ Spring Branch Creek, *Bloody Run Creek, Waterloo Creek, Hewitt and Ensign Creeks (Ensign Hollow),* South Pine Creek, *and* French Creek ~~and Hewitt and Ensign Creeks (Ensign Hollow)~~ shall be by artificial lure only. Artificial lure means lures that do not contain or have applied to them any natural or ~~man-made~~ *synthetic* substances designed to attract fish by the sense of taste or smell. ~~All trout caught from the posted portion of Hewitt and Ensign Creeks (Ensign Hollow), Clayton County, and South Pine Creek, Winneshiek County, and all brown trout caught from French Creek, Allamakee County, must be immediately released alive.~~

[Filed 11/12/99, effective 1/5/00]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

ARC 9515A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 98, "Wild Turkey Spring Hunting," Iowa Administrative Code.

These rules give the regulations for hunting wild turkeys, including season dates, bag limits, method of take, license quotas and application procedures.

Notice of Intended Action was published September 8, 1999, as **ARC 9322A**. The following changes have been made to the Notice. These changes were made due to requests from the public and a rules committee member.

1. Amendments to subrule 98.2(1), paragraph "a," were added to allow the use of number 2 and 3 size nontoxic shot.
2. The amendment which was made in subrules 98.2(2) and 98.13(2) in the Notice of Intended Action regarding the restriction on the use of electronically operated decoys has not been adopted.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

These amendments shall become effective January 5, 2000.

The following amendments are adopted.

ITEM 1. Amend subrule 98.1(1) as follows:

98.1(1) License. All hunters must have in possession a spring wild turkey *hunting* license valid for the current year when hunting wild turkey. No ~~person~~ *one,* while hunting *wild* turkey, shall carry or have in possession any license or transportation tag issued to another ~~person~~ *hunter.* A ~~person~~ *hunter* having a license valid for one of the spring turkey ~~seasons~~ *hunting periods* may accompany, call for, or otherwise assist ~~anyone having~~ *any other hunter who has* a valid turkey *hunting* license ~~in~~ *for* any of the spring ~~seasons~~ *hunting periods,* except that the ~~person~~ *hunter* doing the assisting may not shoot a turkey or carry a firearm or bow unless the ~~person~~ *hunter* has a valid license with an unused tag for the current season. If a turkey is taken, it must be tagged with the tag issued to the ~~person~~ *hunter* who shot the turkey. Two types of licenses will be issued.

a. Combination shotgun-or-archery licenses will be issued by zone and period and will be valid in the designated zone ~~or zones~~ and for the designated period only. No ~~person~~ *one* shall apply for or obtain more than two combination ~~spring~~ shotgun-or-archery licenses ~~per year.~~ *Hunters who obtain one or two combination shotgun-or-archery licenses, whether free or paid, may not apply for or obtain an archery-only license.*

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b. Archery-only licenses will be valid statewide and shall be valid during ~~the entire~~ *all hunting* ~~period~~ *periods* open for spring turkey hunting. No ~~person~~ *one* may apply for or obtain more than two archery-only licenses ~~per year~~. ~~Persons~~ *Hunters* purchasing one or two archery-only licenses ~~shall be ineligible to purchase any other spring wild turkey hunting~~ *may not apply for or obtain a combination shotgun-or-archery* license.

ITEM 2. Amend subrule **98.2(1)**, paragraph **"a,"** as follows:

a. Combination shotgun-or-archery license. Wild turkey may be taken by shotgun or muzzleloading shotgun not smaller than 20-gauge and shooting *only* shot sizes *2 or 3 nontoxic shot or* 4, 5, 6, 7½, or 8 ~~only~~ *lead or nontoxic shot*; and by longbow, recurve or compound bow shooting broadhead or blunthead (minimum diameter 9/16 inch) arrows only. No person may have shotshells containing shot of any size other than *2 or 3 nontoxic shot or* 4, 5, 6, 7½, or 8 *lead or nontoxic shot* on their person while hunting wild turkey.

ITEM 3. Rescind and reserve subrule **98.2(4)**.

ITEM 4. Amend subrule 98.2(5) as follows:

98.2(5) Hunting periods. Hunting periods will be established in accordance with the type of license issued.

a. Combination shotgun-or-archery licenses. Consecutive hunting periods are 4, 5, 7, and ~~12~~ *19* days, respectively, with the first hunting period beginning on the Monday closest to April 13.

b. Archery-only licenses. The hunting period shall be ~~28~~ *35* days beginning on the Monday closest to April 13.

ITEM 5. Rescind subrule **98.3(1)**, paragraph **"a,"** and adopt the following <u>new</u> paragraph in lieu thereof:

a. Combination shotgun-or-archery licenses. Applications for all combination shotgun-or-archery licenses will be received and accepted beginning the second Monday in January through the second Friday in February, or if they bear a valid and legible U.S. Postal Service postmark applied during that period. Licenses that are incomplete or improperly completed, do not meet the above conditions, or are received after the application period will not be considered valid. A hunter may submit up to two applications during the application period, provided that at least one application is for hunting period four in Zone 4, and that $22.50 is submitted with each application. Applicants for Zones 1, 2 or 3 may apply for one choice of zone and hunting period on an application, and may, at the applicant's discretion, choose to accept a license for hunting period four in Zone 4 if the applicant's first choice is denied. No other second choice will be allowed. Applications that are complete except for a zone designation will be assigned to Zone 4. Applications for Zones 1, 2 or 3 that are complete except for a hunting period designation shall be rejected and returned to the applicant. Hunters who apply for more than one combination shotgun-or-archery license in a combination of zones, hunting periods or license types that is not permitted will have the second application received assigned to hunting period four in Zone 4.

If applications for Zones 1, 2 or 3 have been received in excess of the license quota for any zone or hunting period, a drawing will be conducted to determine which applicants receive licenses. If the quota for any hunting period in Zones 1, 2 or 3 has not been filled, licenses shall be issued in the order in which applications are received beginning the second Monday in March and shall continue for five consecutive days or until the quota has been met, whichever first occurs. If a second application period is necessary to fill quotas, only applications for paid licenses for those hunting periods in Zones 1, 2 or 3 with licenses still available will be accepted. Hunters who have not previously applied for a license, were unsuccessful in the first drawing or who have already received one combination shotgun-or-archery license for hunting period four in Zone 4 may apply for one license in any of the hunting periods for which licenses are still available.

ITEM 6. Amend subrule **98.3(2)**, paragraph **"a,"** as follows:

a. Combination shotgun-or-archery licenses. A limited number of combination shotgun-or-archery hunting licenses will be issued for each ~~zone for the first three hunting periods~~ *hunting period in Zones 1, 2 and 3*. There shall be no limit on shotgun-or-archery licenses ~~during hunting period four~~ *in any hunting period* in Zone 4. The same quota shall apply to Zones 1, 2 and 3 in all four hunting periods. The maximum number of combination shotgun-or-archery licenses which will be issued in each zone for the designated hunting period(s) is as follows:

(1) Zone 1. 65.
(2) Zone 2. 125.
(3) Zone 3. 80.
(4) Zone 4. ~~5230, plus licenses issued for Zones 1, 2 and 3 shall also be valid in this zone.~~ *No limit.*

ITEM 7. Amend subrule 98.3(4) as follows:

98.3(4) Landowner-tenant licenses. A landowner or tenant may obtain ~~both~~ a free combination shotgun-or-archery license ~~and a paid shotgun-or-archery license, but the paid license must be obtained in the same manner that a nonlandowner or tenant obtains a second paid license as provided in 98.3(1).~~ *or a free archery-only license. If a free shotgun-or-archery license is obtained for hunting period four in Zone 4, an application may be submitted for a paid shotgun-or-archery license for any zone and hunting period. If a free shotgun-or-archery license is obtained for any hunting period other than hunting period four in Zone 4, the paid shotgun-or-archery application must be for hunting period four in Zone 4. If a free archery-only license is obtained, a paid archery-only license may be purchased during the archery-only application period, but no shotgun-or-archery license may be applied for or obtained.* The free license must be applied for on the landowner application form. Nonresident landowners are not eligible for a free wild turkey hunting license.

ITEM 8. Rescind and reserve rule **571—98.5(481A)**.

ITEM 9. Amend subrule 98.10(1) as follows:

98.10(1) License. All hunters must have in possession a valid nonresident spring wild turkey hunting license and show proof they have paid the current year's habitat fee when hunting wild turkey. No ~~person~~ *one*, while hunting wild turkey, shall carry or have in possession any license or transportation tag issued to another ~~person~~ *hunter*. Licenses will be issued by zone and period and will be valid in the designated zone and period only. No ~~person~~ *one* shall obtain more than one *nonresident* spring wild turkey hunting license.

ITEM 10. Amend subrule 98.10(2) as follows:

98.10(2) Seasons. Bearded (or male) wild turkey may be taken only by the use of shotguns, muzzleloading shotguns, and bow and arrow during the first, third or fourth hunting periods~~.~~ *as defined in 98.2(5), paragraph "a."* No nonresident ~~permits~~ *hunting licenses* will be issued for the second hunting period.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 11. Amend rule 571—98.14(483A) as follows:

571—98.14(483A) Application procedure. ~~All applications for nonresident spring wild turkey hunting licenses must be made on forms provided by the department of natural resources and returned to the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034.~~

Applications for any of the three spring wild turkey hunting periods ~~shall be received and accepted~~ *must be made by telephoning 1-800-367-1188* from the second Monday in January through the last Friday in January. If applications are received in excess of the license quota for any hunting zone or period, a drawing shall be conducted to determine which applicants shall receive licenses. If licenses are still available for any hunting zone or period, licenses will be issued as applications are received until quotas are filled or the second Friday in March, whichever occurs first. Party applications with no more than four individuals will be accepted. No ~~person~~ *one* shall submit more than one application. Incomplete or improperly completed applications, applications not meeting the above conditions, or applications received prior to or after the application period shall not be considered valid applications. The nonresident license fee shall be $75.50.

ITEM 12. Rescind rule **571—98.16(483A)**.

[Filed 11/12/99, effective 1/5/00]
[Published 12/1/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

ARC 9513A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 110, "Trapping Limitations," Iowa Administrative Code.

These rules give the regulations for certain restrictions on the placement and use of various types of traps. This amendment permits the use of colony traps for muskrats, as passed by the Seventy-eighth General Assembly, and requires that they be placed entirely under water.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 6, 1999, as **ARC 9380A**. No comments were received during the comment period or at the public hearing. There are no changes from the Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 456A.24 and 481A.6.

This amendment shall become effective January 5, 2000.

The following amendment is adopted.

Adopt **new** rule 571—110.7(481A) as follows:

571—110.7(481A) Colony traps. All colony traps must be set entirely under water.

[Filed 11/12/99, effective 1/5/00]
[Published 12/1/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

ARC 9518A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.105A, the Department of Public Health hereby amends Chapter 70, "Lead Professional Certification," Iowa Administrative Code.

Iowa Code section 135.105A directs the Department of Public Health to establish a program for the training and certification of lead inspectors and lead abaters and states that a person shall not perform lead abatement or lead inspections unless the person has completed a training program approved by the Department and has obtained certification. Property owners are required to be certified only if the property in which they will perform lead inspections or lead abatement is occupied by a person other than the owner or a member of the owner's immediate family while the measures are being performed.

A person may be certified as both a lead inspector and a lead abater. However, a person who is certified as both shall not provide both inspection and abatement services at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site. Iowa's law stipulates that it could take effect only after the Department of Public Health obtained authorization from the U.S. Environmental Protection Agency (EPA) for its program to train and certify lead inspectors and abaters. Iowa's program was authorized by the U.S. EPA on July 13, 1999. In addition, on July 29, 1999, the U.S. EPA extended the federal deadline for lead professionals to be certified from August 31, 1999, to March 1, 2000.

These amendments extend Iowa's deadline for certification to the new federal deadline of March 1, 2000, and incorporate other changes recommended by the U.S. EPA in its review of Iowa's program. While U.S. EPA regulations refer to children six years of age or under, federal legislation refers to children under the age of six years. The U.S. EPA is changing its regulations to refer to children under the age of six years and has asked the authorized states to do the same. The definition of "certified lead professional" has been changed to include the discipline of project designer. The definition of "elevated blood lead child" has been changed to clarify that children with blood lead levels equal to 20 micrograms per deciliter are included in addition to children with blood lead levels greater than 20 micrograms per deciliter.

A provision for interim certification has been added to allow lead professionals who have passed an approved course up to six months to pass the state certification examination. Federal regulations stipulate that the state certification examination may not be administered by the provider of an approved training course; therefore, this provision has been added to these amendments. The requirement for certified lead abatement workers and certified visual risk assessors to

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pass a state certification examination has been removed since this is not required by federal regulations for these two disciplines.

The required length of refresher training courses for certified lead inspectors and elevated blood lead inspectors has been changed from 8 hours to 16 hours since a 16-hour course is required by the federal regulations for these two disciplines. In addition, certified lead inspectors who completed an approved 24-hour training course and elevated blood lead inspectors who completed an approved 32-hour training course must complete 16 hours of additional training, and an 8-hour refresher course before recertification. The date by which certified lead professionals must meet education and experience requirements has been changed from March 31, 1999, to September 1, 1999, since Iowa's program was not authorized until July 13, 1999. To be consistent with federal regulations, lead professionals who completed approved courses more than three years before being recertified under Iowa's authorized program must complete an 8-hour refresher course.

These amendments were previously Adopted and Filed Emergency and published in the October 6, 1999, Iowa Administrative Bulletin as **ARC 9415A**. Notice of Intended Action to solicit comments on that submission was published in the Iowa Administrative Bulletin on October 6, 1999, as **ARC 9416A**. A public hearing was held over the Iowa Communications Network from 10 to 11 a.m. on October 26, 1999. No comments were received at the public hearing, and no written comments were received prior to the hearing.

Changes have been made from the Notice of Intended Action. All references to "lead inspectors" were changed to "lead inspector/risk assessors" and all references to "elevated blood lead inspectors" were changed to "elevated blood lead (EBL) inspector/risk assessors" to be consistent with a separate Notice of Intended Action that was published on October 6, 1999, as **ARC 9417A**. In Item 10, paragraph "e" of subrule 70.5(3) was changed to state that it applies only to lead abatement contractors, lead abatement workers, project designers, and visual risk assessors since paragraphs "b" and "c" of subrule 70.5(3) contain the requirements for lead inspectors and elevated blood lead (EBL) inspectors.

The Department has determined that these amendments are not subject to waiver or variance because Iowa's program must be as protective as the U.S. EPA regulations which do not allow variances or waivers.

These amendments will become effective on January 5, 2000, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code section 135.105A.

The following amendments are adopted.

ITEM 1. Amend rule 641—70.1(135) as follows:

641—70.1(135) Applicability. Prior to ~~August 1, 1999~~ *March 1, 2000*, this chapter applies to all persons who are certified lead professionals in Iowa. ~~After August 1, 1999~~ *Beginning March 1, 2000*, this chapter applies to all persons who are lead professionals in Iowa. While this chapter requires lead professionals to be certified and establishes specific requirements for how to perform lead-based paint activities if a property owner, manager, or occupant chooses to undertake them, nothing in this chapter requires a property owner, manager, or occupant to undertake any particular lead-based paint activity.

ITEM 2. Amend the following definitions in rule **641—70.2(135)**:

"Certified elevated blood lead (EBL) inspector" means a person who has met the requirements of 641—70.5(135) *for certification or interim certification* and who has been certified by the department.

"Certified lead abatement contractor" means a person who has met the requirements of 641—70.5(135) *for certification or interim certification* and who has been certified by the department.

"Certified lead inspector" means a person who has met the requirements of 641—70.5(135) *for certification or interim certification* and who has been certified by the department.

"Certified lead professional" means a person who has been certified by the department as a lead inspector, elevated blood lead (EBL) inspector, lead abatement contractor, lead abatement worker, *project designer,* or visual risk assessor.

"Certified project designer" means a person who has met the requirements of 641—70.5(135) *for certification or interim certification* and who has been certified by the department.

"Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited by the same child ~~six years of age or under~~ *under the age of six years*, on at least two different days within any week (Sunday through Saturday period, provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours). Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

"Elevated blood lead (EBL) child" means any child who has had one venous blood lead level greater than *or equal to* 20 micrograms per deciliter or at least two venous blood lead levels of 15 to 19 micrograms per deciliter.

"Living area" means any area of a residential dwelling used by at least one child~~, six years of age or less~~ *under the age of six years*, including, but not limited to, living rooms, kitchen areas, dens, playrooms, and children's bedrooms.

"State certification examination" means a discipline-specific examination ~~administered~~ *approved* by the department to test the knowledge of a person who has completed an approved training course and is applying for certification in a particular discipline. *The state certification examination may not be administered by the provider of an approved course.*

"Target housing" means housing constructed prior to 1978 with the exception of housing for the elderly or for persons with disabilities and housing which does not contain a bedroom, unless at least one child ~~six years of age or less~~ *under the age of six years* resides or is expected to reside in the housing for the elderly or persons with disabilities or housing which does not contain a bedroom.

ITEM 3. Amend rule 641—70.3(135) as follows:

641—70.3(135) Certification. Prior to ~~August 1, 1999~~ *March 1, 2000*, lead professionals may be certified by the department. Beginning ~~August 1, 1999~~ *March 1, 2000*, lead professionals must be certified by the department in the appropriate discipline before they conduct lead abatement, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, and visual risk assessments, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person other than the owner or a member of the owner's immediate family while these activities are being performed. In addition, elevated blood lead (EBL) inspections shall be conducted only by certified elevated blood lead (EBL) inspectors employed by or under contract with a certi-

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fied elevated blood lead (EBL) inspection agency. Lead professionals shall not state that they have been certified by the state of Iowa unless they have met the requirements of rule 70.5(135) and been issued a certificate by the department. Prior to ~~August 1, 1999~~ *March 1, 2000*, elevated blood lead (EBL) inspection agencies may be certified by the department. Beginning ~~August 1, 1999~~ *March 1, 2000*, elevated blood lead (EBL) inspection agencies must be certified by the department. Elevated blood lead (EBL) inspection agencies shall not state that they have been certified by the state of Iowa unless they have met the requirements of rule 70.5(135) and been issued a certificate by the department.

ITEM 4. Amend subrule **70.4(1)**, paragraph **"m,"** subparagraph **(3)**, as follows:

(3) The course test blueprint *and the course test.*

ITEM 5. Amend subrule 70.4(9), introductory paragraph, as follows:

70.4(9) To be approved for refresher training *of visual risk assessors, lead abatement contractors, lead abatement workers, and project designers*, a course must be at least 8 training hours. ~~and shall cover at least the following subjects:~~ *To be approved for refresher training of lead inspector/risk assessors who completed an approved 24-hour training course or elevated blood lead (EBL) inspector/risk assessors who completed an approved 32-hour training course, a course must be at least 8 training hours to meet the recertification requirements of subrule 70.5(3). To be approved for refresher training of lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors to meet the recertification requirements of subrule 70.5(5), a course must be at least 16 training hours. All refresher courses shall cover at least the following topics:*

ITEM 6. Amend rule 641—70.5(135), catchwords, as follows:

641—70.5(135) Certification, *interim certification,* and recertification.

ITEM 7. Amend subrule **70.5(1)**, paragraph **"e,"** as follows:

e. Beginning ~~March 1, 1999~~ *March 1, 2000, to become certified as a lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, or project designer,* a certificate showing that the applicant has passed the state certification examination in the discipline in which the applicant wishes to become certified.

ITEM 8. Amend subrule **70.5(1)** by adopting **new** paragraph **"g"** as follows:

g. A person may receive interim certification from the department as a lead inspector/*risk assessor*, elevated blood lead (EBL) inspector/*risk assessor*, lead abatement contractor, or project designer by submitting the items required by paragraphs 70.5(1)"a" to "d" and "f" to the department. If the applicant completed an approved course prior to September 1, 1999, the interim certification shall expire on March 1, 2000. If the applicant completed an approved course on or after September 1, 1999, the interim certification shall expire six months from the date of completion of an approved course. An interim certification must be upgraded to a certification by submitting a certificate to the department showing that the applicant has passed the state certification examination as required by paragraph 70.5(1)"e." Interim certification is equivalent to certification.

ITEM 9. Amend subrule 70.5(2), introductory paragraph, as follows:

70.5(2) *Beginning September 1, 1999,* ~~To~~ *to* become certified by the department as a lead ~~inspector, elevated blood lead (EBL) inspector, lead abatement contractor, lead abatement worker, or visual risk assessor~~ *professional*, an applicant must meet the education and experience requirements for the appropriate discipline:

ITEM 10. Amend subrule **70.5(3)**, introductory paragraph and paragraphs **"b," "c,"** and **"e,"** as follows:

70.5(3) Certifications issued prior to ~~March 31, 1999~~ *September 1, 1999*, shall expire on ~~August 1, 1999~~ *February 29, 2000*. By ~~August 1, 1999~~ *March 1, 2000*, lead professionals certified prior to ~~March 1, 1999~~ *September 1, 1999*, must be recertified by submitting the following:

b. For lead inspector/*risk assessors*, a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(3) *and the completion of an 8-hour refresher course.*

c. For elevated blood lead (EBL) inspector/*risk assessors*, a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(4) *and the completion of an 8-hour refresher course.*

e. ~~A~~ *For lead abatement contractors, lead abatement workers, project designers, and visual risk assessors, if the date on which the applicant completed an approved training course is three years or more before the date of recertification, a* certificate showing that the applicant has successfully completed an approved refresher training course for the appropriate discipline.

ITEM 11. Amend subrule 70.5(5) as follows:

70.5(5) Beginning ~~March 1, 1999~~ *March 1, 2000*, individuals certified as lead professionals must be recertified each year. To be recertified, lead professionals must submit the following:

a. A completed application form.

b. A $50 nonrefundable fee.

c. Every three years, a certificate showing that the applicant has successfully completed an approved refresher training course for the appropriate discipline. *If the applicant completed an approved training program prior to March 1, 2000, the initial refresher training course must be completed no more than three years after the date on which the applicant completed an approved training program.*

ITEM 12. Amend subrule 70.5(6) as follows:

70.5(6) The department shall ~~develop and administer~~ *approve* the state certification examinations for the disciplines of lead inspector/*risk assessor*, elevated blood lead (EBL) inspector/*risk assessor*, lead abatement contractor, ~~lead abatement worker, and visual risk assessor~~ *and project designer. The state certification examination may not be administered by the provider of an approved course.*

a. An individual may take the state certification examination no more than three times within six months of receiving a certificate of completion from an approved course.

b. If an individual does not pass the *state* certification examination within six months of receiving a certificate of completion from an approved course, the individual must retake the appropriate approved course before reapplying for certification.

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ITEM 13. Amend subrule 70.6(1) as follows:

70.6(1) Prior to ~~March 1, 1999~~ *March 1, 2000*, when performing any lead-based paint activity described as an inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, visual risk assessment, or lead abatement, a certified individual must perform that activity in compliance with the appropriate requirements below. Beginning ~~on March 1, 1999~~ *March 1, 2000*, all lead-based paint activities shall be performed according to the work practice standards in rule 70.6(135) and a certified individual must perform that activity in compliance with the appropriate requirements below.

ITEM 14. Amend subrule 70.6(2), introductory paragraph, as follows:

70.6(2) A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* must conduct lead inspections according to the following standards. Beginning ~~on August 1, 1999~~ *March 1, 2000*, lead inspections shall be conducted only by a certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor*.

ITEM 15. Amend subrule 70.6(3), introductory paragraph, as follows:

70.6(3) A certified elevated blood lead (EBL) inspector must conduct elevated blood lead (EBL) inspections according to the following standards. Beginning ~~on August 1, 1999~~ *March 1, 2000, elevated blood lead (*EBL*)* inspections shall be conducted only by a certified EBL inspector/*risk assessor*.

ITEM 16. Amend subrule **70.6(4)**, introductory paragraph and paragraphs **"a," "d,"** and **"e,"** as follows:

70.6(4) A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* must conduct lead hazard screens according to the following standards. Beginning ~~on August 1, 1999~~ *March 1, 2000*, lead hazard screens shall be conducted only by a certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor*.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child ~~six years of age or less~~ *under the age of six years* shall be collected.

d. In residential dwellings, two composite dust samples shall be collected. One sample shall be collected from the floors and the other from the window well and window trough in rooms, hallways, or stairwells where at least one child ~~six years of age or less~~ *under the age of six years* is most likely to come in contact with dust.

e. In multifamily dwellings and child-occupied facilities, a composite dust sample shall also be collected from common areas where at least one child ~~six years of age or less~~ *under the age of six years* is likely to come in contact with dust.

ITEM 17. Amend subrule **70.6(4)**, paragraph **"h,"** subparagraph **(13)**, as follows:

(13) Background information collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child ~~six years of age or less~~ *under the age of six years*; and

ITEM 18. Amend subrule **70.6(5)**, introductory paragraph and paragraphs **"a," "f,"** and **"g,"** as follows:

70.6(5) A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* must conduct risk assessments according to the following standards. Beginning ~~on August 1, 1999~~ *March 1, 2000*, risk assessments shall be conducted only by a certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor*.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child ~~six years of age or less~~ *under the age of six years* shall be collected.

f. In multifamily dwellings and child-occupied facilities, dust samples shall also be collected from common areas adjacent to the sampled residential dwellings or child-occupied facility and in other common areas where the lead inspector or elevated blood lead (EBL) inspector determines that at least one child ~~six years of age or less~~ *under the age of six years* is likely to come in contact with dust. Dust samples may be either composite or single-surface samples.

g. In child-occupied facilities, dust samples shall be collected from the window well, window trough, and floor in each room, hallway, or stairwell utilized by one or more children, ~~six years of age or less~~ *under the age of six years*, and in other common areas where the lead inspector or elevated blood lead (EBL) inspector determines that at least one child ~~six years of age or less~~ *under the age of six years* is likely to come in contact with dust. Dust samples may be either composite or single-surface samples.

ITEM 19. Amend subrule **70.6(5)**, paragraph **"k,"** subparagraph **(13)**, as follows:

(13) Background information collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child ~~six years of age or less~~ *under the age of six years*;

ITEM 20. Amend subrule 70.6(6), introductory paragraph, as follows:

70.6(6) A certified lead abatement contractor or certified lead abatement worker must conduct lead abatement according to the following standards. Beginning ~~on August 1, 1999~~ *March 1, 2000*, lead abatement shall be conducted only by a certified lead abatement contractor or a certified lead abatement worker.

ITEM 21. Amend subrule **70.6(7)**, introductory paragraph and paragraph **"a,"** as follows:

70.6(7) A certified lead inspector/*risk assessor*, a certified elevated blood lead (EBL) inspector/*risk assessor*, or a certified visual risk assessor must conduct visual risk assessments according to the following standards. Beginning ~~on August 1, 1999~~ *March 1, 2000*, visual risk assessments shall be conducted only by a certified lead inspector/*risk assessor*, a certified elevated blood lead (EBL) inspector/*risk assessor*, or a certified visual risk assessor.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child ~~six years of age or less~~ *under the age of six years* shall be collected.

ITEM 22. Adopt **new** rule 641—70.10(135) as follows:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

641—70.10(135) Waivers. Rules in this chapter are not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

[Filed 11/12/99, effective 1/5/00]
[Published 12/1/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

ARC 9519A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.105A, the Department of Public Health hereby amends Chapter 70, "Lead Professional Certification," Iowa Administrative Code.

These amendments change the name of the lead inspector discipline to lead inspector/risk assessor and change the name of the elevated blood lead (EBL) inspector discipline to elevated blood lead (EBL) inspector/risk assessor. This change was requested by currently certified inspectors who anticipate working in other states. In many other states, "inspector" and "risk assessor" are separate disciplines. Iowa's current rules combine the training, education, and experience requirements for inspectors and risk assessors, but call the discipline "lead inspector." Inspectors who anticipate working in other states are concerned that other states will not realize that they meet the requirements for both "inspector" and "risk assessor" unless the term "risk assessor" is included in the name of the discipline. In addition, the amendments change the experience requirement for lead abatement contractors from one year as a certified lead abatement worker or two years in building trades to one year as a certified lead abatement worker or two years of related experience or education (lead, housing inspection, building trades, property management and maintenance). This change was requested by staff of the City of Dubuque Housing Services Department because they are concerned that there will not be enough certified lead abatement contractors under the current requirements to complete the work in the city's lead hazard remediation program that is funded by the U.S. Department of Housing and Urban Development. This change meets the requirement that these rules be as protective as the U.S. EPA requirements for certified lead abatement contractors.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 6, 1999, as **ARC 9417A**. A public hearing was held over the Iowa Communications Network from 10 to 11 a.m. on October 26, 1999. There were no comments received at the public hearing, and no written comments were received prior to the hearing.

Changes have been made from the Notice of Intended Action. A new Item 6 has been added and the subsequent items renumbered to change the term "lead inspector" to "lead inspector/risk assessor" and the term "elevated blood lead (EBL) inspector" to "elevated blood lead (EBL) inspector/risk assessor" in subrule 70.4(9). In Item 8, the amendments to the introductory paragraph of subrule 70.5(2) have not been adopted. Also, in Item 16, the phrase "six years of age or less" has been changed to "under the age of six years" in paragraphs 70.6(5)"f" and "g." The new terms for "lead inspector" and "elevated blood lead (EBL) inspector" and the new phrase for "six years of age or less" were contained in a separate Notice of Intended Action that was published on October 6, 1999, as **ARC 9416A**.

The Department has determined that these rules are not subject to waiver or variance because Iowa's program must be as protective as the U.S. EPA regulations, which do not allow variances or waivers.

These amendments will become effective on January 5, 2000.

These amendments are intended to implement Iowa Code section 135.105A.

The following amendments are adopted.

ITEM 1. Amend the following definitions in rule **641—70.2(135)**:

"Certified elevated blood lead (EBL) inspector/*risk assessor*" means a person who has met the requirements of 641—70.5(135) and who has been certified by the department.

"Certified lead inspector/*risk assessor*" means a person who has met the requirements of 641—70.5(135) and who has been certified by the department.

"Certified lead professional" means a person who has been certified by the department as a lead inspector/*risk assessor*, elevated blood lead (EBL) inspector/*risk assessor*, lead abatement contractor, lead abatement worker, or visual risk assessor.

"Discipline" means one of the specific types or categories of lead-based paint activities identified in this chapter for which individuals may receive training from approved courses and become certified by the department. For example, "lead inspector/*risk assessor*" is a discipline.

ITEM 2. Amend rule 641—70.3(135) as follows:

641—70.3(135) Certification. Prior to August 1, 1999, lead professionals may be certified by the department. Beginning August 1, 1999, lead professionals must be certified by the department in the appropriate discipline before they conduct lead abatement, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, and visual risk assessments, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person other than the owner or a member of the owner's immediate family while these activities are being performed. In addition, elevated blood lead (EBL) inspections shall be conducted only by certified elevated blood lead (EBL) ~~inspectors~~ *inspector/risk assessors* employed by or under contract with a certified elevated blood lead (EBL) inspection agency. Lead professionals shall not state that they have been certified by the state of Iowa unless they have met the requirements of rule 70.5(135) and been issued a certificate by the department. Prior to August 1, 1999, elevated blood lead (EBL) inspection agencies may be certified by the department. Beginning August 1, 1999, elevated blood lead (EBL) inspection agencies must be certified by the department. Elevated blood lead (EBL) inspection agencies shall not state that they have been certified by the state of Iowa unless they have met the requirements of rule 70.5(135) and been issued a certificate by the department.

ITEM 3. Amend subrule **70.4(1)**, paragraph **"b,"** subparagraph **(2)**, as follows:

(2) Certification as a lead inspector/*risk assessor*, elevated blood lead (EBL) inspector/*risk assessor*, or lead abatement contractor.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 4. Amend subrule **70.4(3)**, introductory paragraph and paragraph **"a,"** as follows:

70.4(3) To be approved for the training of lead ~~inspectors~~ *inspector/risk assessors* prior to March 1, 1999, a course must be at least 24 training hours with a minimum of 8 hours devoted to hands-on training activities. Beginning March 1, 1999, a course must be at least 40 training hours with a minimum of 12 hours devoted to hands-on training activities. Lead inspector/*risk assessor* training courses shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of an inspector/*risk assessor.*

ITEM 5. Amend subrule **70.4(4)**, introductory paragraph and paragraph **"a,"** as follows:

70.4(4) To be approved for the training of elevated blood lead (EBL) ~~inspectors~~ *inspector/risk assessors* prior to March 1, 1999, a course must be at least 32 training hours with a minimum of 8 hours devoted to hands-on training activities. Beginning March 1, 1999, a course must be at least 48 training hours with a minimum of 12 hours devoted to hands-on training activities. Elevated blood lead (EBL) inspector/*risk assessor* training courses shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of an elevated blood lead (EBL) inspector/*risk assessor.*

ITEM 6. Amend subrule 70.4(9), introductory paragraph, as follows:

70.4(9) To be approved for refresher training of visual risk assessors, lead abatement contractors, lead abatement workers, and project designers, a course must be at least 8 training hours. To be approved for refresher training of lead ~~inspectors~~ *inspector/risk assessors* who completed an approved 24-hour training course or elevated blood lead ~~inspectors~~ *(EBL) inspector/risk assessors* who completed an approved 32-hour training course, a course must be at least 8 training hours to meet the recertification requirements of subrule 70.5(3). To be approved for refresher training of lead ~~inspectors~~ *inspector/risk assessors* and elevated blood lead ~~inspectors~~ *(EBL) inspector/risk assessors* to meet the recertification requirements of subrule 70.5(5), a course must be at least 16 training hours. All refresher courses shall cover at least the following topics:

ITEM 7. Amend subrule **70.5(1)**, paragraph **"c,"** as follows:

c. A person wishing to become a certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* shall provide documentation of successful completion of the manufacturer's training course or equivalent for the X-ray fluorescence (XRF) analyzer that the inspector/*risk assessor* will use to conduct lead inspections.

ITEM 8. Amend subrule **70.5(2)**, paragraph **"a,"** as follows:

a. Lead ~~inspectors~~ *inspector/risk assessors* and elevated blood lead (EBL) ~~inspectors~~ *inspector/risk assessors* must meet one of the following requirements:

(1) to (4) No change.

ITEM 9. Amend subrule **70.5(2)**, paragraph **"b,"** subparagraph **(2)**, as follows:

(2) Two years of *related* experience *or education* ~~in building trades~~ *(e.g., lead, housing inspection, building trades, property management and maintenance).*

ITEM 10. Amend subrule **70.5(3)**, paragraphs **"b"** and **"c,"** as follows:

b. For lead ~~inspectors~~ *inspector/risk assessors,* a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(3).

c. For elevated blood lead (EBL) ~~inspectors~~ *inspector/risk assessors,* a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(4).

ITEM 11. Amend subrule **70.5(4)**, paragraph **"c,"** as follows:

c. Documentation that the agency employs or has contracted with a certified elevated blood lead (EBL) inspector/*risk assessor* to provide environmental case management of all elevated blood lead (EBL) children in the agency's service area, including follow-up to ensure that lead-based paint hazards identified as a result of elevated blood lead (EBL) inspections are corrected.

ITEM 12. Amend subrule 70.5(6), introductory paragraph, as follows:

70.5(6) The department shall develop and administer the state certification examinations for the disciplines of lead inspector/*risk assessor,* elevated blood lead (EBL) inspector/*risk assessor,* lead abatement contractor, lead abatement worker, and visual risk assessor.

ITEM 13. Amend subrule 70.6(2) as follows:

70.6(2) A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* must conduct lead inspections according to the following standards. Beginning on August 1, 1999, lead inspections shall be conducted only by a certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor.*

a. When conducting an inspection, the *certified lead* inspector/*risk assessor* shall use the documented methodologies, including selection of rooms and components for sampling or testing, specified in Chapter 7 of the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development).

b. No change.

c. If lead-based paint is identified through an inspection, the *certified lead* inspector/*risk assessor* must conduct a visual inspection to determine the presence of lead-based paint hazards and any other potential lead hazards.

d. A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* shall prepare a written report for each residential dwelling or child-occupied facility inspected and shall provide a copy of this report to the person requesting the inspection. A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* shall maintain a copy of each written report for no fewer than three years. The inspection report shall include, at least:

(1) to (5) No change.

(6) Name, signature, and certification number of each certified lead inspector/*risk assessor* or certified elevated blood lead *(EBL)* inspector/*risk assessor* conducting the investigation;

(7) to (12) No change.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 14. Amend subrule 70.6(3) as follows:

70.6(3) A certified elevated blood lead (EBL) inspector/*risk assessor* must conduct elevated blood lead (EBL) inspections according to the following standards. Beginning on August 1, 1999, EBL inspections shall be conducted only by a certified EBL inspector/*risk assessor.*

a. When conducting an elevated blood lead (EBL) inspection, the *certified* elevated blood lead (EBL) inspector/*risk assessor* shall use the documented methodologies, including selection of rooms and components for sampling or testing, specified in Chapter 7 of the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development).

b. No change.

c. If lead-based paint is identified through an inspection, the *certified elevated blood lead (EBL)* inspector/*risk assessor* must conduct a visual inspection to determine the presence of lead-based paint hazards and any other potential lead hazards.

d. A certified elevated blood lead (EBL) inspector/*risk assessor* shall prepare a written report for each residential dwelling or child-occupied facility where an elevated blood lead (EBL) inspection has been conducted and shall provide a copy of this report to the owner and the occupant of the dwelling. The report shall include, at least:

(1) to (5) No change.

(6) Name, signature, and certification number of each certified elevated blood lead (EBL) inspector/*risk assessor* conducting the investigation;

(7) to (12) No change.

e. A certified elevated blood lead (EBL) inspector/*risk assessor* shall maintain a written record for each residential dwelling or child-occupied facility where an elevated blood lead (EBL) inspection has been conducted for no fewer than ten years. The record shall include, at least:

(1) to (4) No change.

ITEM 15. Amend subrule **70.6(4)**, introductory paragraph and paragraph **"h,"** as follows:

70.6(4) A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* must conduct lead hazard screens according to the following standards. Beginning on August 1, 1999, lead hazard screens shall be conducted only by a certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor.*

h. A certified lead inspector/*risk assessor* or a certified elevated blood lead *(EBL)* inspector/*risk assessor* shall prepare a written report for each residential dwelling or child-occupied facility where a lead hazard screen is conducted and shall provide a copy of this report to the person requesting the lead hazard screen. A certified lead inspector/*risk assessor* or a certified elevated blood lead *(EBL)* inspector/*risk assessor* shall maintain a copy of each written report for no fewer than three years. The report shall include, at least:

(1) to (5) No change.

(6) Name, signature, and certification number of each certified lead inspector/*risk assessor* or certified elevated blood lead *(EBL)* inspector/*risk assessor* conducting the investigation;

(7) to (14) No change.

ITEM 16. Amend subrule 70.6(5) as follows:

70.6(5) A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* must conduct risk assessments according to the following standards. Beginning on August 1, 1999, risk assessments shall be conducted only by a certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor.*

a. to e. No change.

f. In multifamily dwellings and child-occupied facilities, dust samples shall also be collected from common areas adjacent to the sampled residential dwellings or child-occupied facility and in other common areas where the *certified* lead inspector/*risk assessor* or *certified* elevated blood lead (EBL) inspector/*risk assessor* determines that at least one child ~~six years of age or less~~ *under the age of six years* is likely to come in contact with dust. Dust samples may be either composite or single-surface samples.

g. In child-occupied facilities, dust samples shall be collected from the window well, window trough, and floor in each room, hallway, or stairwell utilized by one or more children, ~~six years of age or less~~ *under the age of six years*, and in other common areas where the *certified* lead inspector/*risk assessor* or *certified* elevated blood lead (EBL) inspector/*risk assessor* determines that at least one child ~~six years of age or less~~ *under the age of six years* is likely to come in contact with dust. Dust samples may be either composite or single-surface samples.

h. to j. No change.

k. A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* shall prepare a written report for each residential dwelling or child-occupied facility where a risk assessment is conducted and shall provide a copy of the report to the person requesting the risk assessment. A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* shall maintain a copy of the report for no fewer than three years. The report shall include, at least:

(1) to (5) No change.

(6) Name, signature, and certification number of each certified *lead* inspector/*risk assessor* conducting the investigation;

(7) to (16) No change.

ITEM 17. Amend subrule **70.6(6)**, paragraph **"g,"** introductory paragraph and subparagraph (7), as follows:

g. Postabatement clearance procedures shall be conducted by a certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* using the following procedures:

(7) The certified lead inspector/*risk assessor* or certified elevated blood lead (EBL) inspector/*risk assessor* shall compare the residual lead level as determined by the laboratory analysis from each dust sample with applicable clearance levels for lead in dust on floors and window troughs. If the residual lead levels in a dust sample exceed the clearance levels, then all the components represented by the failed dust sample shall be recleaned and retested until clearance levels are met.

ITEM 18. Amend subrule **70.6(6)**, paragraph **"i,"** subparagraph **(4)**, as follows:

(4) The name, address, and signature of each certified lead inspector/*risk assessor* or certified elevated blood lead (EBL) inspector/*risk assessor* conducting clearance sampling, the date on which the clearance testing was conducted, and the results of all postabatement clearance testing and all soil analyses, if applicable.

ITEM 19. Amend subrule **70.6(7)**, introductory paragraph and paragraph **"c,"** as follows:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

70.6(7) A certified lead inspector/*risk assessor*, a certified elevated blood lead (EBL) inspector/*risk assessor*, or a certified visual risk assessor must conduct visual risk assessments according to the following standards. Beginning on August 1, 1999, visual risk assessments shall be conducted only by a certified lead inspector/*risk assessor*, a certified elevated blood lead (EBL) inspector/*risk assessor*, or a certified visual risk assessor.

c. A certified lead inspector/*risk assessor*, a certified elevated blood lead (EBL) inspector/*risk assessor*, or a certified visual risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where a visual risk assessment is conducted and shall provide a copy of the report to the person requesting the visual risk assessment. A certified lead inspector/*risk assessor*, a certified elevated blood lead (EBL) inspector/*risk assessor*, or a certified visual risk assessor shall maintain a copy of the report for no fewer than three years. The report shall include, at least:

(1) to (5) No change.

(6) Name, signature, and certification number of each certified visual *risk* assessor, certified lead inspector/*risk assessor*, or certified elevated blood lead (EBL) inspector/*risk assessor* conducting the visual risk assessment;

(7) and (8) No change.

ITEM 20. Amend subrule 70.6(9) as follows:

70.6(9) A person may be certified as a lead inspector/*risk assessor*, visual risk assessor, or elevated blood lead (EBL) inspector/*risk assessor* and as a lead abatement contractor or lead abatement worker. However, a person who is certified both as a lead inspector/*risk assessor*, visual risk assessor, or elevated blood lead (EBL) inspector/*risk assessor* and as a lead abatement contractor or lead abatement worker shall not provide both lead inspection or visual risk assessment and lead abatement services at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site.

ITEM 21. Amend subrule 70.6(10) as follows:

70.6(10) Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this rule shall be collected by persons certified as a lead inspector/*risk assessor* or an elevated blood lead (EBL) inspector/*risk assessor*. These samples shall be analyzed by a recognized laboratory.

[Filed 11/12/99, effective 1/5/00]
[Published 12/1/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

ARC 9520A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11 and 1999 Iowa Acts, chapter 41, the Department of Public Health hereby amends Chapter 201, "Organized Delivery Systems," Iowa Administrative Code.

The amendments address a variety of organized delivery system and policy requirements. "Emergency services" has been defined and must be a covered treatment for organized delivery systems subject to Department of Public Health regulation. An organized delivery system must provide continuity of care for pregnancy and terminal illness. Organized delivery systems must also set up procedures to review coverage for experimental treatment when such treatment is limited or denied. Utilization review requirements have been defined. A process for external review of coverage denial decisions has been outlined and must be implemented by organized delivery systems subject to Department of Public Health regulation. These amendments also provide a mechanism for the appeal of a denial of coverage based on medical necessity. These additions and amendments are required to implement 1999 Iowa Acts, chapter 41.

These rules are not subject to waiver or variance because 1999 Iowa Acts, Senate File 276 [Iowa Code chapter 514J], provides no such provision. The requirements listed herein are taken directly from the statutory provisions that are not subject to waiver.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 6, 1999, as **ARC 9418A**. A public hearing was held on October 26, 1999. No members of the public attended the hearing. No comments concerning the proposed amendments were received from the public. These amendments are identical to those published under Notice of Intended Action.

The State Board of Health adopted these amendments at their regular board meeting on November 10, 1999.

These amendments will become effective on January 5, 2000.

These amendments are intended to implement 1999 Iowa Acts, chapter 41.

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 [201.2, 201.6, 201.18] is being omitted. These amendments are identical to those published under Notice as **ARC 9418A**, IAB 10/6/99.

[Filed 11/12/99, effective 1/5/00]
[Published 12/1/99]

[For replacement pages for IAC, see IAC Supplement 12/1/99.]

ARC 9492A

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code section 100.35, the Department of Public Safety hereby amends Chapter 5, "Fire Marshal," Iowa Administrative Code.

These amendments provide a new framework for ensuring fire safety in school and college buildings whose plans will be approved after these changes take effect. The Life Safety Code, with certain amendments, is adopted as the basic framework for fire safety requirements in construction of new and remodeled school buildings (Item 17) and college buildings (Item 32). In Item 1, new buildings are defined as those for which plans receive approval from the State Fire Marshal on or after February 1, 2000. Other amendments clarify the continued applicability of the current fire safety

PUBLIC SAFETY DEPARTMENT[661](cont'd)

rules for school and college buildings to existing school and college buildings and contain coordinating language.

Notice of Intended Action proposing adoption of these amendments was published in the Iowa Administrative Bulletin on April 21, 1999, as **ARC 8929A**. A public hearing on these amendments was held on May 17, 1999. No comments were received regarding the amendments either at the hearing or otherwise. These amendments are substantially similar to those contained in the Notice of Intended Action, with the exception that references to the effective date have been changed to February 1, 2000.

These amendments are intended to implement Iowa Code section 100.35.

These amendments will become effective February 1, 2000.

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 [5.650 to 5.657, 5.659 to 5.666, 5.675, 5.700 to 5.714, 5.749 to 5.752, 5.754, 5.756, 5.758 to 5.765, 5.775] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8929A**, IAB 4/21/99.

[Filed 11/9/99, effective 2/1/00]
[Published 12/1/99]

[For replacement pages for IAC, see IAC Supplement 12/1/99.]

ARC 9507A

TURKEY MARKETING COUNCIL, IOWA[787]

Adopted and Filed

Pursuant to the authority of 1999 Iowa Acts, chapter 158, section 4, the Iowa Turkey Marketing Council adopts Chapter 1, "Refunds," Iowa Administrative Code.

This chapter is required by 1999 Iowa Acts, chapter 158. The chapter is intended to clarify who is entitled to a refund of a turkey excise tax payment.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 28, 1999, as **ARC 9231A**. No public comment was received on the chapter. The adopted rule is identical to the one published under Notice. No waiver was included in the rule as the rule itself constitutes a waiver for the turkey excise tax.

The rule was adopted during the November 3, 1999, meeting of the Iowa Turkey Marketing Council.

The rule shall become effective on January 5, 2000.

The rule is intended to implement 1999 Iowa Acts, chapter 158.

The following **new** chapter is adopted.

CHAPTER 1
REFUNDS

787—1.1(78GA,ch158) Refunds.

1.1(1) An assessment imposed under Iowa Code section 184.2 shall not be refunded on turkeys raised in Iowa.

1.1(2) An assessment may be refunded on turkeys raised in another state and processed in Iowa if both of the following criteria are met:

a. The refund is requested by an organization representing the interests of the turkey producers in the state in which the turkeys were raised.

b. The organization requesting the refund has a signed and effective agreement on file between it and the Iowa Turkey Marketing Council regarding the refund.

This rule is intended to implement 1999 Iowa Acts, chapter 158.

[Filed 11/12/99, effective 1/5/00]
[Published 12/1/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/99.

*SUMMARY OF DECISIONS
THE SUPREME COURT OF IOWA
FILED NOVEMBER 17, 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. 99-1088. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. FLEMING.

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Ternus, JJ. Opinion by Neuman, J. (6 pages $2.40)

The board of professional ethics and conduct charged respondent, Bruce D. Fleming, with neglect and illegal fee-taking in connection with the probate of two estates. The grievance commission found the charges were established and recommended a thirty-day suspension. The matter is now before us for de novo review. **OPINION HOLDS:** We find the board has easily established Fleming's ethical violations. Given the financial penalties suffered by the estates' beneficiary because of Fleming's neglect, his disregard for rules and statutes respecting fees, his less than full cooperation with the board, and his history of reprimands for similar misconduct, we suspend Fleming's license to practice law for not less than six months. As a condition of reinstatement, Fleming shall furnish proof that he has reimbursed the residuary beneficiary for the interest and penalties paid by her as a result of Fleming's failure to file the Iowa inheritance tax returns when due. Costs are assessed to Fleming.

No. 99-1087. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. LEON.

On review of the report of the Grievance Commission. **LICENSE REVOKED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Ternus, JJ. Opinion by Lavorato, J. (8 pages $3.20)

The board of professional ethics and conduct alleged that attorney Trinidad J. Leon neglected clients' legal matters, misappropriated client trust funds, misrepresented to his clients the status of their cases, and failed to respond to the board's resulting ethics inquiries. Our grievance commission concluded that Leon committed the alleged violations and recommended that he be suspended for one year. We review the record de novo. **OPINION HOLDS:** We find Leon committed all the ethical violations the board alleged. Leon misappropriated funds on five separate occasions involving four separate clients to cover up four separate incidents of neglect. When confronted by his partner and a judge, he lied to further the cover-up. He failed to fully reimburse the trust account for the misappropriations, then compounded these violations by ignoring the board's inquiries. Such a pattern of misconduct leads us to conclude that future misconduct is likely. Therefore, we revoke Leon's license to practice law in this state. Costs are assessed to Leon.

*Reproduced as submitted by the Court

No. 97-834. INTERSTATE POWER CO. v. INSURANCE CO. OF N. AM.

Appeal from the Iowa District Court for Clinton County, John A. Nahra, Judge. AFFIRMED IN PART, REVERSED IN PART, AND REMANDED. Considered en banc. Opinion by Carter, J. (14 pages $5.60)

Interstate Power Company (Interstate) appeals from a summary judgment in favor of Insurance Company of North America (INA) with respect to Interstate's allegations that INA insured it against liability for environmental cleanup costs at several Midwest locations. At issue was the nature and extent of INA's coverage between 1946 and 1964. Under a policy in effect between 1946 and 1961, INA's liability for property damage extended to damages caused by accident. However, under the policy in effect between 1961 and 1964, INA was liable for property damages resulting from an occurrence either by accident or a continuous exposure to conditions that unexpectedly or unintentionally caused damage. The district court ruled in INA's favor regarding coverage from 1946-1961. The court concluded the ground contamination was not accidental and thus INA was not liable for damages during those years. The district court also denied coverage from 1961-1964 on the grounds that (1) no occurrence under the policy definition occurred, and (2) Interstate failed to establish that the injuries were unexpected. Interstate has appealed. **OPINION HOLDS:** I. We conclude the district court was correct in granting summary judgment for INA on the policy years 1946-1961. Ground contamination occurring over a period of time from a natural seeping process is not accidental when the sources of the contamination are deliberately exposed to that process. We agree with the district court that no accident was involved in this process. II.A. Regarding the policy period of 1961-1964, we reject the district court's conclusion that, as a matter of law, there was no "occurrence." All the policy required was that repeated exposure to conditions caused some damage during the policy period. B. We also conclude the district court erred in granting summary judgment on grounds Interstate failed to show the damages were unexpected and unintentional. Whether the environmental damage was expected or intended was an issue of disputed fact. III. We nevertheless conclude INA was entitled to summary judgment on the"occurrence" policies on claims regarding property in Rochester, Minnesota; Albert Lea, Minnesota; and Mason City as a result of unreasonably late notice to the insurer.

No. 98-918. SMITH v. STATE.

Appeal from the Iowa District Court for Tama County, William L. Thomas, Judge. AFFIRMED. Considered by McGiverin, C.J., and Larson, Carter, and Cady, JJ., and Andreasen, S.J. Per curiam. (3 pages $1.20)

Dennis Smith filed an application for postconviction relief, claiming there was no predicate felony for his 1985 possession-of-a-firearm conviction because his citizenship rights had been restored in 1967. His petition was denied as untimely, and he appeals. **OPINION HOLDS:** Smith was aware an application for restoration of his citizenship had been filed, and he thought his rights had been restored at the time of his 1985 conviction. Based on these circumstances, the trial court properly found the postconviction application was not based on a ground of fact or law that could not have been raised within the application time period. We affirm the district court judgment.

No. 98-353. STATE ex rel. VALEN v. ESTHERVILLE LINCOLN CENT. COMMUNITY SCH. DIST.

Appeal from the Iowa District Court for Emmet County, Frank B. Nelson, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, and Cady, JJ., and Andreasen, S.J. Opinion by Carter, J. (6 pages $2.40)

Lincoln Central Community School District proposed merger with the Armstrong-Ringsted district. While that proposal was pending before the Lakeland Area Education Agency, merger of Estherville and Lincoln Central was proposed. The agency dismissed the Armstrong-Ringsted proposal, and the parties appealed. The agency then dismissed the Estherville proposal. While the Armstrong-Ringsted appeal was pending, another Estherville-Lincoln Central merger was proposed and approved. The plaintiff-relators, citizens in the merged Estherville district, filed suit. The district court denied relief. The plaintiff-relators appeal, contending the same geographical area cannot be subject to multiple, simultaneous reorganization proceedings. **OPINION HOLDS:** I. We are convinced the appeal of the agency's action on the Armstrong-Ringsted reorganization proposal did not preclude the agency from proceeding forward with the Estherville reorganization proposal. II. Because we find the agency acted according to law, the plaintiff-relators' equitable arguments based on the agency's allegedly illegal actions fail. We conclude the district court's judgment should be affirmed.

No. 97-1992. IN RE MARRIAGE OF ANEWEER.

Appeal from the Iowa District Court for Carroll County, Ronald H. Schechtman, Judge. **AFFIRMED.** Considered en banc. Per curiam. (2 pages $ .80)

The court being equally divided, the judgment is affirmed by operation of law.

No. 96-2274. MILLER v. IOWA DIST. CT.

Certiorari to the Iowa District Court for Jones County, Larry J. Conmey, Judge. **WRIT ANNULLED IN MILLER CASE; WRIT SUSTAINED IN MAHAN CASE AND CASE REMANDED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell and Ternus, JJ. Opinion by McGiverin, C.J. (10 pages $4.00)

Plaintiffs Byron Miller and Russell Mahan, inmates at a correctional facility, were found guilty by a prison disciplinary committee of violating certain prison rules stemming from their escape from that facility. After exhausting their administrative remedies, Miller and Mahan filed applications for postconviction relief, asserting that prison officials failed to comply with an Iowa Department of Corrections policy which requires prison disciplinary proceedings shall be stayed until related criminal charges are disposed of or dismissed, unless the inmate is informed that his statements made during a disciplinary hearing will not be used in the subsequent criminal proceedings. The district court denied the requested relief, finding Miller and Mahan suffered no prejudice by the failure of prison officials to comply with the policy, and we granted their petitions for writ of

No. 96-2274. MILLER v. IOWA DIST. CT. (continued)

certiorari. **OPINION HOLDS:** I. Miller did not raise the issue of noncompliance with the policy in his appeal before the Director of Corrections and has therefore failed to preserve error on this issue. The writ of certiorari is annulled as to his claim. II. With respect to Mahan, prison officials did not comply with the policy and that failure deprived him of a substantial right. III. The proper remedy for noncompliance with the policy is to sustain the writ and remand Mahan's case for a new hearing before the disciplinary committee.

No. 98-418. CASS COUNTY v. SANDHORST.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Cass County, James M. Richardson, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Ternus, JJ. Per curiam. (7 pages $2.80)

In 1997, Cass County filed a claim against Eugene Sandhorst's conservatorship, seeking reimbursement for amounts the county paid to Cass, Inc., for care services furnished to Eugene from 1992-1997. The county sought proceeds from the sale of a one-fifth remainder interest in farmland held in a separate trust established on Eugene's behalf. The district court approved the claim against the conservatorship for $31,021.56, but ruled the trust assets could not be invaded by the county. The county appeals and the court of appeals reversed. We granted further review. **OPINION HOLDS:** The district court properly approved the county's claim against the conservatorship for $31,021.56 and properly concluded, under the present record, that the county cannot invade assets held in the trust to satisfy that claim in the conservatorship because the trustee and trust were not parties before the court. We vacate the court of appeals' decision and affirm the district court's ruling.

No. 98-1417. STATE v. MANN.

Appeal from the Iowa District Court for Clay County, Frank B. Nelson, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Ternus, JJ. Opinion by Ternus, J. (14 pages $5.60)

Defendant, a seventeen-year-old juvenile, was charged in district court with two forcible felonies (murder and kidnapping). Defendant entered a plea of guilty to second-degree murder and requested a deferred judgment. The district court denied the request and sentenced him to a mandatory term of incarceration not to exceed fifty years. Defendant appeals. **OPINION HOLDS:** I. A guilty plea does not waive challenges that do not affect the validity of the conviction. Thus, a waiver of constitutional challenges to a sentencing statute is not implicit in a defendant's guilty plea. II. Error was adequately preserved when defendant filed a motion raising constitutional challenge to the sentencing statute a few days before sentencing where State did not object to court's consideration of motion and court had sufficient time to review and address the issue. III. The age classification of juveniles made in section 232.8(1)(c) is reasonable and operates equally upon all juveniles falling within that class and therefore does not violate the Equal Protection Clause.

No. 98-788. EATON v. IOWA EMPLOYMENT APPEAL BD.

Appeal from the Iowa District Court for Polk County, Robert Wilson, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Ternus, JJ. Opinion by Ternus, J. (10 pages $4.00)

Jack Eaton was terminated from his employment with Deere & Company after he failed a drug test. The testing was requested pursuant to a rehiring agreement after Eaton had previously been terminated for violating the company's nonsmoking policy. Eaton was later denied unemployment compensation benefits on the basis that the test failure constituted disqualifying misconduct. The administrative law judge ruled that the prohibition against such testing under Iowa Code section 730.5 (1997) did not apply to testing done pursuant to a rehiring agreement. This ruling was affirmed by the Iowa Employment Appeal Board and by the district court. Eaton appeals. **OPINION HOLDS:** I. To the extent the agency's decision can be interpreted as including a finding that Eaton's drug test was random, we hold that the test falls squarely within the prohibition of section 730.5(2) against random testing. Therefore, the agency erred in holding that the test did not violate this statute. II. The agreement, which provided that Eaton would be discharged if he violated the terms of the agreement, conditioned his continued employment on his submission to random drug tests in violation of Iowa Code section 730.5(2). III. We do not think the record contains substantial evidence that Deere had probable cause to believe Eaton was impaired on the job at the time it requested he submit to drug testing. Therefore, to the extent the agency's decision rested on a finding the drug test was authorized under the probable cause provision of section 730.5(3), the decision was not supported by substantial evidence in the record. We reverse the agency's decision and remand for a determination of the benefits to which Eaton is entitled.

No. 98-251. STATE v. RUBINO.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer and K.D. Briner, Judges. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT REVERSED IN PART, CONDITIONALLY AFFIRMED IN PART, AND REMANDED WITH INSTRUCTIONS.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Ternus, JJ. Opinion by Neuman, J. (12 pages $4.80)

Counsel for the juvenile defendant failed to appear at a reverse waiver hearing, and the defendant was tried as an adult and convicted of first-degree burglary. The defendant appealed. The court of appeals reversed defendant's conviction and remanded for a new hearing on his motion to transfer jurisdiction. It directed the district court to grant him a new trial if the reverse waiver motion was denied. We granted the State further review. **OPINION HOLDS:** I. The State concedes the case must be remanded for new hearing on the motion to transfer jurisdiction. However, an automatic grant of a new trial would be premature, and the defendant's conviction shall only be vacated if the district court determines that good cause compels the transfer of the case to the juvenile court. If the district court determines the defendant was properly tried as an adult, the conviction shall stand. II. Four of the defendant's claims of ineffective

No. 98-251. STATE v. RUBINO. *(continued)*

assistance of counsel are preserved for postconviction proceedings because they implicate trial tactics or strategy. III. The punishment set by our legislature for the crime of first-degree burglary is not grossly disproportionate to the harm sought to be punished and deterred, thus defendant's counsel was not ineffective for failing to raise the claim that defendant's punishment was cruel and unusual. IV. The trial court deftly balanced the defendant's right to impeach the witnesses who had entered into plea agreements with the State with its duty not to sidetrack the jury with concerns over the sentence facing the defendant. V. The record furnishes substantial proof from which a jury could find, beyond a reasonable doubt, that the defendant's reliance on the justification defense was unfounded.

No. 98-275. COOK v. McNEAL.

Appeal from the Iowa District Court for Muscatine County, J. Hobart Darbyshire, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Neuman, Snell, and Ternus, JJ. Opinion by Neuman, J. (8 pages $3.20)

In 1996, various landowners in drainage districts in Muscatine and Louisa Counties circulated a petition to amend the method of electing drainage district trustees pursuant to Iowa Code section 468.511 (1997). The petition was presented to the drainage board trustees in December 1996. The board accepted the petition and presented it to the county auditor. In January 1997, when the trustees learned the auditor did not canvas petitions submitted under section 468.511, the board, now with newly-elected members from an interim election, held a meeting in each county to canvass votes. Several landowners appeared, requesting the removal of their names from the petition. The Board concluded that anyone who signed the petition by December 1996 would not be permitted to withdraw and determined the amendment had passed. At the next meeting, however, the board voted to rescind the election results, claiming the landowners were not well informed. The plaintiffs appealed to the district court, which ruled the board was required to honor requests for removal of signatures before canvassing was completed and that there were sufficient controversial votes to defeat the petition. The plaintiffs have appealed. **OPINION HOLDS:** I. We conclude that jurisdiction of the board attached at the time the petition was filed, not when canvassed, and its power to act could not be impaired by attempted withdrawals of some of the petitioners' votes in the interim. II. We likewise conclude section 468.511 does not give the board authority to rescind the will of the electors. We therefore reverse the district court's judgment and remand for a judgment reinstating the results of the election.

No. 98-890. DOLEZAL v. BOCKES.

Appeal from the Iowa District Court for Grundy County, George L. Stigler, James C. Bauch, and Todd A. Geer, Judges. **REVERSED AND REMANDED WITH DIRECTIONS.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Ternus, JJ. Opinion by Lavorato, J. (9 pages $3.60)

On December 31, 1997, Doug Dolezal filed suit against Bockes Brothers Farms, Inc., Roger Bockes, Richard Bockes, and Robert Bockes. Service on all the defendants was made before January 24, 1998, the date the amendment to Iowa Rule of Civil Procedure 231 went into effect. On February 5 Dolezal filed a

No. 98-890. DOLEZAL v. BOCKES. (continued)

demand for entry of default, and default judgments were subsequently entered against the defendants. Dolezal had not complied with the ten-day notice provisions of newly amended rule 231(b), and the individual defendants now appeal. **OPINION HOLDS:** I. Rule 231(b) neither takes away causes of action that previously existed nor creates new rights and is therefore procedural rather than substantive. II. Rule 231(b) became effective before Dolezal filed his written demand for default and applied to the demand. Dolezal did not comply with its notice and certification requirements, and the district court was without authority to enter the order of default and the subsequent default judgments against the defendants. III. The distinction between defendants who do not defend because of excusable neglect and those who simply do not intend to defend is irrelevant on the question of whether rule 231(b) applies. The rule does not require the party against whom the default is sought to file an answer or motion, and we will not read such a requirement into it. IV. The defendants were not required to file a motion to set aside the default and default judgment before appealing to this court.

No. 98-1435. STATE v. KNOWLES.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis, District Associate Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Lavorato, J. Dissent by Snell, J. (9 pages $3.60)

Knowles was a party to pharmaceutical sales to the University of Iowa Hospitals and Clinics. The State claimed that he gave or offered to give sporting event tickets to hospital employees who made purchasing decisions. Knowles was charged with the offense of making a gift as a restricted donor in violation of Iowa Code section 68B.22(2) (1997). The district court ruled that the offense was a specific-intent offense, and the State must prove an intent to influence official action as an element of the crime. We granted the State discretionary review. **OPINION HOLDS:** I. We find the plain and clear meaning of the statute indicates that the State must prove the accused was aware the law prohibited a restricted donor from offering or making a gift to a public employee and that the accused purposely violated the prohibition. II. The court erred by including intent to influence official action as an element of the offense. **DISSENT ASSERTS:** The prohibited result of the law is the creation of a conflict of interest or the appearance of impropriety, arising out of the giving or offering of a gift. Section 68B.22(2) is a general intent crime because a conflict of interest or the appearance of impropriety may reasonably be expected to follow a restricted donor's gift, or offer of a gift, to a public official or employee, regardless of the donor's subjective intent to influence the donee. I would reverse and remand this case for trial as a general intent crime.

No. 98-930. STATE v. PACE.

Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by Larson, P.J., and Carter, Ternus, and Cady, JJ., and Harris, S.J. Opinion by Cady, J. (18 pages $7.20)

Lawrence Pace drove to the rural home of Duane Myers, parked in the driveway, and confronted his ex-wife, Maureen, at the backdoor. An oral argument between the two ensued followed by a physical altercation in the

No. 98-930. STATE v. PACE. (continued)

backyard once Myers stepped in. After being repeatedly hit in the head with a metal club, Myers retreated to his house, with Pace in pursuit. Pace attempted to enter Myers' porch, which is attached to the house, by pushing on the door behind Myers, but Myers was able to close the door. The jury found Pace guilty of first-degree burglary and going armed with intent. Pace appeals his burglary conviction on sufficiency-of-evidence grounds, and claims his trial counsel was ineffective both in failing to challenge the term "appurtenance" in the statutory definition of "occupied structure," and in failing to request a ruling on his motion for mistrial. **OPINION HOLDS:** I. Under the facts of this case, we conclude neither the sidewalk, step, or stoop to the house, nor the driveway were occupied structures. Consequently, mere entry upon them did not constitute burglary. II. We find substantial evidence to support the conviction for second-degree burglary when Pace pushed in on the door to the house while Myers struggled to close it, but the factor which would elevate this to first-degree burglary, the infliction of bodily injury, occurred prior to the perpetration of the burglary. III. As sufficient evidence of a burglary existed, Pace suffered no prejudice by his counsel's failure to challenge the constitutionality of the term "appurtenance." IV. Pace was not prejudiced by the failure of his counsel to request a ruling on his motion for mistrial. We reverse the judgment and sentence for first-degree burglary and remand for entry of judgment and sentence for second-degree burglary. We affirm the judgment for going armed with intent.

No. 98-481. HARTIG DRUG CO. v. HARTIG.

Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Carter, and Cady, JJ., and Andreasen, S.J. Opinion by Cady, J. (9 pages $3.60)

The lease for Hartig Drug Company's store set a monthly rental amount of 2.75 percent of the "gross sales" of the business of the store payable to the building owner, Kenneth Hartig. The lease broadly defined "gross sales." After the lease was entered into, Hartig Drug established its store as a U.S. Postal Service substation and began selling lottery tickets for the State of Iowa. Hartig Drug did not include stamp sales, lottery sales, or the lottery commissions in the percentage lease rental calculation. Kenneth filed a claim alleging unpaid rent based upon these exclusions. The district court found the percentage rent calculation should have included the total sale of all lottery tickets and stamps. Hartig Drug appeals. **OPINION HOLDS:** Applying the rules of contract interpretation we find the percentage rent terms include lottery and stamp sales, but not the total amount of the sale. The lottery and stamp sales were a service for customers, and the revenues Hartig Drug received for performing those services is properly included within the definition of "gross sales." But the lease did not contemplate the inclusion of proceeds from the lottery and stamp sales which did not belong to the business and was not considered as part of its income. We therefore reverse the district court and remand for entry of judgment for the additional rent based only upon the actual commissions received for lottery tickets and the actual compensation received from the postal service for the sale of stamps.

No. 98-586. WEMARK v. STATE.

Appeal from the Iowa District Court for Winneshiek County, Margaret L. Lingreen, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, and Cady, JJ., and Andreasen, S.J. Opinion by Cady, J.

(13 pages $5.20)

Robert Wemark was found guilty of first-degree murder in the death of his wife. Prior to trial, his lawyers filed a notice of intent to rely upon the defense of diminished responsibility. Before an interview with a medical expert employed by the State, Wemark disclosed the location of the knife he used to stab his wife to his counsel. Concerned they had an ethical obligation to disclose its location, defense counsel advised Wemark to provide this information to the medical expert during the scheduled interview knowing he would notify the prosecutor. Defense counsel felt voluntary disclosure could be used at trial to bolster Wemark's credibility and show the ineptitude of the police investigation. They also hoped the interview might bolster the defense of diminished responsibility. Police did find the knife and it was introduced at trial. The trial was closely followed by the media which gave extensive news coverage. Wemark filed an application for postconviction relief claiming his attorneys were ineffective for (1) encouraging him to disclose the location of the knife, (2) failing to investigate potential outside influences on the jury, and (3) failing to challenge the medical examiner's testimony. The court denied the application. Wemark appeals. **OPINION HOLDS:** I. The attorney-client privilege protects statements by a client revealing the location of the instrumentality of a completed crime. Nevertheless, the lack of a duty to disclose the knife's location does not necessarily mean disclosure would compromise the right to effective counsel because disclosure may be justified as a tactical choice or strategy. The inquiry turns on the reasons for disclosure. Here, we find the reasons for the disclosure were based upon counsels' faulty ethical concerns regarding the knife, not trial tactics or strategy. However, no prejudice occurred because there was overwhelming evidence that Wemark killed his wife with the knife. II. We give deference to the court's finding that no credible evidence of any jury misconduct existed. Defense counsel was not ineffective. III. Defense counsel's conduct in responding to the testimony of the examiner was well within the range of reasonable assistance.

No. 98-1786. BERRYHILL v. STATE.

Appeal from the Iowa District Court for Emmet County, Frank B. Nelson, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, and Cady, JJ., and Andreasen, S.J. Opinion by Cady, J. (7 pages $2.80)

Jeff Berryhill filed an appeal from his conviction for first-degree burglary but voluntarily dismissed it before obtaining a ruling. He believed the trial record was inadequate to properly present his ineffective assistance of counsel claims on appeal, and elected to pursue them in a postconviction relief proceeding where a full and complete record could be made. The district court concluded Berryhill failed to establish sufficient reason or cause for not pursuing his claims on direct appeal and dismissed the application. Berryhill appeals. **OPINION HOLDS:** I. Any claim not properly raised on direct appeal may not be litigated in a postconviction relief action unless sufficient reason or cause is shown for not previously raising the claim, and actual prejudice resulted from the claim of error. II. Our frequent preference to preserve ineffective assistance claims for postconviction relief does not alleviate the need to at least raise the claim on appeal. III. Berryhill's voluntary dismissal of his appeal deprived this court of an

No. 98-1786. BERRYHILL v. STATE. (continued)

opportunity to consider the grounds for the dismissal and any alternative disposition. IV. The need for the court to determine the adequacy of the record is too important to carve out an exception to the rule under our sufficient reason clause for cases where appellate counsel may have correctly decided that the claim of ineffective assistance of counsel was incapable of resolution in an appeal. Appellate courts, not counsel, determine whether the trial record is adequate to present a claim on appeal.

No. 97-1518. MARTIN v. B.F. GOODRICH CO.

Appeal from the Iowa District Court for Scott County, Max R. Werling, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Lavorato, Snell, and Ternus, JJ. Opinion by Snell, J. (9 pages $3.60)

Plaintiff Albert Martin was injured by an exploding tire. The tire was manufactured by defendant B.F. Goodrich Company (BFG) in 1984. Martin and his wife sued BFG alleging the tire was defective and unreasonably dangerous. The Martins also unsuccessfully attempted to sue Michelin North America (MNA), which had ultimately acquired all the assets and liabilities of BFG's tire business, sold by BFG in 1986. The district court found insufficient evidence to ascertain MNA's interest in the suit and declared it a non-party. During discovery, the Martins sought information related to the tire's design, testing, and modification, as well as data regarding prior lawsuits. They also requested answers to interrogatories concerning the source of payment for certain studies conducted by Standard Testing Laboratories (STL), relied on by BFG experts. MNA, which has custody of BFG's records, granted the Martins access to documents originated prior to the 1986 sale, but not to subsequent documents which BFG never possessed. The district court granted the Martins' motion to compel, rejecting BFG's argument that the records in question were not subject to discovery because they were generated by unrelated corporations and were out of its control. The court based its ruling on the fact that MNA will ultimately be responsible for a judgment against BFG, that it is the real party in interest, and that basic fairness required it to turn over the information sought. We granted MNA an interlocutory appeal. **OPINION HOLDS:** I. Generally, we agree with BFG that the test for determining control is whether there is a legal right to obtain the information. The Martins have asserted no grounds under which BFG can legally demand production of the materials held by MNA and STL. II. The Martins' arguments for constructive control are not supported by the record. A right of indemnity, which does not in and of itself give rise to a legal right to demand information, is but one factor to consider in divining constructive control. Even if we were to embrace the doctrine of constructive control, the Martins have not adequately corroborated their assertion that MNA is BFG's indemnitor, and there has been no finding that MNA is required to assist in the litigation or is controlling BFG's strategy. Also, much of the information the Martins seek is readily ascertainable through skillful examination of witnesses. For these reasons, we conclude the post 1986 documents held by MNA and the information regarding tests conducted by STL are beyond the scope of discovery. We reverse the district court's order and remand.

No. 98-753. WESTERN STATES INS. CO. v. CONTINENTAL INS. CO.

Appeal from the Iowa District Court for Muscatine County, Patrick J. Madden, Judge. **AFFIRMED.** Considered by Carter, P.J., and Lavorato, Snell, and Cady, JJ., and Schultz, S.J. Opinion by Snell, J. Special Concurrence by Carter, J. (6 pages $2.40)

Western States issued Darryl Fiscus an automobile insurance policy on a 1990 Chevrolet. On December 14, 1993, during the term of coverage, Fiscus sold the car to Rickey Snyder. Snyder paid for the vehicle in full and acquired possession. Prior to the transfer of title, Snyder was involved in an accident with the Steinmans. The Steinmans filed suit against Fiscus and Snyder for damages, and the court granted Fiscus summary judgment because he did not own the car at the time of the accident. The Steinmans subsequently reached a settlement with their uninsured/underinsured motorist carrier, Continental, whereby Continental took a full assignment of the Steinmans' tort claims against Snyder. A controversy ensued over whether the policy issued to Fiscus extended coverage to Snyder as an authorized driver of the Chevrolet. The district court ruled in favor of Western States, concluding that Fiscus' sale of the auto relieved him of responsibility for Snyder's actions and voided the insurance policy. Continental appeals. **OPINION HOLDS:** Iowa Code section 321.493 (1997) is clear in that a seller shall not be accountable for any damage resulting from the negligent operation of the vehicle by another, and that the purchaser will be deemed the owner for purposes of fixing liability. We find that the exception does not simply preclude third parties from seeking redress against the seller, it prevents the buyer from denying ownership and avoiding responsibility for his actions. Further, whether an insurable interest survived subsequent to the sale of the auto is irrelevant; section 321.493 distinguishes ownership for the purpose of establishing liability which would be pointless if we held that a seller's insurer could be forced to compensate third parties irrespective of proprietorship. **SPECIAL CONCURRENCE ASSERTS:** This court may not have made the best choice when opting to use the certificate-of-title law as the measure of ownership in insurance policy disputes. Property law would appear to be a more appropriate measure of the parties legitimate expectations. I caution against adopting an unwavering reliance on certificate-of-title laws to establish the element of ownership as required by liability insurance policies.

No. 98-786. SCHUMACHER ELEC., INC. v. DeBRUYN.

Appeal from the Iowa District Court for Scott County, C.H. Pelton, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Ternus, JJ. Opinion by Snell, J. (7 pages $2.80)

The DeBruyns hired Monarch Development Company, Inc., owned by Gerald Welvaert, as the general contractor for construction of a building on their property. Monarch subcontracted the electrical work to Schumacher Electric, Inc. Schumacher completed its work and billed Monarch. Monarch failed to pay so Schumacher recorded a mechanic's lien listing Welvaert and Monarch as the property owner. Schumacher later filed a petition to foreclose its mechanics lien naming the DeBruyns, Welvaert, Monarch, First Central, and the IRS as defendants. The court granted defendants' summary judgment motion, ruling that Schumacher failed to perfect its lien under Iowa Code section 572.8 (1997) because it mistakenly listed the general contractor rather than Carol DeBruyn as the property owner. Schumacher appeals. **OPINION HOLDS:** Schumacher argued that the general contractor could be construed as the "owner's agent," and

No. 98-786. SCHUMACHER ELEC., INC. v. DeBRUYN. (continued)

it relies on *Love Bros., Inc. v. Mardis*, 189 Iowa 350, 176 N.W.2d 616 (1920). The present case is distinguishable from *Love* because here no agency relationship is shown by contract and there is no proof that the parties intended an agency relationship. We hold Schumacher's naming of the general contractor as owner did not perfect a mechanic's lien against the DeBruyns on an agency theory.

No. 98-283. BOWLBY v. TEAMSTERS OVER THE ROAD.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge. **AFFIRMED.** Considered en banc. Per curiam. Larson, Neuman, Snell, and Cady, JJ., concur; McGiverin, C.J., and Carter, Lavorato, and Ternus, JJ., concur in result only. (8 pages $3.20)

Plaintiff Donald Bowlby, Sr., was a member of defendant union from 1947 until his retirement in 1988. As an honorary retired member, he no longer pays dues but is entitled to various perquisites including medical insurance. In 1991, Donald and his wife Betty inquired of the union's insurance clerk, Ruth Pearson, about a possible change in Betty's insurance status after she applied for Social Security disability benefits. The Bowlbys incurred $12,742.53 in uninsured medical expenses after following Pearson's erroneous advice. The Bowlbys filed suit against the union and its insurer claiming negligent misrepresentation. Following a jury verdict in the Bowlbys' favor, the union appeals. **OPINION HOLDS:** I. We agree with the union that a pecuniary interest is required of a defendant in order to find liability for negligent misrepresentation under Restatement (Second) of Torts section 552. II. We disagree with the union that the information it proffered the Bowlbys was purely gratuitous since he no longer paid dues. The provision of information concerning members' rights and a description of the services and benefits available is central to the union's role. To the extent Don was not eligible for certain services until after the date of his retirement, he did, in essence, contract for future benefits. We rule as a matter of law that the union had a pecuniary interest in disseminating the information to the Bowlbys. III. In light of this finding, the district court committed harmless error in failing to properly instruct the jury on the pecuniary interest requirement.

No. 97-2069. STATE v. CARTER.

Appeal from the Iowa District Court for Cerro Gordo County, Jon Stuart Scoles, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, and Cady, JJ., and Andreasen, S.J. Opinion by Andreasen, S.J. (8 pages $3.20)

A woman asked defendant, Carter, for a ride to a lounge. However, during the ride he stopped near a cornfield and struck the woman in the head with a bar. Carter forcibly removed her from the car and vaginally penetrated her and made her perform oral sex. After the sex acts had been completed, he stabbed her in the neck with a knife, cutting her trachea nearly in half. She pretended to be dead and Carter left the scene. Carter was charged with first-degree sexual assault and attempted murder. During deliberations, the jury sent the court a note inquiring as to when sexual abuse ends. Defense counsel did not object to the court's response. The jury found Carter guilty on both counts. He appeals only from his conviction on the sexual abuse charge. **OPINION HOLDS:** I. We reject Carter's claims his trial counsel was ineffective in failing to move for a judgment of acquittal because there was insufficient evidence the victim sustained a serious

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injury. There was sufficient evidence to establish that the injury to the victim's trachea created a substantial risk of death. II. We also reject Carter's claims his counsel was ineffective in failing to move for a judgment of acquittal based upon the State's failure to prove the victim sustained the serious injury "during the commission of" the sexual abuse. We hold that under Iowa Code section 709.2 the serious injury need not occur simultaneously with the commission of the sexual abuse in order to constitute first-degree sexual abuse. It is sufficient if the serious injury precedes or follows the sexual abuse as long as the injury and sexual abuse occur as part of an unbroken chain of events or as part of one continuous series of acts connected with one another. III. Trial counsel was not ineffective for failing to object to the trial court's response to the question the jury sent to the judge. The response was sufficiently consistent with our holding in this opinion.

No. 98-1244. STATE v. RANDLE.

Appeal from the Iowa District Court for Linn County, Larry J. Conmey, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Carter, and Cady, JJ., and Andreasen, S.J. Opinion by Andreasen, S.J. (6 pages $2.40)

Defendant was charged with attempted murder and willful injury. He posted a bail bond and signed a bail bond form in which he agreed to submit to the orders of the court. Defendant was present for his first day of trial but failed to appear for the second day. The court found defendant was voluntarily absent and allowed the trial to proceed. Defendant was convicted of willful injury and assault with intent to inflict serious injury. The State then charged defendant with failure to appear. The court granted defendant's motion to dismiss, as the court found the defendant had voluntarily waived his right to be present. The State appeals. **OPINION HOLDS:** I. Defendant is not vested with a right to be absent from trial merely because Iowa Rule of Criminal Procedure 25(2) permits trial to continue during defendant's voluntary absence. II. The State is not barred from charging defendant with failure to appear when defendant voluntarily absents himself from trial and is tried in absentia. III. A defendant who obtains a pretrial release pursuant to Iowa Code chapter 811 is statutorily required to appear for trial. The district court erred in dismissing the trial information.

No. 97-514. MONTGOMERY 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, Carter, and Cady, JJ., and Andreasen, S.J. Per curiam. (5 pages $2.00)

Theron Montgomery, an inmate at the Anamosa Men's reformatory, was found guilty of violating a class I rule, and an administrative law judge imposed a sanction of the loss of 120 days of good conduct time. The warden affirmed the sanction. The deputy director signed a time adjustment record, dated a week after the warden's decision. It notified Montgomery of his lost good conduct time. The warden did not sign the record. Montgomery's appeal to the director was later denied. Montgomery sought postconviction relief, and the district court

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dismissed his application. This court granted his petition for writ of certiorari. **OPINION HOLDS:** I. We find that both the warden and director must approve the sanction imposed by the administrative law judge; however, their signatures are not required on the time adjustment record. II. We conclude the warden approved the sanction when he affirmed it, and the director approved it on the time adjustment record and by denying Montgomery's appeal.

No. 97-1308. IN RE MARRIAGE OF MILLER.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge. **AFFIRMED.** Considered en banc. Per curiam. Dissent by Larson, J.

(6 pages $2.40)

Following the dissolution of their marriage, Roger and Dee Ann Miller had numerous financial disputes regarding Roger's child support payments and Dee Ann's rental payments to Roger on a town house he owned. Roger filed an action for past due rent, and Dee Ann counterclaimed for past due child support. The parties subsequently negotiated a settlement wherein Roger agreed to pay $11,500 if Dee Ann agreed to release all child support and any other sums or obligations due her under the decree. Dee Ann signed the agreement but refused to sign a release after Roger made the required payment. Roger filed an application to enforce the agreement, and the district court ordered Dee Ann to sign it. Dee Ann subsequently filed the present action, requesting the court's interpretation of the agreement regarding whether her rights to a share of Roger's pension and attorney fees were relinquished in the settlement agreement. The district court ruled the agreement did not cover those issues. Roger has appealed. **OPINION HOLDS:** I. We believe it was appropriate for the court to consider extrinsic evidence on the parties' intent as to the scope of the settlement agreement. We agree with Dee Ann that her pension and attorney-fee claims, which were already in judgment, were not intended to be covered. We therefore affirm. **DISSENT ASSERTS:** Any intention on the part of Dee Ann to reserve the attorney-fee and pension-share issues was not disclosed, and they cannot be asserted now in light of the broad coverage of the settlement agreement.

No. 98-831. EGLI v. TROY.

Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan and Lawrence H. Fautsch, Judges. **AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.** Considered by McGiverin, C.J., and Larson, Carter, and Cady, JJ., and Andreasen, S.J. Opinion by Larson, J.

(10 pages $4.00)

When the Eglis discovered a home being built on land they thought was theirs, they brought an action under Iowa Code chapter 650 (1995) against the parties building the house, the Troys, as well as other adjoining neighbors, the Ransons, who the Eglis claim were also asserting dominion over some of the Egli land. The Troys and Ransons brought in their seller, Rosemary Greve, on a third-party petition asserting breach of a special warranty deed given to the Ransons (who later conveyed part of it to the Troys). The district court entered summary judgment against the Troys and Ransons on their third-party claim against Mrs. Greve on the basis the Egli claim was not one by "persons claiming by, through or under" her as provided in the deed. Later, the court ruled in favor of the Eglis on their acquiescence claim that the property in question was bounded

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by a fence line. The Troys and Ransons appeal. **OPINION HOLDS:** I. The special warranty deed warranted against claims arising through acquiescence by the Greves as well as any affirmative acts by them. A genuine issue of material fact was generated as to whether, and if so, when title was acquired by the Eglis or their predecessors by acquiescence. It was therefore error for the court to grant summary judgment in favor of Greve. We reverse and remand for further proceedings on the third-party petition. II. Because evidence at trial showed that the present contestants, as well as their predecessors in interest, treated the fence line as the boundary, there is substantial evidence supporting the trial court's acquiescence finding. III. The court properly admitted hearsay evidence on the acquiescence issue under Iowa Rule of Evidence 803(3) with respect to the intent of the parties and their predecessors regarding the location of the boundary. In addition, the evidence was admissible under Iowa Rule of Evidence 803(20), which provides an exception for reputation concerning boundaries. Furthermore, we agree with the Eglis that any such evidence was merely cumulative because the defendants' own evidence presented basically the same facts. We find no error in the court's evidence ruling.

No. 97-1941. MARTIN & PITZ ASSOCS., INC. v. HUDSON CONSTR. SERVS., INC.

Appeal from the Iowa District Court for Black Hawk County, L.D. Lybbert, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, and Cady, JJ., and Andreasen, S.J. Opinion by Larson, J. (9 pages $3.60)

Carl Pugh fell and was injured while working for a subcontractor on a construction project. He sued the project's general contractor for negligently supervising the project, and he sued two architectural firms for providing a defective design. After his suit was settled, one of the firms, Martin & Pitz Associates (MPA), sought indemnification for its settlement expenses from the general contractor and subcontractor. A jury allocated 100% of the fault for the accident to Pugh, and the district court denied indemnity under the terms of the construction contracts. MPA appeals. **OPINION HOLDS:** I. We find an employee's fault in causing his own injury is not "negligence" that may be imputed to an employer for indemnity purposes. II. The agreements relied on by MPA do not satisfy the requirement of providing, in clear and unequivocal language, for indemnification for MPA's own negligence. Because the contracts do not meet the clear-and-unequivocal language test and because Pugh's negligence cannot be imputed to his employer or a third party, the district court correctly refused indemnity.

No. 98-1387. STATE v. ATWOOD.

Appeal from the Iowa District Court for Linn County, Van D. Zimmer, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, and Cady, JJ., and Andreasen, S.J. Opinion by Larson, J. (16 pages $6.40)

Jeremy Atwood was convicted of two counts of vehicular homicide. On the morning scheduled for final arguments, a receptionist in the public defender's office heard from an anonymous caller that the trial participants would all be killed unless a certain verdict was returned. The court delayed closing arguments and proposed it go to the jury room and tell the jury, in general terms, that the proceedings were delayed due to the phone call. The court denied Atwood's

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motion for a mistrial and spoke to the jurors without counsel being present. Atwood appeals. OPINION HOLDS: I. We do not believe the circumstances required a mistrial; otherwise, litigants whose trial was proceeding badly could simply arrange for a threatening phone call and start over. The court did not abuse its discretion in discussing the matter with the jury, nor did it err by not inquiring of the jury what effect the threat had on them, which would magnify the event and exacerbate any effect. With regard to Atwood's absence, we decline to adopt a per se rule that would make any communication between a judge and jury, outside the presence of the defendant, reversible error. In this case, the court did not refuse Atwood the right to be present; the defense did not request to be there. Any error was harmless. II. The trial court did not abuse its discretion in denying Atwood's motion for change of venue. III. The court did not err in allowing a police officer to relate statements made by Atwood's passenger while he was a patient in the hospital. The testimony was an excited utterance. IV. The court did not err in allowing testimony of a sheriff's deputy concerning his reconstruction of the accident and his conclusion that Atwood was speeding. This witness was clearly qualified to testify, and it was the jury's function to weigh the conflicting evidence. V. The evidence was sufficient to support the recklessness component of motor vehicle homicide. VI. We preserve for possible postconviction proceedings Atwood's complaint that he received ineffective assistance of counsel because his attorney failed to participate in the meeting between the judge and jury. VII. The court did not err in denying Atwood's requested instruction that a violation of a rule of the road is not recklessness per se. The substance was clearly embodied in other instructions. VIII. The court did not err in failing to give a spoliation instruction because he failed to show what sort of evidence might have been destroyed and presented no evidence of bad faith. IX. We reject Atwood's cumulative-error argument because we have determined that no errors were committed in the trial court.

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