



IOWA ADMINISTRATIVE BULLETIN

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July 15, 1998

Pages 69 to 200

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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.

KATHLEEN K. BATES, Administrative Code Editor Telephone: (515)281-3355
ROSEMARY DRAKE, Assistant Editor (515)281-7252

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Iowa Administrative Bulletin

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Fourth quarter	April 1, 1999, to June 30, 1999	\$ 65.00 plus \$3.25 sales tax

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Iowa Administrative Code

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

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(Subscription expires June 30, 1999)

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

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CITATION of Administrative Rules

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

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

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

Schedule for Rule Making 1998

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. 26 '97	Jan. 14 '98	Feb. 3	Feb. 18	Feb. 20	Mar. 11	Apr. 15	July 13
Jan. 9 '98	Jan. 28	Feb. 17	Mar. 4	Mar. 6	Mar. 25	Apr. 29	July 27
Jan. 23	Feb. 11	Mar. 3	Mar. 18	Mar. 20	Apr. 8	May 13	Aug. 10
Feb. 6	Feb. 25	Mar. 17	Apr. 1	Apr. 3	Apr. 22	May 27	Aug. 24
Feb. 20	Mar. 11	Mar. 31	Apr. 15	Apr. 17	May 6	June 10	Sept. 7
Mar. 6	Mar. 25	Apr. 14	Apr. 29	May 1	May 20	June 24	Sept. 21
Mar. 20	Apr. 8	Apr. 28	May 13	May 15	June 3	July 8	Oct. 5
Apr. 3	Apr. 22	May 12	May 27	May 29	June 17	July 22	Oct. 19
Apr. 17	May 6	May 26	June 10	June 12	July 1	Aug. 5	Nov. 2
May 1	May 20	June 9	June 24	June 26	July 15	Aug. 19	Nov. 16
May 15	June 3	June 23	July 8	July 10	July 29	Sept. 2	Nov. 30
May 29	June 17	July 7	July 22	July 24	Aug. 12	Sept. 16	Dec. 14
June 12	July 1	July 21	Aug. 5	Aug. 7	Aug. 26	Sept. 30	Dec. 28
June 26	July 15	Aug. 4	Aug. 19	Aug. 21	Sept. 9	Oct. 14	Jan. 11 '99
July 10	July 29	Aug. 18	Sept. 2	Sept. 4	Sept. 23	Oct. 28	Jan. 25 '99
July 24	Aug. 12	Sept. 1	Sept. 16	Sept. 18	Oct. 7	Nov. 11	Feb. 8 '99
Aug. 7	Aug. 26	Sept. 15	Sept. 30	Oct. 2	Oct. 21	Nov. 25	Feb. 22 '99
Aug. 21	Sept. 9	Sept. 29	Oct. 14	Oct. 16	Nov. 4	Dec. 9	Mar. 8 '99
Sept. 4	Sept. 23	Oct. 13	Oct. 28	Oct. 30	Nov. 18	Dec. 23	Mar. 22 '99
Sept. 18	Oct. 7	Oct. 27	Nov. 11	Nov. 13	Dec. 2	Jan. 6 '99	Apr. 5 '99
Oct. 2	Oct. 21	Nov. 10	Nov. 25	Nov. 27	Dec. 16	Jan. 20 '99	Apr. 19 '99
Oct. 16	Nov. 4	Nov. 24	Dec. 9	Dec. 11	Dec. 30	Feb. 3 '99	May 3 '99
Oct. 30	Nov. 18	Dec. 8	Dec. 23	Dec. 25	Jan. 13 '99	Feb. 17 '99	May 17 '99
Nov. 13	Dec. 2	Dec. 22	Jan. 6 '99	Jan. 8 '99	Jan. 27 '99	Mar. 3 '99	May 31 '99
Nov. 27	Dec. 16	Jan. 5 '99	Jan. 20 '99	Jan. 22 '99	Feb. 10 '99	Mar. 17 '99	June 14 '99
Dec. 11	Dec. 30	Jan. 19 '99	Feb. 3 '99	Feb. 5 '99	Feb. 24 '99	Mar. 31 '99	June 28 '99
Dec. 25	Jan. 13 '99	Feb. 2 '99	Feb. 17 '99	Feb. 19 '99	Mar. 10 '99	Apr. 14 '99	July 12 '99
Jan. 8 '99	Jan. 27 '99	Feb. 16 '99	Mar. 3 '99	Mar. 5 '99	Mar. 24 '99	Apr. 28 '99	July 26 '99

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
4	Friday, July 24, 1998	August 12, 1998
5	Friday, August 7, 1998	August 26, 1998
6	Friday, August 21, 1998	September 9, 1998

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 Ami Pro, Microsoft Word, Professional Write, 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, 4th Floor, Lucas State Office Building or included with the documents submitted to the Governor's Administrative Rules Coordinator.

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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; 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, Fourth Floor, Des Moines, Iowa 50319.

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Iowa community development block grant program, ch 23 IAB 7/15/98 ARC 8137A	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	August 4, 1998 2:30 p.m.
Export trade assistance program—cost of interpreters, 68.3, 68.4 IAB 7/15/98 ARC 8138A	Business Finance Conference Room First Floor 200 E. Grand Ave. Des Moines, Iowa	August 4, 1998 1:30 p.m.

EDUCATION DEPARTMENT[281]

Community colleges—instructional course for drinking drivers, 21.30 to 21.32 IAB 7/15/98 ARC 8179A	State Board Room Grimes State Office Bldg. Des Moines, Iowa	August 4, 1998 1 p.m.
Community colleges—financial aid, 21.45 IAB 7/15/98 ARC 8178A (ICN Network)	ICN Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	August 4, 1998 9 a.m.
	Preus Library, Room 100 Luther College 700 College Dr. Decorah, Iowa	August 4, 1998 9 a.m.
	Activity Center 106, Classroom 1 North Iowa Area Community College 500 College Dr. Mason City, Iowa	August 4, 1998 9 a.m.
	Library Bldg., Room 22 Iowa Lakes Community College 300 S. 18th St. Estherville, Iowa	August 4, 1998 9 a.m.
	ICN Classroom 2, Bldg. D, Rm. 410 Northwest Iowa Community College 603 W. Park Sheldon, Iowa	August 4, 1998 9 a.m.
	Room 101 St. Edmonds High School 501 N. 22nd St. Fort Dodge, Iowa	August 4, 1998 9 a.m.
	Continuing Educ. Center 806, Room 1 Iowa Valley Comm. College District 3702 S. Center St. Marshalltown, Iowa	August 4, 1998 9 a.m.

**EDUCATION
DEPARTMENT[281]
(Cont'd)**

Dept. of Human Services Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	August 4, 1998 9 a.m.
Meeting Room A Davenport Public Library 321 Main Davenport, Iowa	August 4, 1998 9 a.m.
ICN Classroom 1, Linn Hall 203B Kirkwood Community College 6301 Kirkwood Blvd. S.W. Cedar Rapids, Iowa	August 4, 1998 9 a.m.
ICN Classroom 1, Bldg. A, Rm. 925 Western Iowa Tech. Comm. College 4647 Stone Ave. Sioux City, Iowa	August 4, 1998 9 a.m.
Bluffs 1, Looft Hall Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	August 4, 1998 9 a.m.
ICN Classroom 1, Instructional Center, Room 211 Southwestern Community College 1501 W. Townline Rd. Creston, Iowa	August 4, 1998 9 a.m.
ICN Classroom 4, Advanced Technology Center, Room 107 Indian Hills Community College 525 Grandview Ave. Ottumwa, Iowa	August 4, 1998 9 a.m.
ICN Classroom 1, North Campus/ Trustee Hall, Room 503 Southeastern Community College 1015 S. Gear Ave. West Burlington, Iowa	August 4, 1998 9 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, 20.2, 22.1, 23.1(4) IAB 6/17/98 ARC 8084A	East Conference Room Air Quality Bureau, Suite 1 7900 Hickman Rd. Urbandale, Iowa	July 17, 1998 1 p.m.
Acid rain exemptions and NESHAP for primary aluminum reduction plants, Title V operating permit application, 22.103(2), 22.105(1), 22.123, 22.124, 22.203, 22.300(8), 23.1 IAB 6/17/87 ARC 8087A	East Conference Room Air Quality Bureau, Suite 1 7900 Hickman Rd. Urbandale, Iowa	July 17, 1998 1:30 p.m.
NAAQS revisions—air quality, 28.1 IAB 6/17/98 ARC 8086A	Council Chambers, City Hall 226 W. 4th St. Davenport, Iowa	July 15, 1998 1 p.m.

**ENVIRONMENTAL
PROTECTION
COMMISSION[567]
(Cont'd)**

Shelby Room, Looft Hall
Iowa Western Community College
2700 College Rd.
Council Bluffs, Iowa

July 16, 1998
1 p.m.

East Conference Room
Air Quality Bureau, Suite 1
7900 Hickman Rd.
Urbandale, Iowa

July 17, 1998
2 p.m.

NATURAL RESOURCE COMMISSION[571]

Pilot program for state and local
cooperative lake rehabilitation,
30.14
IAB 7/1/98 ARC 8130A

Conference Room
Fourth Floor West
Wallace State Office Bldg.
Des Moines, Iowa

July 21, 1998
10 a.m.

Controlled waterfowl hunting,
53.2
IAB 7/1/98 ARC 8131A

Conference Room
Fourth Floor
Wallace State Office Bldg.
Des Moines, Iowa

July 22, 1998
10 a.m.

NURSING BOARD[655]

LPN scope of practice,
6.2(5), 6.3, 6.5, 6.6
IAB 7/15/98 ARC 8145A

Ballroom
Kirkwood Civic Center Hotel
4th and Walnut
Des Moines, Iowa

September 2, 1998
7 p.m.

PERSONNEL DEPARTMENT[581]

IPERS,
21.6(9), 21.11, 21.24(9)
IAB 7/1/98 ARC 8126A
(See also ARC 8127A)

IPERS
600 E. Court Ave.
Des Moines, Iowa

July 21, 1998
9 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Marital and family therapists and
mental health counselors—licensure,
30.1 to 30.6, 30.8 to 30.10,
31.1(3), 31.4(1), 31.8(4)
IAB 7/15/98 ARC 8155A

Conference Room—4th Floor
Lucas State Office Bldg.
Des Moines, Iowa

August 4, 1998
8 to 10 a.m.

Nursing home administrators,
141.3, 141.7
IAB 7/15/98 ARC 8156A
(ICN Network)

ICN Classroom—3rd Floor East
Room 326
Lucas State Office Bldg.
Des Moines, Iowa

August 10, 1998
1 to 4 p.m.

ICN Classroom 1, Room 0210
Eastern Iowa Community College
500 Belmont Rd.
Bettendorf, Iowa

August 10, 1998
1 to 4 p.m.

State Room
Northern Trails AEA 2
9184B 265th St.
Clear Lake, Iowa

August 10, 1998
1 to 4 p.m.

**PROFESSIONAL LICENSURE
DIVISION[645]
(Cont'd)**

	Bluffs 2, Looft Hall Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	August 10, 1998 1 to 4 p.m.
	ICN Classroom 1, Bldg. A, Rm. 925 Western Iowa Tech. Comm. College 4647 Stone Ave. Sioux City, Iowa	August 10, 1998 1 to 4 p.m.
	Room 110, Tama Hall Hawkeye Community College 1501 E. Orange Rd. Waterloo, Iowa	August 10, 1998 1 to 4 p.m.
Podiatry examiners—continuing education, 220.102 IAB 7/15/98 ARC 8154A	Conference Room—4th Floor Lucas State Office Bldg. Des Moines, Iowa	August 4, 1998 12 noon to 2 p.m.
Athletic trainer advisory board, amendments to chs 350, 355 to 358 IAB 7/15/98 ARC 8153A	Conference Room—4th Floor Side One Lucas State Office Bldg. Des Moines, Iowa	August 5, 1998 1 to 3 p.m.

PUBLIC HEALTH DEPARTMENT[641]

HIV-related test for convicted or alleged sexual-assault offenders and the victims, 11.70 to 11.74 IAB 7/15/98 ARC 8168A	Conference Room—3rd Floor Side One Lucas State Office Bldg. Des Moines, Iowa	August 4, 1998 10 a.m.
Public health nursing, ch 79 IAB 7/15/98 ARC 8171A (ICN Network)	ICN Room 326 Lucas State Office Bldg. Des Moines, Iowa	August 4, 1998 9 a.m.
	Room 106, Charles City Center North Iowa Area Community College 200 Harwood Dr. Charles City, Iowa	August 4, 1998 9 a.m.
	Room 111 National Guard Armory 1925 210th St. Corning, Iowa	August 4, 1998 9 a.m.
	Room 16 Fairfield High School 605 E. Broadway Fairfield, Iowa	August 4, 1998 9 a.m.
	Room 204, Library Bldg., 2nd Floor Iowa Central Community College 330 Ave. M Fort Dodge, Iowa	August 4, 1998 9 a.m.
	Room 123 Harlan High School 2102 Durant Harlan, Iowa	August 4, 1998 9 a.m.

**PUBLIC HEALTH
DEPARTMENT[641]
(Cont'd)**

ICN Classroom 1 Room 8774C, JPP, 8th Floor Univ. of Iowa Hospitals and Clinics 200 Hawkins Dr. Iowa City, Iowa	August 4, 1998 9 a.m.
ICN Room National Guard Armory 1015 N. Lincoln Knoxville, Iowa	August 4, 1998 9 a.m.
ICN Classroom Oelwein Armory 201 10th St. S.E. Oelwein, Iowa	August 4, 1998 9 a.m.
ICN Classroom 1 Bldg. D, Room 402 Northwest Iowa Community College 603 W. Park Sheldon, Iowa	August 4, 1998 9 a.m.
ICN Room 326 Lucas State Office Bldg. Des Moines, Iowa	August 4, 1998 9:30 a.m.
Room 106, Charles City Center North Iowa Area Community College 200 Harwood Dr. Charles City, Iowa	August 4, 1998 9:30 a.m.
Room 111 National Guard Armory 1925 210th St. Corning, Iowa	August 4, 1998 9:30 a.m.
Room 16 Fairfield High School 605 E. Broadway Fairfield, Iowa	August 4, 1998 9:30 a.m.
Room 204, Library Bldg., 2nd Floor Iowa Central Community College 330 Ave. M Fort Dodge, Iowa	August 4, 1998 9:30 a.m.
Room 123 Harlan High School 2102 Durant Harlan, Iowa	August 4, 1998 9:30 a.m.
ICN Classroom 1 Room 8774C, JPP, 8th Floor Univ. of Iowa Hospitals and Clinics 200 Hawkins Dr. Iowa City, Iowa	August 4, 1998 9:30 a.m.
ICN Room National Guard Armory 1015 N. Lincoln Knoxville, Iowa	August 4, 1998 9:30 a.m.

Home care aide,
ch 80
IAB 7/15/98 ARC 8170A
(ICN Network)

**PUBLIC HEALTH
DEPARTMENT[641]
(Cont'd)**

Iowa senior health program,
ch 83
IAB 7/15/98 ARC 8169A
(ICN Network)

ICN Classroom
Oelwein Armory
201 10th St. S.E.
Oelwein, Iowa

August 4, 1998
9:30 a.m.

ICN Classroom 1
Bldg. D, Room 402
Northwest Iowa Community College
603 W. Park
Sheldon, Iowa

August 4, 1998
9:30 a.m.

ICN Room 326
Lucas State Office Bldg.
Des Moines, Iowa

August 4, 1998
10 a.m.

Room 106, Charles City Center
North Iowa Area Community College
200 Harwood Dr.
Charles City, Iowa

August 4, 1998
10 a.m.

Room 111
National Guard Armory
1925 210th St.
Corning, Iowa

August 4, 1998
10 a.m.

Room 16
Fairfield High School
605 E. Broadway
Fairfield, Iowa

August 4, 1998
10 a.m.

Room 204, Library Bldg., 2nd Floor
Iowa Central Community College
330 Ave. M
Fort Dodge, Iowa

August 4, 1998
10 a.m.

Room 123
Harlan High School
2102 Durant
Harlan, Iowa

August 4, 1998
10 a.m.

ICN Classroom 1
Room 8774C, JPP, 8th Floor
Univ. of Iowa Hospitals and Clinics
200 Hawkins Dr.
Iowa City, Iowa

August 4, 1998
10 a.m.

ICN Room
National Guard Armory
1015 N. Lincoln
Knoxville, Iowa

August 4, 1998
10 a.m.

ICN Classroom
Oelwein Armory
201 10th St. S.E.
Oelwein, Iowa

August 4, 1998
10 a.m.

ICN Classroom 1
Bldg. D, Room 402
Northwest Iowa Community College
603 W. Park
Sheldon, Iowa

August 4, 1998
10 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Private investigation and private security businesses, 2.1 to 2.8, 2.10 to 2.12, 2.17 IAB 7/15/98 ARC 8140A (See also ARC 8141A herein)	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	August 10, 1998 9:30 a.m.
Detection of drugs other than alcohol, 7.9 IAB 7/15/98 ARC 8174A (See also ARC 8175A herein)	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	August 10, 1998 9 a.m.
Sex offender registry, 8.302 to 8.304 IAB 7/15/98 ARC 8176A (See also ARC 8177A herein)	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	August 10, 1998 10 a.m.

TRANSPORTATION DEPARTMENT[761]

Iowa scenic byway program, ch 132 IAB 7/1/98 ARC 8128A	Commission Conference Room 800 Lincoln Way Ames, Iowa	July 23, 1998 10 a.m. (If requested)
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WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

Coordinating service provider, ch 4 IAB 7/15/98 ARC 8161A (See also ARC 8162A herein)	Room 135 150 Des Moines St. Des Moines, Iowa	August 4, 1998 1 p.m.
Youth affairs, 10.1 to 10.5 IAB 7/15/98 ARC 8163A (See also ARC 8164A herein)	Room 135 150 Des Moines St. Des Moines, Iowa	August 4, 1998 10:30 a.m.
Work force investment program, 11.3 to 11.10 IAB 7/15/98 ARC 8159A (See also ARC 8160A herein)	Room 135 150 Des Moines St. Des Moines, Iowa	August 4, 1998 10 a.m.
Iowa welfare-to-work program, ch 14 IAB 7/15/98 ARC 8165A (See also ARC 8166A herein)	Room 135 150 Des Moines St. Des Moines, Iowa	August 4, 1998 9 a.m.
Strategic workforce development fund, ch 15 IAB 7/15/98 ARC 8157A (See also ARC 8158A herein)	Room 135 150 Des Moines St. Des Moines, Iowa	August 4, 1998 11 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:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPLOYMENT SERVICES DEPARTMENT[341]

Job Service Division[345]

Labor Services Division[347]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

Status of Blacks Division[434]

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
INTERNATIONAL NETWORK ON TRADE (INTERNET)[497]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE AND FINANCE DEPARTMENT[701]
 Lottery Division[705]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SESQUICENTENNIAL COMMISSION, IOWA STATEHOOD[731]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Industrial Services Division[873]
 Labor Services Division[875]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

NOTICE - AVAILABILITY OF PUBLIC FUNDS

<u>AGENCY</u>	<u>Programs</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period* and Project Period</u>
Public Health	Newborn Hearing Screening Program \$30,000.00 has been allocated to fund a maximum of 15 hospitals for the acquisition of newborn hearing screening equipment.	Service area plans from Iowa Hospitals with birthing centers.	Newborn Hearing Screening Equipment grants are open to any Iowa hospital that does not currently have a newborn hearing screening program established and does not have the necessary equipment to conduct the screenings.	Newborn hearing screening, including reporting of pass/fail/miss rates, referral status and follow up. Referral of newborns to Iowa's System of Early Intervention Services if congenital hearing loss is known or anticipated.	August 10, 1998	Contract Period: August 15, 1998 to September 30, 1999. Project Period: August 15, 1998 to September 30, 2001.

Instructions: All applicants who intend to compete for funding must have completed and submitted an application form to be received by the Iowa Department of Public Health on or before 4:00 p.m., August 10, 1998. Request for applications must be directed in writing to:

Dawn Gentsch, MPH
Newborn Hearing Project Coordinator
Iowa Department of Public Health
321 E. 12th Street
Des Moines, Iowa 50319-0075

- * The equipment is inventory of the Iowa Department of Public Health and all details of the equipment must be reported to IDPH upon request for internal and external audit purposes of the Department.

ARC 8137A

ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]

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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to rescind Chapter 23, "Community Development Block Grant Nonentitlement Program," and adopt a new Chapter 23, "Iowa Community Development Block Grant Program," Iowa Administrative Code.

These rules are being proposed to consolidate and clarify program requirements and to set out new application procedures and review processes.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on August 4, 1998. Interested persons may submit written or oral comments by contacting Monica Fischer, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4797.

A public hearing to receive comments about the proposed rules will be held on August 4, 1998, at 2:30 p.m. at the above address in the IDED Main Conference Room. Individuals interested in providing comments at the hearing should contact Monica Fischer by 4 p.m. on August 3, 1998, to be placed on the hearing agenda.

These rules are intended to implement Iowa Code section 15.108(1)"a."

The following chapter is proposed.

Rescind 261—Chapter 23 and adopt in lieu thereof the following new chapter:

CHAPTER 23

IOWA COMMUNITY DEVELOPMENT
BLOCK GRANT PROGRAM

261—23.1(15) Purpose. The primary purpose of the community development block grant program is the development of viable communities by providing decent housing and suitable living environments and expanding economic opportunities, primarily for persons of low and moderate income.

261—23.2(15) Definitions. When used in this chapter, unless the context otherwise requires:

"Activity" means one or more specific activities, projects or programs assisted with CDBG funds.

"Career link" means a program providing training and enhanced employment opportunities to the working poor and underemployed Iowans.

"CDBG" means community development block grant.

"EDSA" means economic development set-aside.

"HUD" means the U.S. Department of Housing and Urban Development.

"IDED" means the Iowa department of economic development.

"LMI" means low and moderate income. Households earning 80 percent or less of the area median income are LMI households.

"PFSA" means public facilities set-aside.

"Program income" means gross income a recipient receives that is directly generated by the use of CDBG funds, including funds generated by the use of program income.

"Program year" means the annual period beginning January 1 and ending December 31.

"Recipient" means a local government entity awarded CDBG funds under any CDBG program.

"Working poor" means an employed person with an annual household income between 25 and 50 percent of the area median family income.

261—23.3(15) Eligible applicants. All incorporated cities and all counties in the state of Iowa, except those designated as entitlement areas by the U.S. Department of Housing and Urban Development, are eligible to apply for and receive funds under this program.

23.3(1) Any eligible applicant may apply directly or on behalf of a subrecipient.

23.3(2) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

23.3(3) Applicants shall not apply on behalf of eligible applicants other than themselves.

261—23.4(15) Allocation of funds. IDED shall distribute CDBG funds as follows:

23.4(1) Administration. Two percent of total program funds including program income plus \$100,000 shall be used for state administration.

23.4(2) Technical assistance. One percent of the funds shall be used for the provision of substantive technical assistance to recipients.

23.4(3) Housing fund. Twenty-five percent of the funds shall be reserved for a housing fund to be used to improve the supply of affordable housing for LMI persons.

23.4(4) Job creation, retention and enhancement fund. Twenty percent of the funds shall be reserved for a job creation, retention and enhancement fund to be for workforce development and to expand economic opportunities and job training for LMI persons. Job creation, retention and enhancement funds are awarded through three programs: the economic development set-aside (EDSA), the public facilities set-aside (PFSA) and career link.

23.4(5) Imminent threat contingency fund. Up to \$500,000 shall be reserved to fund projects that address an imminent threat to public health, safety or welfare that necessitates immediate corrective action.

23.4(6) Competitive program. The remaining funds shall be available on a competitive basis through the water and sewer fund and community facilities and services fund. Of this remaining amount, 70 percent shall be reserved for the water and sewer fund, 15 percent shall be reserved for the community facilities and services fund and 15 percent shall be allocated to either the water and sewer fund or community facilities and services fund at the discretion of the director, based on requests for funds.

a. Funding from the water and sewer fund shall be divided into two award cycles.

b. Up to 85 percent of the funds shall be awarded in the first award cycle.

23.4(7) Reallocation. Any reserved funds not used for their specified purpose within the program year shall be reallocated to the competitive program for use through the water

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and sewer fund and community facilities and services fund according to the percentages set forth in subrule 23.4(6).

23.4(8) Recaptured funds. Recaptured funds shall be returned to the competitive program for use through the water and sewer fund and community facilities and services fund according to the percentages set forth in subrule 23.4(6). Recaptured funds shall be committed to open contracts. Preference for reimbursement shall be given to those contracts funded in prior years, with priority given to those from the earliest year not yet closed out. Reimbursement will then proceed on a first-in, first-out basis.

261—23.5(15) Common requirements for funding. Applications for funds under any of the CDBG programs shall meet the following minimum criteria:

23.5(1) Proposed activities shall be eligible, as authorized by Title I, Section 105 of the Housing and Community Development Act of 1974 and as further defined in 24 CFR 570, as revised April 1, 1997.

23.5(2) Proposed activities shall address at least one of the following three objectives:

1. Primarily benefit low- and moderate-income persons. To address this objective, 51 percent or more persons benefiting from a proposed activity must have incomes at or below 80 percent of the area median income.

2. Aid in the prevention or elimination of slums and blight. To address this objective, the application must document the extent or seriousness of deterioration in the area to be assisted, showing a clear adverse effect on the well-being of the area or community and illustrating that the proposed activity will alleviate or eliminate the conditions causing the deterioration.

3. Meet an urgent community development need. To address this objective, the applicant must certify that the proposed activity is designed to alleviate existing conditions that pose a serious and immediate threat to the health or welfare of the community and that are recent in origin or that recently became urgent; that the applicant is unable to finance the activity without CDBG assistance and that other sources of funding are not available. A condition shall be considered recent if it developed or became urgent within 18 months prior to submission of the application for CDBG funds.

23.5(3) Applicants shall demonstrate capacity for grant administration. Administrative capacity shall be evidenced by previous satisfactory grant administration, availability of qualified personnel or plans to contract for administrative services. Funds used for administration shall not exceed 10 percent of the CDBG award amount or 10 percent of the total contract amount, except for awards made under the career link program, for which funds used for administration shall not exceed 5 percent of the CDBG award amount.

23.5(4) Applicants who have received previous CDBG awards shall have demonstrated acceptable past performance, including the timely expenditure of funds.

23.5(5) Applications shall demonstrate the feasibility of completing the proposed activities with the funds requested.

23.5(6) To the greatest extent feasible, applications shall propose the use of CDBG funds as gap financing. Applications shall identify and describe any other sources of funding for proposed activities.

23.5(7) Applications shall include a community development and housing needs assessment. In evaluating applications, IDED shall give supplementary credit to applicants that have developed comprehensive community and economic development plans.

23.5(8) Negotiation of awards. IDED reserves the right to negotiate award amounts, terms and conditions prior to making any award under any program.

23.5(9) Applicants shall certify their compliance with the following:

1. The Civil Rights Act of 1964 (PL 88-352) and Title VIII of the Civil Rights Act of 1968 (PL 90-284) and related civil rights, fair housing and equal opportunity statutes and orders;

2. Title I of the Housing and Community Development Act of 1974;

3. Age Discrimination Act of 1975;

4. Section 504 of the Housing and Urban Development Act of 1973;

5. Section 3 of the Housing and Urban Development Act of 1968;

6. Davis-Bacon Act (40 U.S.C. 276a-5) where applicable under Section 100 of the Housing and Community Development Act of 1974;

7. Lead-Based Paint Poisoning Prevention Act;

8. 24 CFR 58, as revised April 1, 1997, and the National Environmental Policy Act of 1969;

9. Uniform Relocation Assistance and Real Property Acquisition Act of 1979, Titles II and III;

10. Americans with Disabilities Act;

11. Section 102 of the Department of Housing and Urban Development Reform Act of 1989;

12. Contract Work Hours and Safety Act;

13. Copeland Anti-Kickback Act;

14. Department of Defense Reauthorization Act of 1986;

15. Fair Labor Standards Act;

16. Hatch Act;

17. Prohibition on the Use of Excessive Force and Barring Entrance;

18. Drug-Free Workplace Act;

19. Governmentwide Restriction on Lobbying;

20. Single Audit Act;

21. State of Iowa Citizen Participation Plan; and

22. Other relevant regulations as noted in the CDBG management guide.

261—23.6(15) Requirements for the competitive program.

23.6(1) Restrictions on applicants.

a. An applicant shall be allowed to submit one application per year under the water and sewer fund and one application per year under the community facilities and services fund.

b. An eligible applicant involved in a joint application (not as the lead applicant) shall be allowed to submit a separate, individual application only if the applicant is bound by a multijurisdictional agreement by state statute to provide a public service that is facilitated by the joint application and the activity proposed in the joint application is not located in the applicant's jurisdiction.

23.6(2) Grant ceilings. Maximum grant awards are as follows:

1. Applicants with populations of fewer than 1,000 shall apply for no more than \$250,000.

2. Applicants with populations of 1,000 to 2,499 shall apply for no more than \$400,000.

3. Applicants with populations of 2,500 to 14,999 shall apply for no more than \$600,000.

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4. Applicants with populations of 15,000 to 49,999 shall apply for no more than \$800,000.

However, no recipient shall receive more than \$1,000 per capita based on the total population within the recipient's jurisdiction. If a county applies on behalf of one or more unincorporated communities within its jurisdiction, the \$1,000 per capita ceiling shall pertain to any project benefiting all residents of the unincorporated community or communities, not the entire unincorporated population of the county applying. Applicants shall use one of the following for population figures to determine the applicable grant ceilings: 1990 census figures, special census figures or adjusted figures based on annexation completed in accordance with statutory requirements in Iowa Code chapter 368. County populations shall be calculated for unincorporated areas only to determine applicable grant ceilings.

a. Joint applications for sewer and water projects shall be awarded no more than the cumulative joint total allowed according to the population of each jurisdiction participating in the project. For all other joint applications, an application shall be awarded no more than one and one-half times the maximum amount allowed for either of the joint applicants.

b. Applicants may apply for the maximum amount for which they are eligible under both the sewer and water fund and community facilities and services fund.

c. Applicants may apply for multiple activities under each fund for an amount up to the applicable ceilings. IDEED shall review multiple activities individually.

23.6(3) Water and sewer fund application procedure. IDEED shall announce the availability of funds and instructions for applying for funds through direct mail, public notices, media releases, workshops or other means determined necessary by IDEED.

a. Application forms shall be available upon request from IDEED, Bureau of Community Facilities and Services, 200 East Grand Avenue, Des Moines, Iowa 50309, telephone (515)242-4825.

b. Applicants shall submit a preapplication for review by IDEED staff by a deadline established by IDEED, which shall be no earlier than 60 days after the announcement of availability of funds.

c. Applicants whose preapplications best meet the following application review criteria shall be invited to submit full applications for funds:

- (1) Magnitude of need for the project.
- (2) Impact of the activity on standard of living or quality of life of proposed beneficiaries.
- (3) Readiness to proceed with the proposed activity and likelihood that the activity can be completed in a timely fashion. Procurement of an engineer shall be considered evidence of readiness to proceed.
- (4) Degree to which water and sewer fund assistance would be leveraged by other funding sources and documentation of applicant efforts to secure the maximum amount possible of local financial support for the activity.
- (5) Capacity to operate and maintain the proposed activity.
- (6) Capacity for continued viability of the activity after CDBG assistance.
- (7) Scope of project benefit relative to the amount of CDBG funds invested.

Applicants who are not invited to submit full applications may request in writing that IDEED hold their preapplications for consideration in the second award cycle.

d. IDEED shall provide by mail full application forms and instructions to the selected applicants with the invitation to apply.

e. Full applications shall be submitted by a deadline established by IDEED, which shall be no earlier than 50 days after IDEED issues the invitation to apply. Applicants shall submit the original and two copies of completed applications with required attachments to IDEED at the address provided in paragraph "a" above.

f. Applicants shall submit preliminary engineering reports with their full applications.

g. IDEED staff may consult on proposed activities with other state agencies responsible for water- and sewer-related activities and may conduct site evaluations of proposed activities.

h. Applications selected to receive awards shall be notified by letter from the IDEED director at a date determined by IDEED, which shall be no later than 90 days after the application due date.

23.6(4) Community facilities and services fund application procedure. Each year, IDEED shall announce the availability of funds and instructions for applying for funds through direct mail, public notices, media releases, workshops or other means determined necessary by IDEED.

a. Application forms shall be available upon request from IDEED, Bureau of Community Facilities and Services, 200 East Grand Avenue, Des Moines, Iowa 50309, telephone (515)242-4825.

b. Applicants shall submit a preapplication for review by IDEED staff by a deadline established by IDEED, which shall be no earlier than 60 days after the announcement of availability of funds.

c. Applicants whose preapplications best meet the following application review criteria shall be invited to submit full applications for funds:

- (1) Magnitude of need for the project.
- (2) Impact of the activity on standard of living or quality of life of proposed beneficiaries.
- (3) Readiness to proceed with the proposed activity and likelihood that the activity can be completed in a timely fashion.
- (4) Degree to which community facilities and services fund assistance would be leveraged by other funding sources and documentation of applicant efforts to secure the maximum amount possible of local financial support for the activity.
- (5) Capacity to operate and maintain the proposed activity.
- (6) Capacity for continued viability of the activity after CDBG assistance.
- (7) Scope of project benefit relative to the amount of CDBG funds invested.

d. IDEED shall provide by mail full application forms and instructions to the selected applicants with the invitation to apply.

e. Full applications shall be submitted by a deadline established by IDEED, which shall be no earlier than 50 days after IDEED issues the invitation to apply. Applicants shall submit the original and two copies of completed applications with required attachments to IDEED at the address provided in paragraph "a" above.

f. IDEED staff may consult on proposed activities with other state agencies responsible for community facilities and services-related activities and may conduct site evaluations of proposed activities.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

g. Applications selected to receive awards shall be notified by letter from the IDED director at a date determined by IDED, which shall be no later than 90 days after the application due date.

23.6(5) Contingent funding. IDED may make awards contingent upon receipt of funding from other sources.

23.6(6) Negotiation of awards. IDED reserves the right to negotiate award amounts and terms.

261—23.7(15) Requirements for the economic development set-aside fund.

23.7(1) Restrictions on applicants.

a. Applicants shall apply only for direct loans or forgivable loans to make to private businesses for the creation of new jobs or the retention of existing jobs that would otherwise be lost.

b. The maximum grant award for individual business assistance applications from any city or county is \$500,000 per application.

c. The average starting wage of jobs to be created or retained by a proposed project must meet or exceed 75 percent of the average county wage scale or \$7 an hour, unless evidence exists of a negative condition that has the potential to cause severe economic distress on the community.

d. At least 51 percent of the permanent jobs created or retained by the proposed project shall be taken by or made available through first consideration activities to persons from low- and moderate-income families.

e. Projects must maintain a minimum ratio of one permanent job created or retained for every \$10,000 in CDBG funds awarded.

f. Terms of conventional loans proposed for the project must be consistent with terms generally accepted by conventional financial institutions.

g. Applications must provide evidence of adequate private equity.

h. Applications must provide evidence that the EDSA funds requested are necessary to make the proposed project feasible and that the business requesting assistance can continue as a going concern in the foreseeable future if assistance is provided.

i. IDED shall not consider applications proposing business relocation from within the state unless evidence exists of unusual circumstances that make the relocation necessary for the business's viability.

j. No significant negative land use or environmental impacts shall occur as a result of the project.

23.7(2) Application procedure. Application forms and instructions shall be available upon request from IDED, Bureau of Business Financing, 200 East Grand Avenue, Des Moines, Iowa 50309, telephone (515)242-4825. An original and two copies of completed applications with required attachments shall be submitted to the same address. IDED shall accept EDSA applications at any time and shall review applications on a continuous basis. IDED shall take action on submitted applications within 60 days of receipt. Action may include funding the application for all or part of the requested amount, denying the applicant's request for funding or requesting additional information from the applicant for consideration before a final decision is made.

23.7(3) Review criteria. IDED shall review applications and make funding decisions based on the following criteria:

1. Impact of the project on the community.
2. Appropriateness of the jobs to be created or retained by the proposed project.

3. Appropriateness of the proposed wage and benefit package available to employees in jobs created or retained by the proposed project.

4. Degree to which EDSA funding would be leveraged by private investment.

5. Degree of demonstrated business need.

6. In evaluating applications, IDED shall give supplementary credit to applicants who have executed a good neighbor agreement with the business to be assisted.

7. IDED may conduct site evaluations of proposed projects.

261—23.8(15) Requirements for the public facilities set-aside fund. PFSA funds are reserved for infrastructure projects in direct support of economic development activities that shall create or retain jobs.

23.8(1) Restrictions on applicants.

a. The maximum grant award for individual applications is \$500,000.

b. At least 51 percent of the permanent jobs created or retained by the proposed project shall be taken by or made available through first consideration activities to persons from low- and moderate-income families.

c. Projects must maintain a minimum ratio of one permanent job created or retained for every \$10,000 in CDBG funds awarded.

d. The applicant local government must contribute at least 50 percent of the total amount of funds requested.

e. Applications must provide evidence that the PFSA funds requested are necessary to make the proposed project feasible and that the business requesting assistance can continue as a going concern in the foreseeable future if assistance is provided.

f. Jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered to be new jobs created.

g. No significant negative land use or environmental impacts shall occur as a result of the project.

h. Applications shall include a business assessment plan, projecting for each identified business the number of jobs to be created or retained as a result of the public improvement proposed for assistance.

23.8(2) Application procedure. Application forms and instructions shall be available upon request from IDED, Bureau of Business Financing, 200 East Grand Avenue, Des Moines, Iowa 50309, telephone (515)242-4819. An original and one copy of completed applications with required attachments shall be submitted to the same address. IDED shall accept PFSA applications at any time and shall review applications on a continuous basis. IDED shall take action on submitted applications within 60 days of receipt. Action may include funding the application for all or part of the requested amount, denying the applicant's request for funding or requesting additional information from the applicant for consideration before a final decision is made.

23.8(3) Review criteria. IDED shall review applications and make funding decisions based on the following criteria:

1. Impact of the project on the community.
2. Number of jobs created or retained per funds requested.
3. Degree to which PFSA funding would be leveraged by private investment.
4. Degree of demonstrated need for the assistance. IDED may conduct site evaluations of proposed projects.

261—23.9(15) Requirements for the career link program. Projects funded through the career link program assist

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the working poor and underemployed to obtain the training and skills necessary to move into available higher-skill, higher-paying jobs.

23.9(1) Restrictions on applicants.

a. Identified positions shall pay a minimum of \$10 per hour plus benefits. IDED shall consider training proposals to fill occupations paying less than \$10 per hour if a wage progression to \$10 per hour shall be reached within 24 months of employment.

b. Applications shall include evidence of business participation in the curriculum design and evidence that a number of positions are available equal to or greater than the number of persons to be trained.

c. The proposed training period shall not exceed 12 months per individual participant. The project length shall not exceed 24 months.

d. Applicants may use awarded funds for training, transportation and child care costs. Up to 5 percent of funds may be used for administration.

e. Projects shall be designed to target the working poor.

23.9(2) Application procedure. Application forms and instructions shall be available upon request from IDED, Bureau of Community Facilities and Services, 200 East Grand Avenue, Des Moines, Iowa 50309, telephone (515) 242-4819. An original and five copies of completed applications shall be submitted to the same address. IDED shall accept career link applications at any time and shall review applications on a continuous basis until all program funds are obligated or the program is discontinued.

23.9(3) Review criteria. IDED shall review applications and make funding decisions based on the following criteria:

1. Quality of the jobs available and business participation.
2. Merit of the proposed training plan.
3. Degree to which career link funds are leveraged by other funding sources.
4. Merit of the recruitment/job matching plan.
5. Scope of project benefit relative to the amount of funds invested.

261—23.10(15) Requirements for the imminent threat contingency fund. The imminent threat contingency fund is reserved for communities experiencing an imminent threat to public health, safety or welfare that necessitates immediate corrective action sooner than could be accomplished through normal CDBG funding procedures.

23.10(1) Application procedure. Communities in need of these funds shall submit a written request to IDED, Bureau of Community Facilities and Services, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the community's problem, the amount of funding requested, projected use of funds and an explanation of why the problem cannot be remedied through normal CDBG funding procedures.

23.10(2) Application review. Upon receipt of a request for imminent threat funding, IDED, in consultation with appropriate federal, state and local agencies, shall make a determination of whether the community and project are eligible for funding and notify the applicant of its determination. A project shall be considered only if it meets all of the following criteria:

1. An immediate threat must exist to health, safety or community welfare that requires immediate action.
2. The threat must be the result of unforeseeable and unavoidable circumstances or events.
3. No known alternative project or action would be more feasible than the proposed project.

4. Sufficient other local, state or federal funds (including the CDBG competitive program) either are not available or cannot be obtained in the time frame required.

23.10(3) Compliance with federal and state regulations. A community receiving funds under the imminent threat contingency fund shall comply with all laws, rules and regulations applicable to the CDBG competitive program, except those not required by federal law that IDED may choose to waive.

261—23.11(15) Requirements for the housing fund program. Specific requirements for the housing fund are listed separately at 261—Chapter 25.

261—23.12(15) Interim financing program. The objective of the CDBG interim financing program is to benefit persons living in eligible Iowa communities by providing short-term financing for the implementation of projects that create or retain employment opportunities, prevent or eliminate blight or accomplish other federal and state community development objectives. Up to \$25 million shall be made available for grants under the CDBG interim financing program during any program year.

23.12(1) Eligible activities. Funds provided through the interim financing program shall be used for the following activities:

1. Short-term assistance, interim financing or construction financing for the construction or improvement of a public work.
2. Short-term assistance, interim financing or construction financing for the purchase, construction, rehabilitation or other improvement of land, buildings, facilities, machinery and equipment, fixtures and appurtenances or other projects undertaken by a for-profit organization or business or a nonprofit organization.
3. Short-term or interim financing assistance for otherwise eligible projects or programs.

23.12(2) Restrictions on applicants.

- a. No significant negative land use or environmental impacts shall occur as a result of the project.
- b. Applications must provide evidence that the proposed project shall be completed within 30 months of the date of grant award.
- c. The amount of funds requested shall not exceed \$20 million.

d. Applications must provide evidence of an irrevocable letter of credit or equivalent security instrument from an AA- or better-rated lending institution, assignable to IDED, in an amount equal to the CDBG short-term grant funds requested, plus interest, if applicable.

e. Applications must provide evidence of the commitment of permanent financing for the project.

f. Applications must include assurance that program income earned or received as a result of the project shall be returned to IDED on or before the end date of the grant contract.

23.12(3) Application procedure. Applications may be submitted at any time in a format prescribed by IDED. Applications shall be processed, reviewed and considered on a first-come, first-served basis to the extent funds are available. IDED shall make funding decisions within 30 days of receipt of a completed application. Applications that are incomplete or require additional information, investigation or extended negotiation may lose funding priority.

23.12(4) Application review. Applications shall be reviewed and funding decisions made based on the following review criteria:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

1. Degree to which CDBG funds would be leveraged by other funding sources.
2. Reasonableness of the project cost per beneficiary ratio.
3. Documented need for the CDBG assistance.
4. Degree of public benefit, as measured by the present value of proposed assistance to direct wages and aggregate payroll lost, indirect wages and aggregate payroll lost, dislocation and potential absorption of workers and the loss of economic activity.

261—23.13(15) Flood recovery fund. The flood recovery fund is reserved for communities that suffered damage from flooding in 1993. Funds are available to repair flood damage and to prevent future threat to public health, safety or welfare. The source of funds is supplemental appropriations from HUD for flood disaster relief efforts.

23.13(1) Application procedure. Communities in need of flood recovery funds shall submit a written request to IDEED, Bureau of Community Facilities and Services, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the community's problem, the amount of funding requested, projected use of funds and an explanation of why the problem cannot be remedied through normal CDBG funding procedures.

23.13(2) Application review. Upon receipt of a request, IDEED, in consultation with appropriate federal, state and local agencies, shall make a determination of whether the community and project are eligible for funding and notify the applicant community of its determination. A project shall be considered eligible only if it meets all of the following criteria:

1. An immediate threat must exist to health, safety or community welfare that requires immediate action.
2. The threat must be a result of flooding in 1993.
3. No known alternative project or action would be more feasible than the proposed project.
4. Sufficient other local, state or federal funds (including the CDBG competitive program) either are not available or cannot be obtained in the time frame required.

23.13(3) Compliance with federal and state regulation. A community receiving funds under the flood recovery fund shall comply with all laws, rules and regulations applicable to the CDBG competitive program, except those waived by HUD as a result of federal action in conjunction with the flood disaster and those not required by federal law that IDEED may choose to waive. IDEED shall make available a list of all applicable federal regulations and disaster-related waivers granted by Congress and relevant federal agencies to all applicants for assistance.

261—23.14(15) Administration of a CDBG award. This rule applies to all grant recipients awarded funds from any of the CDBG programs. Recipients shall comply with requirements and instructions set forth in the applicable CDBG management guide.

23.14(1) Contracts. After making an award notification to a recipient, IDEED will issue a CDBG contract. The contract shall be between the recipient local government and IDEED. These rules and applicable federal and state laws and regulations shall be part of the contract.

a. Recipients shall execute and return the contract to IDEED within 45 days of the transmittal date from IDEED. Failure to do so may be cause for termination of the award.

b. Certain activities require permits or clearances that shall be obtained from other state or federal agencies prior to proceeding with the project. IDEED may include securing

necessary permits or clearances as conditions to the CDBG contract.

23.14(2) General financial management standards. Recipients shall comply with 24 CFR 85, as revised April 1, 1997, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments. Allowable costs shall be determined in accordance with OMB Circular A-87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments."

23.14(3) Requests for funds. Recipients shall submit requests for funds in the manner described and on the forms provided in the CDBG management guide. Individual requests for funds shall be made in whole dollar amounts not less than \$500, except for the final request for funds.

23.14(4) Program income. If a recipient receives program income before the contract end date, it must be expended before requesting additional funds. If a recipient receives program income on or after the contract end date, the recipient may reuse the program income according to an IDEED-approved reuse plan, or the recipient may return the program income to IDEED. If a recipient receives less than \$25,000 of program income cumulative of all CDBG grants in a program year, it shall be considered miscellaneous revenue and may be used for any purpose.

23.14(5) Record keeping and retention. All records related to the project, including the original grant application, reports, financial records and documentation of compliance with state and federal requirements shall be retained for five years after contract closeout. Representatives of HUD, the Inspector General, the General Accounting Office, the state auditor's office and IDEED shall have access to all books, accounts, documents, records and other property belonging to or in use by recipients pertaining to the receipt of CDBG funds.

23.14(6) Performance reports and reviews. Recipients shall submit recipient performance reports to IDEED as prescribed in the CDBG management guide. IDEED shall perform project reviews and site inspections deemed necessary to ensure program compliance. When noncompliance is indicated, IDEED may require remedial actions to be taken.

23.14(7) Contract amendments. Any substantive change to a funded CDBG project, including time extensions, budget revisions and significant alteration to proposed activities, shall be considered a contract amendment. The recipient shall request the amendment in writing. No amendment shall be valid until approved in writing by IDEED. IDEED shall not approve the addition of a new activity unrelated to the original contract activities, unless all original activities shall also be completed per the contract. In such cases, IDEED may allow up to \$10,000 of the original CDBG award to be used for a new activity. For projects funded under the economic development set-aside, IDEED shall not approve amendments involving the replacement of one activity with another.

23.14(8) Contract closeout and audit. Upon completion of project activities and contract expiration, IDEED shall initiate closeout procedures. Contracts may be subject to audit before closeout of the contract can be completed. Recipients of federal funds of \$300,000 or more within one year must have these funds audited. The audit shall be performed in a manner consistent with the provisions set forth in the Single Audit Act, as revised in 1996, and described in the CDBG management guide.

23.14(9) Contractors and subrecipients limitation. CDBG funds shall not be used directly or indirectly to employ, award contracts to, otherwise engage the services of

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or fund any contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status by HUD under the provisions of 24 CFR 24, as revised April 1, 1997.

23.14(10) Compliance with federal and state laws and regulations. Recipients shall comply with all applicable provisions of the Housing and Community Development Act of 1974 and these administrative rules. Recipients shall also comply with any provisions of the Iowa Code governing activities performed under this program.

23.14(11) Noncompliance. At any time before project closeout, IDEED may, for cause, find that a recipient is not in compliance with requirements under this program. At IDEED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDEED. Findings of noncompliance may include the use of CDBG funds for activities not described in the application, failure to complete approved activities in a timely manner, failure to comply with any applicable state or federal rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved project in a timely manner.

23.14(12) Appeals process for findings of noncompliance. Appeals shall be entertained in instances where it is alleged that IDEED staff participated in a decision that was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDEED. Appeals shall be addressed to the division administrator of the division of community and rural development. Appeals shall be in writing and submitted to IDEED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director shall make the final decision on all appeals.

These rules are intended to implement Iowa Code section 15.108(1)"a."

ARC 8138A

ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]

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 15.104 and 15.106, the Iowa Department of Economic Development proposes amendments to Chapter 68, "Export Trade Assistance Program," Iowa Administrative Code.

Existing program rules do not authorize reimbursement for the costs of interpreters. Numerous companies have requested that this be changed, and the Department agrees that such an expense is essential for the success of Iowa companies attending international trade events. This amendment permits eligible businesses to be reimbursed for the costs of an interpreter. The second amendment adds a criterion that a company must satisfy before receiving trade assistance under the ETAP program. To be eligible, a company must provide proof of deposit or payment of the trade show or trade mission participation fee. These amendments also update the reference to the implementing legislation.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on August 4, 1998. Interested persons may submit written or oral comments by contacting Mike Doyle, International Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4729.

A public hearing to receive comments about the proposed amendments will be held on August 4, 1998, at 1:30 p.m. at the above address in the Business Finance Conference Room on the first floor. Individuals interested in providing comments at the hearing should contact Mike Doyle by 4 p.m. on August 3, 1998, to be placed on the hearing agenda.

These amendments are intended to implement 1998 Iowa Acts, Senate File 2296, section 1, subsection 4, paragraph "b."

The following amendments are proposed:

ITEM 1. Amend **261—Chapter 68** by striking "(77GA, HF655)" and inserting "(77GA, SF2296)" wherever it appears.

ITEM 2. Amend rule 261—68.3(77GA, HF655) as follows:

261—68.3(77GA, HF655) (77GA, SF2296) Eligible applicants. The export trade assistance program is available to Iowa firms producing products or providing services in the state of Iowa. To be eligible to receive trade assistance, applicants must meet all ~~three~~ *four* of the following criteria:

1. Be an entity employing fewer than 500 individuals, 75 percent or more of whom are employed within the state of Iowa;

2. Exhibit products or services or samples of Iowa manufactured, processed or value-added products or agricultural commodities in conjunction with a foreign trade show or trade mission (catalog exhibits are permitted if they are used in conjunction with the exhibit of a product or service or in association with the firm's participation in a trade mission), *and*

3. Have at least one full-time employee or sales agent attend the trade show or participate in the trade mission; *and*

4. *Provide proof of deposit or payment of the trade show or trade mission participation fee.*

ITEM 3. Amend 261—68.4(77GA, HF655) as follows:

261—68.4(77GA, HF655) (77GA, SF2296) Eligible reimbursements. The department's reimbursement to approved applicants for assistance shall not exceed 75 percent of the expenses directly attributed to the applicant's cost of participation in a trade show or trade mission. Total reimbursement shall not exceed \$4,000 per event. Payments will be made by the department on a reimbursement basis upon submission of proper documentation and approval by the department of paid receipts by the bureau. Reimbursement is limited to the following types of expenses:

68.4(1) Trade shows.

a. Space rental.

b. Booth construction at show site.

c. Booth equipment or furniture rental.

d. Freight costs associated with shipment of equipment or exhibit materials to the participant's booth and return.

e. Booth utility costs.

f. *Interpreter fees.*

g. Per diem (lodging and meals) for the day immediately before the opening day of the trade show through the day immediately after the closing day of the trade show; per diem is calculated at 50 percent of the rate schedules provided by the

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261](cont'd)

U.S. Department of State for travel in foreign areas; and per diem will be paid for only one employee.

68.4(2) No change.

ITEM 4. Amend the implementation clause at the end of 261—Chapter 68 as follows:

These rules are intended to implement 1997 Iowa Acts, House File 655, section 1, subsection 4, paragraph "c." 1998 Iowa Acts, Senate File 2296, section 1, subsection 4, paragraph "b."

ARC 8179A

EDUCATION DEPARTMENT [281]

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 256.7(3), the Iowa Department of Education hereby gives Notice of Intended Action to amend Chapter 21, "Community Colleges," Iowa Administrative Code.

These proposed amendments describe the instructional course for drinking drivers, including the approval of the instructional course and the setting of tuition and fees by the Department of Education.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 4, 1998. Such written materials should be directed to the Bureau of Community Colleges, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; fax (515)281-6544. Persons who wish to convey their views orally should contact the Bureau of Community Colleges at (515)281-3671 or at the Bureau of Community Colleges on the third floor of the Grimes State Office Building.

Also, there will be a public hearing on August 4, 1998, at 1 p.m. in the State Board Room in the Grimes State Office Building, at which time persons who wish to convey their views orally or in writing may do so. At the hearing, persons will be requested to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any person who intends to attend the public hearing and has special requirements such as hearing or mobility impairment should contact the Department of Education, Bureau of Community Colleges, and advise of any specific needs.

These amendments are intended to implement Iowa Code section 321J.22.

The following amendments are proposed.

ITEM 1. Amend 281—Chapter 21, Division III, title, as follows:

INSTRUCTION INSTRUCTIONAL COURSE FOR DRINKING DRIVERS

ITEM 2. Amend 281—Chapter 21 by renumbering rules 281—21.30(321J) and 281—21.31(321J) as 281—21.31(321J) and 281—21.32(321J) and adopting the following new rule:

281—21.30(321J) Purpose. The purpose of the instructional course for drinking drivers is designed to inform the of-

fender about drinking and driving and encourage the offender to assess the offender's own drinking and driving behavior in order to select practical alternatives.

ITEM 3. Amend renumbered rule 281—21.31(321J) as follows:

281—21.31(321J) Course. The ~~instruction~~ instructional course for drinking drivers shall be developed and approved by the state board of education for use by community colleges. Each course of instruction shall include establish the following:

1. ~~Factual information about the physical effects of alcohol;~~ An understanding that alcohol-related problems could happen to anyone and that a person's drinking choices matter. The course illustrates common views of society that prevent people from taking drinking choices seriously. Research is presented to challenge common views with an understanding that alcohol problems are related to lifestyle choices.

2. ~~Assistance to each student with a self-assessment and an increased awareness of drinking and driving problems;~~ An understanding that specific low-risk choices will help reduce the risk of experiencing alcohol-related problems at any point in life. The course presents research-based, low-risk guidelines.

3. ~~An attempt to motivate each student to select alternatives to drinking and driving; and Methods of providing support for making low-risk choices.~~

4. ~~Assistance to students in establishing contact with service agencies within their communities. An accurate description of the progression of drinking to the development of alcoholism to help people weigh the risk involved with high-risk drinking and to see how high-risk choices may jeopardize their lives and the lives of others.~~

5. ~~Opportunities to develop a specific plan of action to follow through with low-risk choices. A list of community resources is provided for ongoing support and treatment as needed.~~

ITEM 4. Amend renumbered rule 281—21.32(321J) as follows:

281—21.32(321J) Fee Tuition fee established.

1. Each person enrolled in the ~~instruction~~ instructional course for drinking drivers shall pay to the community college a tuition fee of \$60 75 to defray the expenses of for the approved 12-hour course, plus a reasonable book fee, or \$175 for the approved 28-hour weekend course, plus a reasonable book fee. ~~unless the person has been determined to be indigent. For the approved 28-hour weekend course, the community college shall set a reasonable fee for lodging, meals, and security.~~

2. A person shall not be denied enrollment in a course by reason of a person's indigency. For court-ordered placement, the court shall determine a person's indigency. In all other instances, the community college shall determine indigency upon application.

ITEM 5. Amend 281—Chapter 21, Division III, implementation sentence, as follows:

Rules 21.30(321J) and 21.31(321J) These rules are intended to implement Iowa Code section 321J.22.

ARC 8178A

EDUCATION DEPARTMENT[281]

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 256.7(5), the Iowa Department of Education hereby gives Notice of Intended Action to amend Chapter 21, "Community Colleges," Iowa Administrative Code.

The proposed amendment to Chapter 21 describes the plan for distribution of general state financial aid appropriated by the General Assembly to the Department of Education for community college programs.

Any interested person may make written suggestions or comments on this proposed amendment on or before August 4, 1998. Such written materials should be directed to Evelyn Anderson, Bureau of Community Colleges, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; fax (515)281-6544. Persons who wish to convey their views orally should contact the Bureau of Community Colleges at (515)281-3866 located on the third floor of the Grimes State Office Building.

There will be a public hearing via the Iowa Communications Network on August 4, 1998, at 9 a.m. at which time persons may present their views either orally or in writing. ICN sites are:

- Iowa Department of Education, ICN Room, Second Floor, Grimes State Office Building, E. 14th and Grand, Des Moines
- Luther College, Preus Library Room 100, 700 College Drive, Decorah
- North Iowa Area Community College, Classroom 1, Activity Center 106, 500 College Drive, Mason City
- Iowa Lakes Community College, Library Building, Room 22, 300 South 18th Street, Estherville
- Northwest Iowa Community College, ICN Classroom 2, Building D, Room 410, 603 West Park, Sheldon
- St. Edmonds High School, Room 101, 501 N. 22nd Street, Fort Dodge
- Iowa Valley Community College District, Classroom 1, Continuing Education Center 806, 3702 South Center Street, Marshalltown
- Department of Human Services, Pinecrest Office Building, 1407 Independence Avenue, Waterloo
- Davenport Public Library, Meeting Room A, 321 Main, Davenport
- Kirkwood Community College, ICN Classroom 1, Linn Hall 203B, 6301 Kirkwood Boulevard SW, Cedar Rapids
- Western Iowa Tech Community College, ICN Classroom 1, Building A, Room 925, 4647 Stone Avenue, Sioux City
- Iowa Western Community College, Bluffs 1, Looft Hall, 2700 College Road, Council Bluffs
- Southwestern Community College, ICN Classroom 1, Instructional Center Room 211, 1501 West Townline Road, Creston

- Indian Hills Community College, ICN Classroom 4, Advanced Technology Center, Room 107, 525 Grandview Avenue, Ottumwa
- Southeastern Community College, ICN Classroom 1, North Campus/Trustee Hall, Room 503, 1015 South Gear Avenue, West Burlington

At the hearing, persons will be requested to give their names and addresses for the record and to confine their remarks to the subject of the amendment. Any person who plans to attend the public hearing and has need for special accommodations, such as hearing or mobility impairment, should contact the Department of Education, Bureau of Community Colleges, with information regarding specific needs.

This rule is intended to implement Iowa Code sections 260C.14(21) and 260C.49.

The following amendment is proposed.

Rescind rule 281—21.45(260D) and adopt the following **new** rule:

281—21.45(260C) Purpose. A distribution plan for general state financial aid to Iowa's community colleges is established for the fiscal year commencing July 1, 1999, and succeeding fiscal years. Funds appropriated by the general assembly to the department of education for general financial aid to community colleges shall be allocated to each community college in the manner defined in this chapter.

21.45(1) Definitions. For the purpose of this rule, the following definitions shall apply:

"Academic year" means a period of time which begins with the first day of the fall term for each community college and continues through the day preceding the start of the next fall term as indicated in the official college calendar.

"Base funding" means the amount of general state financial aid each community college received as an allocation from appropriations made from the state general fund in the base year.

"Base year" means the fiscal year ending during the calendar year in which a budget is certified.

"Contact hour" for a noncredit course equals 50 minutes of contact between an instructor and students in a scheduled course offering for which students are registered.

"Credit hour," for purposes of community college funding distribution, shall be as defined in subrule 21.2(13).

"Eligible credit courses" means all credit courses that are eligible for general state financial aid and which must be part of an approved program of study. Developmental education courses that award credit hours are eligible for inclusion in the FTEE calculation. The department of education shall review and provide a determination should a question of eligibility occur.

"Eligible noncredit courses" means all noncredit courses eligible for general state financial aid that must fit one of the following ten eligible categories for noncredit courses:

1. Community resource development: courses that provide participants with information which may result in improved and enhanced community resources or community development programs.
2. State-mandated or state-approved: organized educational instruction designed to meet legislated or licensing requirements as defined in the Code of Iowa. The educational curriculum for such instruction is approved by the department of education, licensing boards, or state departments.
3. Legal and consumer rights: a group of instructional courses that provide the opportunity to become a better-

EDUCATION DEPARTMENT[281](cont'd)

informed and more thoughtful consumer and identify the consumer's rights and obligations under a contract.

4. Health: courses designed to enhance understanding, attitudes, and practices relating to individual, family, and community health. Instruction is based on scientific facts that serve as a foundation for decision making and action to achieve health potentials.

5. Employment and business: learning activities that are designed to develop skills needed to obtain and enhance employment. The activities will provide an understanding of business principles and practices having applications in business and industry locally, regionally, nationally, and internationally.

6. Programs for individuals with restricted incomes: a group of instructional courses designed for individuals living on a restricted income. These individuals include the elderly, widows and widowers, unemployed or those receiving financial aid from federal and state welfare agencies and organizations. Each course offered in this classification must clearly indicate that it is offered for restricted-income individuals, and enrollment efforts must be directed to these individuals.

7. Environmental education: instructional courses designed to assist individuals to understand the effect upon one's health and well-being of environmental factors such as water supply, pollution control, food contamination, air pollution, radiation exposure, and hazardous materials.

8. Consumer and homemaking adult education: instructional courses designed to include instruction on the following: child development, care and guidance; clothing and textiles; consumer education; family/individual health; family living and parenthood; food and nutrition; home management (including resource management); and housing, home furnishing and equipment.

9. Adult vocational training/retraining education: individual vocational courses, each complete in itself and designed for the specific purposes of training persons for upgrading the skills of persons presently employed, and retraining persons for new employment.

10. ABE/high school completion/ESL: adult basic education, high school completion and English as a second language.

The department of education shall review and provide a determination should a question of eligibility occur.

"Eligible student" means a student enrolled in credit or noncredit courses except for the following: individuals enrolled under the provisions of Iowa Code chapter 260E (Iowa Industrial New Jobs Training Act), 260F (Iowa JOBS Training Act), or 261C (Postsecondary Enrollment Options Act) or Iowa Code section 257.11 (Supplementary Weighting Plan).

"Enrollment," for the purposes of calculating the distribution of the proportional share of state general aid, means full-time equivalent enrollment (FTEE).

"Fiscal year" means a year beginning July 1 of a given calendar year and ending June 30 of the next calendar year.

"Full-time equivalent enrollment (FTEE)" means that one FTEE equals 24 credit hours for credit courses or 600 contact hours for noncredit courses generated by all eligible students enrolled in eligible courses.

"Inflation rate" shall be calculated by determining the percent change in the consumer price index for all urban consumers (CPI-U) as a percent change from the value for the quarter ending June 30 twelve months prior to the beginning of the base year to the value for the quarter ending June 30 prior to the base year.

21.45(2) Moneys appropriated by the general assembly from the general fund to the department of education for community college purposes for general state financial aid for a fiscal year shall be allocated to each community college by the department of education based on each community college's base funding, the inflation rate, and any remaining moneys on the college's proportional share of the total FTEE. The appropriations shall be allocated in the following manner and sequence:

a. Base funding. The amount of general state financial aid each community college received as an allocation from appropriations made from the state general fund in the base year.

b. Distribution for inflation. After the base funding has been allocated, the first priority shall be to give each college an increase based upon inflation. The inflation increase shall not be less than 2 percent. However, the inflation increase shall be equal to the inflation rate if it exceeds 2 percent, if the amount of state aid appropriated is equal to or greater than the inflation rate.

c. Distribution based on proportional share of enrollment. The balance of the growth in state aid appropriations, once the inflation increase has been satisfied, shall be distributed based on each college's proportional share of enrollment. However, a minimum of 1 percent of the total growth shall be distributed in this manner.

d. Appropriation. If the total appropriation made by the general assembly is less than 2 percent growth, the entire increase shall be distributed as inflation.

21.45(3) Program length for the associate of applied sciences (AAS) degree in vocational-technical subjects and for the associate of applied arts (AAA) degrees shall consist of an academic program being the equivalent of a maximum of four semesters and two summer sessions of instruction. AAS and AAA degree programs shall not exceed a maximum of 86 credit hours unless the department of education has granted a waiver pursuant to 21.45(5).

21.45(4) All credit-bearing courses required for program admittance or graduation, or both, must be included in the 86-credit-hour maximum, with the exception of developmental credit hours. Prerequisites that provide an option to students for credit or noncredit shall be counted toward the program maximum of 86 credit hours. Noncredit prerequisites will not be counted toward the 86-credit-hour maximum.

21.45(5) AAS and AAA programs that receive accreditation from nationally recognized accrediting bodies may appeal maximum credit-hour-length requirements to the department of education for consideration of a waiver. All AAS and AAA degree programs over the 86-semester-hour maximum must have approved program-length waivers.

21.45(6) All credit certificate and diploma programs as defined in subrule 21.2(10) shall not exceed 48 credit hours.

21.45(7) Each community college shall provide information in the manner and form as determined by the department of education to implement this chapter. If the community college fails to provide the information as requested, the department shall estimate the FTEE of that college.

This rule is intended to implement Iowa Code sections 260C.14(21) and 260C.49.

ARC 8181A**ENGINEERING AND LAND
SURVEYING EXAMINING
BOARD[193C]****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 542B.6, the Engineering and Land Surveying Examining Board hereby gives Notice of Intended Action to amend Chapter 1, "Administration," Iowa Administrative Code.

This amendment will simplify the requirements to become licensed by comity.

Any interested person may make written or oral suggestions or comments on these proposed amendments on or before August 4, 1998. Comments should be directed to Gleen Coates, Executive Secretary, Iowa Engineering and Land Surveying Examining Board at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021, or by telephoning (515)281-7360.

This amendment is intended to implement Iowa Code section 542B.14.

The following amendment is proposed.

Amend subrule 1.4(5), paragraph "f," as follows:

f. If a comity applicant did not have the required *four years of experience* before writing the professional examination, the board may offer the applicant an oral examination in lieu of retaking the written examination if the applicant has *12 or more years' experience acceptable to the board.* ~~A comity applicant with 25 or more years' experience acceptable to the board may be considered for licensure even if that applicant lacked the required experience before writing the professional examination.~~ *approve the application for licensure if the applicant satisfies all other conditions of licensure, the applicant has not been disciplined in any other jurisdiction, and the applicant has had at least five years of practical engineering experience of a character satisfactory to the board since initial licensure.*

ARC 8182A**ENGINEERING AND LAND
SURVEYING EXAMINING
BOARD[193C]****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 355.3 and 542B.6, the Engineering and Land Surveying Examining

Board hereby gives Notice of Intended Action to amend Chapter 2, "Minimum Standards for Property Surveys," Iowa Administrative Code.

This amendment will further delineate the elements of a plat of survey.

Any interested person may make written or oral suggestions or comments on this proposed amendment on or before August 4, 1998. Comments should be directed to Gleen Coates, Executive Secretary, Iowa Engineering and Land Surveying Examining Board at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021, or by telephoning (515)281-7360.

This amendment is intended to implement Iowa Code section 542B.2.

The following amendment is proposed.

Amend subrules 2.5(5) and 2.5(6) as follows:

2.5(5) The plat shall show ~~documentation~~ that record title boundaries, centerlines, and other boundary lines were retraced to monuments found or placed by the surveyor. *The surveyor shall retrace the exterior lines of a section to determine acreage for assessment and taxation purposes.*

2.5(6) The plat shall show that the survey is tied to a physically monumented land line which is identified by two United States public land survey system corners or by two physically monumented corners of a recorded subdivision. *The plat shall show a distance relationship measured by the surveyor between the two corners on the physically monumented land line.* The physically monumented land line shall be germane to the survey of the lot, parcel, or tract.

ARC 8147A**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 217.6, the Department of Human Services proposes to amend Chapter 1, "Departmental Organization and Procedures," appearing in the Iowa Administrative Code.

1998 Iowa Acts, Senate File 2406, section 19, repealed Iowa Code section 217.9A, which established the Commission on Children, Youth and Families. This amendment removes the Commission from the Department's rules on organization and procedures.

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 August 5, 1998.

This amendment is intended to implement Iowa Code section 17A.3(1).

The following amendment is proposed.

Rescind and reserve rule 441—1.9(17A).

ARC §148A

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 225C.6 and 1998 Iowa Acts, House File 2545, section 8, subsection 2, paragraph "c," and section 9, the Department of Human Services proposes to amend Chapter 25, "Disabilities Services Management," appearing in the Iowa Administrative Code.

The Seventy-seventh General Assembly in 1998 Iowa Acts, House File 2545, appropriated allowable growth funds for county mental health, mental retardation, and developmental disabilities services funds. The total amount appropriated, \$18.1 million, amounts to funds previously appropriated plus the 2.48 percent allowable growth factor recommended in the Governor's budget. House File 2545 appropriates funds to each of four priority areas as follows: Growth - \$12 million, Per Capita Expenditure Target Pool - \$2.1 million, Risk Pool - \$2 million, and the Incentive and Efficiency Pool - \$2 million.

These amendments establish requirements for counties to receive funding from the Incentive and Efficiency Pool created by the Seventy-seventh General Assembly in 1998 Iowa Acts, House File 2545, section 8. To be eligible for these funds, a county must collect and report performance measure data in the desired results areas of Equity of Access, Community-Based Supports, Consumer Participation, and Administration; select five performance indicators, three from at least two of four desired results areas and two indicators from either the desired results areas or indicators proposed by the counties; and propose a percentage change for each of the five selected indicators.

The State County Management Committee shall review all proposals and decide whether to accept or reject the proposals or request modifications. The Department of Human Services shall analyze each county's reports to determine the extent to which the county achieved the levels contained in the proposal accepted by the State County Management Committee. The amount actually paid to a county shall be the product of the county's percentage score on the five selected performance indicators and the county's maximum amount, which is the county's percentage share of the state's general population applied to the amount available for distribution from the pool.

These amendments contain a phase-in provision for the first two years. A county which collects and reports all required data by December 1, 1999, shall be deemed to have received a 100 percent score on the county's performance indicators and be eligible for the full payment in January of 2000. A county which submits a proposal for improvement with its management plan for the fiscal year which begins July 1, 1999, and reports the levels achieved on the selected performance measures by December 1, 2000, shall be deemed to have received a 100 percent score on the county's performance indicators, regardless of the actual levels

achieved, and be eligible for the full payment in January of 2001.

These amendments were developed by a work group from the State County Management Committee and recommended by the State County Management Committee for adoption by the Mental Health and Developmental Disabilities Commission as required by the General Assembly in 1998 Iowa Acts, House File 2545, section 8, subsection 2, paragraph "c."

The substance of these amendments is also Adopted and Filed Emergency and is published herein as ARC §149A. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

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 August 5, 1998.

These amendments are intended to implement 1998 Iowa Acts, House File 2545, section 8, subsection 2.

ARC §150A

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4 and 1998 Iowa Acts, Senate File 2410, section 7, subsection 12, and section 80, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

This amendment reinstates the four-month work transition period for Medicaid.

The work transition period (WTP) is a four-month disregard of earnings for certain people who begin new employment. The WTP was originally established as a welfare reform waiver policy in the Family Investment Program (FIP) that was designed to be an incentive for welfare participants to begin new employment. The Medicaid and Food Stamp programs also adopted the WTP policy. During an evaluation of the welfare reform policies, it was recommended by the Welfare Reform Advisory Council that this disregard be discontinued because it was not meeting the goal for which it was intended and was very complex to administer. The General Assembly supported the recommendation and on April 18, 1997, Governor Branstad signed 1997 Iowa Acts, chapter 41, section 35, which directed the Department to eliminate the WTP as of October 1, 1997, for the FIP, Food Stamp, and Medicaid programs.

In the meantime, the Balanced Budget Act (BBA) of 1997 was signed into law on August 5, 1997. The BBA added Title 21 to the Social Security Act and appropriated \$39.6 billion to enable states to develop health care programs for uninsured children. Section 2105 of the BBA contains a maintenance of effort provision which prohibits states from

HUMAN SERVICES DEPARTMENT[441](cont'd)

adopting more restrictive income and resources methodologies than those that were in place as of June 1, 1997.

The Department proceeded to eliminate the WTP effective October 1, 1997, and submitted a State Plan amendment to the Health Care Financing Administration (HCFA) in December of 1997. HCFA has advised the state that even though the Iowa General Assembly passed legislation to eliminate the WTP prior to the passage of the BBA and the maintenance of effort date, if Iowa does not withdraw the State Plan amendment, Iowa will lose approximately \$32 million annually in federal child health care funding.

The 1998 Iowa General Assembly passed legislation authorizing the Department to reinstate the WTP for Medicaid only if the disregard must be reinstated to ensure federal funding. The Department is working with the Iowa Congressional Delegation to find a legislative remedy.

The substance of this amendment is also Adopted and Filed Emergency and is published herein as ARC §151A. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

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 August 5, 1998.

This amendment is intended to implement Iowa Code section 249A.4 and 1998 Iowa Acts, Senate File 2410, section 7, subsection 12.

ARC §152A

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” appearing in the Iowa Administrative Code.

These amendments revise Medicaid policy governing payment for hospice services. The amendments allow an unlimited number of 60-day certification periods following two 90-day periods, relieve the hospice of the responsibility for hiring a physician directly, and refine the definition of terminal illness. Patients are now eligible for hospice if their prognosis is for a life expectancy of six months or less “if the terminal illness runs its normal course.” This change recognizes that patients sometimes outlive their prognoses, resulting in longer hospice usage than originally contemplated.

State hospice policy mirrors federal policy. These amendments reflect changes in federal hospice rules as a result of passage of the Balanced Budget Act of 1997.

These changes confer a benefit on clients by allowing a person to elect hospice benefits with a more flexible methodology or benefit period. Additionally, providers are given

more flexibility in how they operate their hospice, which will be a benefit to providers who live in rural areas or who have difficulty recruiting medical personnel.

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 August 5, 1998.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend rule 441—78.36(249A) as follows:

Amend subrule 78.36(1), paragraph “a,” as follows:

Amend subparagraph (8) as follows:

(8) Physical therapy, occupational therapy and speech-language pathology *unless this provision has been waived under the Medicare program for a specific provider.*

Adopt the following new subparagraph (9):

(9) Other items or services specified in the resident’s plan that would otherwise be paid under the Medicaid program.

Amend the last paragraph as follows:

Nursing care, medical social services, ~~physician services~~ and counseling are core hospice services and must routinely be provided directly by hospice employees. The hospice may contract with other providers to provide the remaining services. Bereavement counseling, consisting of counseling services provided after the individual’s death to the individual’s family or other persons caring for the individual, is a required hospice service but is not reimbursable.

Further amend subrule 78.36(1), paragraph “b,” subparagraph (2), as follows:

(2) Administrative duties performed by the medical director, *any* hospice-employed physician, or *any* consulting physician are included in the normal hospice rates. Patient care provided by the medical director, hospice-employed physician, attending physician, or consulting physician is separately reimbursable. Payment to the attending or consulting physician includes other partners in practice.

Amend subrule 78.36(4), introductory paragraph and paragraph “a,” as follows:

78.36(4) Approval for hospice benefits. Payment will be approved for hospice services to individuals who are certified as terminally ill, that is, the individuals have a medical prognosis that their life expectancy is six months or less *if the illness runs its normal course*, and who elect hospice care rather than active treatment for the illness.

a. Physician certification process. The hospice must obtain certification that an individual is terminally ill in accordance with the following procedures:

(1) The hospice may obtain verbal orders to initiate hospice service from the medical director of the hospice or the physician member of the hospice interdisciplinary group and by the individual’s attending physician (if the individual has an attending physician). The verbal order shall be noted in the patient’s record. The verbal order must be given within two days of the start of care and be followed up in writing no later than eight calendar days after hospice care is initiated. The certification must include the statement that the individual’s medical prognosis is that the individual’s life expectancy is six months or less *if the illness runs its normal course*.

(2) When verbal orders are not secured, the hospice must obtain, no later than two calendar days after hospice care is initiated, written certification signed by the medical director of the hospice or the physician member of the hospice interdisciplinary group and by the individual’s attending physician (if the individual has an attending physician). The certi-

HUMAN SERVICES DEPARTMENT[441](cont'd)

fication must include the statement that the individual's medical prognosis is that the individual's life expectancy is six months or less, *if the illness runs its normal course.*

(3) ~~When the individual remains in the care of the hospice at the end of six months, another certification is required. The procedures and time frames in subparagraphs (1) and (2) above are to be followed. Hospice care benefit periods consist of up to two periods of 90 days each and an unlimited number of subsequent 60-day periods as elected by the individual. The medical director or a physician must recertify at the beginning of each benefit period that the individual is terminally ill.~~

ITEM 2. Amend subrule 79.1(14) by adopting the following new paragraph "f":

f. Location of services. Claims must identify the geographic location where the service is provided (as distinct from the location of the hospice).

ARC 8143A

INDUSTRIAL SERVICES
DIVISION[873]

Notice of Termination

Pursuant to the authority of Iowa Code sections 17A.4(1)"b" and 86.8, the Division of Industrial Services hereby terminates the rule making initiated by its Notice of Intended Action for Items 3 and 4 of ARC 7887A published in the March 25, 1998, Iowa Administrative Bulletin, amending Chapter 6, "Settlements and Commutations."

The Notice of Intended Action for these items specified the circumstances under which a lien for legal services might be approved. The Division of Industrial Services received comments from attorneys expressing concerns on the new rule. Item 3 related to a change in the title of Chapter 6 to include the topic of rule 6.7(86), Legal services liens, which was Item 4.

The terminated amendments appeared in the Notice of Intended Action published on March 25, 1998, as ARC 7887A.

ARC 8145A

NURSING BOARD[655]

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 and 147.76, the Iowa Board of Nursing hereby gives Notice of Intended Action to amend Chapter 6, "Nursing Practice for Registered Nurses/Licensed Practical Nurses," Iowa Administrative Code.

These amendments expand the LPN scope of practice related to intravenous therapy and modify the LPN scope of practice in the school setting.

Any interested person may make written suggestions or comments on the proposed amendments on or before Sep-

tember 2, 1998. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, 1223 East Court Avenue, Des Moines, Iowa 50319; fax (515) 281-4825. Persons who wish to convey their views orally should contact the Iowa Board of Nursing at (515)281-3256 or at the Board of Nursing office at 1223 East Court Avenue, Des Moines, Iowa.

Also, a public hearing will be held at 7 p.m. on September 2, 1998, in the Ballroom of the Kirkwood Civic Center Hotel, 4th and Walnut, Des Moines, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

These amendments are intended to implement Iowa Code section 152.1.

The following amendments are proposed.

ITEM 1. Amend subrule 6.2(5) by adopting the following new paragraph "c" and relettering paragraphs "c" and "d" as "d" and "e":

c. Using professional judgment in assigning and delegating activities and functions to unlicensed assistive personnel. Activities and functions which are beyond the scope of practice of the licensed practical nurse may not be delegated to unlicensed assistive personnel.

ITEM 2. Amend subrule 6.3(2) as follows:

6.3(2) The licensed practical nurse shall participate in the nursing process, consistent with accepted and prevailing practice, by assisting the registered nurse or physician. ~~The licensed practical nurse may assist the registered nurse in monitoring, observing and reporting reactions to therapy. The licensed practical nurse may add intravenous solutions without medications to established intravenous sites, regulate the rate of nonmedicated intravenous solutions and discontinue intravenous therapy. The licensed practical nurse shall not perform any procedure/treatment requiring the knowledge and skill ascribed to the registered nurse, including:~~

~~a. The initiation of intravenous solutions, intravenous medications and blood components.~~

~~b. The administration of medicated intravenous solutions, intravenous medications and blood components.~~

~~c. The initiation or administration of medications requiring the knowledge or skill level currently ascribed to the registered nurse.~~

ITEM 3. Amend rule 655—6.3(152) by adopting the following new subrules 6.3(3) and 6.3(4) and renumbering subrules 6.3(3) to 6.3(7) as 6.3(5) to 6.3(9).

6.3(3) The licensed practical nurse shall not perform any activity requiring the knowledge and skill ascribed to the registered nurse, including:

a. The initiation of or assessment related to procedures/therapies requiring the knowledge or skill level ascribed to the registered nurse.

b. The initiation of intravenous solutions, intravenous medications and blood components.

c. The administration of medicated intravenous solutions, intravenous medications and blood components.

d. The initiation or administration of medications requiring the knowledge or skill level currently ascribed to the registered nurse.

6.3(4) A licensed practical nurse, under the supervision of a registered nurse, may engage in the limited scope of practice of intravenous therapy. In providing the limited scope of therapy, the licensed practical nurse may add intravenous

NURSING BOARD[655](cont'd)

solutions without medications to established peripheral intravenous sites, regulate the rate of nonmedicated intravenous solutions, administer maintenance doses of analgesics via the patient-controlled analgesic pump set at a lock-out interval, and discontinue intravenous therapy. Nursing tasks which may be delegated in a certified end-stage renal dialysis unit by the registered nurse to the licensed practical nurse with documented training include:

- a. Initiation and discontinuation of the hemodialysis treatment utilizing an established vascular access.
- b. The administration of local anesthetic prior to cannulation of the peripheral vascular access site.
- c. Administration of prescribed dosages of heparin solution or saline solution utilized in the initiation and discontinuation of hemodialysis.

ITEM 4. Amend renumbered subrule 6.3(6), paragraphs "a" and "b," as follows:

- a. Community health. (Subrules 6.6(1) and 6.6(3) 6.6(4) are exceptions to the "proximate area" requirement.)
- b. School nursing. (~~Subrule~~ *Subrules* 6.6(2) and 6.6(3) ~~is an exception~~ *are exceptions* to the "proximate area" requirement.)

ITEM 5. Amend rule 655—6.5(152) by adding the following new subrules 6.5(3), 6.5(4) and 6.5(5):

6.5(3) A licensed practical nurse, who has completed a board-approved intravenous therapy certification course offered by a board-approved provider of continuing education, shall be permitted to perform, in addition to the functions set forth in subrule 6.3(4), procedures related to the expanded scope of administration of intravenous therapy in a licensed hospital, licensed skilled nursing facility and a certified end-stage renal dialysis unit. The board-approved course shall incorporate the responsibilities of the nurse when providing intravenous therapy to children, adults and elderly adults. When providing intravenous therapy, the licensed practical nurse shall be under the supervision of the registered nurse. Procedures which may be assumed if delegated by the registered nurse are as follows:

- a. Initiation of a peripheral intravenous line for continuous or intermittent therapy using an intermittent infusion device or a therapy cannula not to exceed three inches in length.
- b. Administration via peripheral lines, after the first dose has been administered by the registered nurse, of premixed electrolyte solutions or premixed vitamin solutions. The solutions must be prepackaged by the manufacturer or premixed and labeled by a registered pharmacist or registered nurse.
- c. Administration via peripheral lines, after the first dose has been administered by the registered nurse, of solutions containing potassium chloride that do not exceed 40 meq per liter and at a rate that does not exceed 10 meq per hour. The solutions must be prepackaged by the manufacturer or premixed and labeled by a registered pharmacist or registered nurse.
- d. Administration via peripheral lines, after the first dose has been administered by the registered nurse, of intravenous antibiotic solutions prepackaged by the manufacturer or premixed and labeled by a registered pharmacist or registered nurse.
- e. Maintenance of the patency of peripheral intravenous lines with heparin irrigation solution or normal saline irrigation solution.

6.5(4) Acts which may not be delegated by the registered nurse to the licensed practical nurse are as follows:

a. Administration of medication by bolus or IV push except maintenance doses of analgesics via a patient-controlled analgesia pump set at a lock-out interval.

b. Administration of blood and blood products; vasodilators, vasopressors, oxytoxics, chemotherapy, colloid therapy, total parenteral nutrition, hypertonic solutions, anticoagulants, antiarrhythmics, and thrombolytics.

c. Initiation of infusion pumps.

d. Provision of intravenous therapy to a client under the age of 12 or any client weighing less than 80 pounds, with the exception of those activities authorized in the limited scope of practice found in subrule 6.3(4).

e. Provision of intravenous therapy in any setting except licensed hospitals, licensed skilled nursing facilities and certified end-stage renal dialysis units with the exception of those activities authorized in the limited scope of practice found in subrule 6.3(4).

6.5(5) To be eligible for intravenous therapy certification, the licensee shall hold a current unrestricted Iowa license and documentation of 2080 hours of practice as a licensed practical nurse.

ITEM 6. Amend rule 655—6.6(152) by adopting the following new subrule 6.6(2) and renumbering subrules 6.6(2) and 6.6(3) as 6.6(3) and 6.6(4):

6.6(2) The licensed practical nurse shall be permitted to provide supportive and restorative care to a specific student in the school setting in accordance with the student's health plan when under the supervision of and as delegated by the registered nurse employed by the school district.

ARC §155A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF BEHAVIORAL SCIENCE EXAMINERS

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners hereby gives Notice of Intended Action to amend Chapter 30, "Licensure of Marital and Family Therapists and Mental Health Counselors," and Chapter 31, "Continuing Education and Disciplinary Process," Iowa Administrative Code.

These proposed amendments specify the requirements for mandatory licensure, limit the time applications will be kept on file, change the continuing education compliance period to cover the same time as the renewal compliance period, clarify the requirements for reinstatement of a lapsed license and establish a fee for reinstatement of a lapsed license.

Any interested person may make written comments on the proposed amendments not later than August 4, 1998, addressed to Judy Manning, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on August 4, 1998, from 8 to 10 a.m. in the Fourth Floor Conference Room, Iowa Department of Public Health, Lucas State Office Building, Des

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Moines, Iowa 50319-0075. 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 amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of Iowa Code section 17A.31.

The proposed amendments are intended to implement Iowa Code chapters 154D and 272C.

The following amendments are proposed.

ITEM 1. Amend rule 645—30.1(147,154D) by striking the following definitions:

~~“First qualifying degree” for a marital and family therapist is a master’s degree or doctoral degree as specified in subrule 30.3(1).~~

~~“First qualifying degree” for a mental health counselor is a master’s degree or doctoral degree as specified in subrule 30.4(1).~~

ITEM 2. Amend subrule 30.2(2) as follows:

~~30.2(2) The Completed application forms form fully completed per instructions on the forms shall be filed with the board of behavioral science examiners with all required supporting documents and fees at least 90 days before the date of the examination. The applicant must present proof of meeting all requirements of the relevant profession outlined in rule 30.3(147,154D) or 30.4(147,154D) before the applicant is eligible to sit for the examination. An applicant for a license to practice marital and family therapy or mental health counseling applying prior to July 1, 2000, shall not be required respectively to meet the examination requirement contained in Iowa Code section 154D.2, subsection 1, paragraph “c,” or subsection 2, paragraph “c,” if one of the following is met:~~

~~a. The applicant meets the requirements contained in Iowa Code section 154D.2, subsection 1, paragraphs “a” and “b,” or subsection 2, paragraphs “a” and “b,” respectively.~~

~~b. The applicant meets the requirements contained in Iowa Code section 154D.2, subsection 1, paragraph “a,” or subsection 2, paragraph “a,” and has 4,000 hours of employment experience in the practice of marital and family therapy or mental health counseling, respectively.~~

ITEM 3. Amend subrule 30.2(4) as follows:

~~30.2(4) If licensed in another state, the applicant must also present with the application an official copy of license and current renewal of license to practice marital and family therapy or mental health counseling issued by another state and an official statement issued by a licensing board or department that no disciplinary action is pending against the applicant and the applicant does not have a suspended or revoked license in another state. An individual licensed in another state seeking a license to practice marital and family therapy or mental health counseling in Iowa will be considered on an individual basis under the principle of interstate endorsement.~~

ITEM 4. Amend subrule 30.2(5) as follows:

~~30.2(5) Applicants who file incomplete applications will not be allowed to take the examination. Incomplete applications that have been on file in the board office for two years shall be considered invalid and shall be destroyed. The application fee is nonrefundable.~~

ITEM 5. Amend subrule 30.2(7) as follows:

~~30.2(7) An oral examination may be administered to: an applicant at the board’s discretion.~~

~~a. Any applicant seeking licensure under 30.3(1)“c” or 30.4(1)“c.”~~

~~b. Any applicant seeking licensure under rule 30.5(147,154D).~~

~~c. Any applicant seeking licensure under 30.3(1)“b” or 30.4(1)“b.”~~

~~d. Any other applicant at the board’s discretion.~~

ITEM 6. Adopt new subrule 30.2(8) as follows:

~~30.2(8) Transition provisions.~~

a. An applicant for a license to practice marital and family therapy or mental health counseling, applying prior to July 1, 2000, shall not be required respectively to meet the examination requirement contained in Iowa Code section 154D.2, subsection 1, paragraph “c,” or subsection 2, paragraph “c,” if one of the following is met:

(1) The applicant meets the requirements contained in Iowa Code section 154D.2, subsection 1, paragraphs “a” and “b,” or subsection 2, paragraphs “a” and “b,” respectively.

(2) The applicant meets the requirements contained in Iowa Code section 154D.2, subsection 1, paragraph “a,” or subsection 2, paragraph “a,” and has 4,000 hours of employment experience in the practice of marital and family therapy or mental health counseling, respectively.

b. Penalty fees otherwise incurred pursuant to Iowa Code section 147.10, and continuing education requirements applicable to the period prior to license reinstatement, shall be waived by the board for any previously licensed marital and family therapist or mental health counselor whose license has lapsed prior to July 1, 1998. Applicants with a lapsed license applying for reinstatement shall be required to complete a reinstatement application and pay a renewal fee and reinstatement fee pursuant to Iowa Code section 147.11 and section 147.80, subsections 21 and 22.

ITEM 7. Amend subrule 30.3(1) by adopting the following new paragraph “c”:

c. An oral examination may be administered to an applicant at the board’s discretion.

ITEM 8. Amend subrule 30.3(2) as follows:

~~30.3(2) Clinical experience requirements. The applicant must document a minimum of two years or its equivalent of full-time supervised professional work experience in marital and family therapy following receipt of the first qualifying graduate degree completion of the practicum and all graduate coursework, with exception of the thesis. This experience must include successful completion of at least 200 hours of supervision concurrent with 1,000 hours of marital and family therapy conducted in face-to-face contact with couples and families. Only supervised clinical contact may be credited for this requirement. At least 100 of the 200 hours of supervision must be individual supervision.~~

ITEM 9. Amend subrule 30.4(1) by adopting the following new paragraph “c”:

c. An oral examination may be administered to an applicant at the board’s discretion.

ITEM 10. Amend subrule 30.4(2), introductory paragraph, as follows:

~~30.4(2) Clinical experience requirements. The applicant must document a minimum of two years or its equivalent of full-time supervised professional work experience in mental health counseling following receipt of the first qualifying~~

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

~~graduate degree completion of the practicum and all graduate coursework, with exception of the thesis.~~

ITEM 11. Amend subrule 30.4(2), paragraph "c," as follows:

c. The applicant must document a minimum of two years or its equivalent of full-time supervised professional work experience in mental health counseling following ~~receipt of the first qualifying graduate degree completion of the practicum and all graduate coursework, with exception of the thesis.~~ This experience must include successful completion of at least 200 hours of supervision concurrent with 1,000 hours of mental health counseling conducted in face-to-face contact with individuals or groups. Only supervised clinical contact may be credited for this requirement. At least 100 of the 200 hours of supervision must be individual supervision.

ITEM 12. Amend subrule 30.5(3), paragraph "b," as follows:

b. A certified copy of the scores from the appropriate professional examination to be sent to the board. *An applicant for a license to practice marital and family therapy or mental health counseling, applying prior to July 1, 2000, shall not be required respectively to meet the examination requirement contained in Iowa Code section 154D.2, subsection 1, paragraph "c," or subsection 2, paragraph "c," if one of the following is met:*

(1) *The applicant meets the requirements contained in Iowa Code section 154D.2, subsection 1, paragraphs "a" and "b," or subsection 2, paragraphs "a" and "b," respectively.*

(2) *The applicant meets the requirements contained in Iowa Code section 154D.2, subsection 1, paragraph "a," or subsection 2, paragraph "a," and has 4,000 hours of employment experience in the practice of marital and family therapy or mental health counseling, respectively.*

ITEM 13. Amend subrule 30.5(6) as follows:

30.5(6) An applicant shall submit the required fee in the form of a check or money order made payable to the Board of Behavioral Science Examiners. *The application fee is non-refundable.*

ITEM 14. Amend subrule 30.6(1) as follows:

30.6(1) The biennial license renewal period shall extend from October 1 of each even-numbered year until September 30 of the next even-numbered year ~~beginning October 1, 1994. Beginning October 1, 1998, the~~ continuing education period shall extend from ~~July 1~~ *October 1* of the each even-numbered year until ~~June 30~~ *September 30* of the next even-numbered year.

ITEM 15. Amend subrule 30.6(2) as follows:

30.6(2) Licensees who have met continuing education requirements for the biennium and wish to have their licenses renewed shall complete the board-approved renewal form and the board-approved continuing education report and return them to professional licensure, department of public health by ~~July 31~~ *September 30* (even year) beginning ~~July 31, 1996~~ *September 30, 2000*.

ITEM 16. Amend subrule 30.6(3) as follows:

30.6(3) Late filing. Licensees who fail to submit the application for renewal and complete and appropriately document *continuing* education hours by September 30 (even year), *beginning September 30, 2000*, shall be required to pay a late filing fee and may be subject to an audit of their continuing education report.

ITEM 17. Amend subrule 30.6(4) as follows:

30.6(4) Licensees who have not fulfilled the requirements for license renewal and who have not placed the license on inactive status by ~~September 30~~ *October 31* (even year) for the licensure biennium will have a lapsed license and shall not engage in the practice of marital and family therapy or mental health counseling as a licensed practitioner.

ITEM 18. Amend rule 645—30.8(147,154D), introductory paragraph, as follows:

~~645—30.8(147,154D) Reinstatement of inactive practitioners.~~ Inactive practitioners who have ~~not~~ been granted a certificate of exemption shall, prior to engaging in the practice of the profession as a licensed provider in the state of Iowa, satisfy the following requirements for reinstatement:

ITEM 19. Adopt new subrule 30.8(5) as follows:

30.8(5) Penalty fees otherwise incurred pursuant to Iowa Code section 147.10, and continuing education requirements applicable to the period prior to license reinstatement, shall be waived by the board for any previously licensed marital and family therapist or mental health counselor whose license has lapsed prior to July 1, 1998. Applicants with a lapsed license applying for reinstatement shall be required to complete a reinstatement application and pay a renewal fee and reinstatement fee pursuant to Iowa Code section 147.11 and section 147.80, subsections 21 and 22.

ITEM 20. Rescind rule 645—30.9(147,154D) and adopt the following new rule in lieu thereof:

~~645—30.9(147,154D) Reinstatement of lapsed license.~~ Those persons who have not placed their licenses on inactive status and have allowed their licenses to lapse shall satisfy the following requirements for reinstatement prior to practicing as a mental health counselor or marital and family therapist in the state of Iowa:

30.9(1) Submit written application for reinstatement to the board upon forms provided by the board.

30.9(2) Furnish with the application evidence of completion of all past due continuing education requirements to a maximum of five renewal periods.

30.9(3) Pay all past due renewal fees, penalty fees, the reinstatement fee and the current biennial license fee.

30.9(4) The board may require successful completion of an oral interview prior to reinstatement.

30.9(5) Those persons whose license has lapsed for more than one year shall also be required to complete the appropriate professional examination.

30.9(6) Penalty fees otherwise incurred pursuant to Iowa Code section 147.10, and continuing education requirements applicable to the period prior to license reinstatement, shall be waived by the board for any previously licensed marital and family therapist or mental health counselor whose license has lapsed prior to July 1, 1998. Applicants with a lapsed license applying for reinstatement shall be required to complete a reinstatement application and pay a renewal fee and reinstatement fee pursuant to Iowa Code section 147.11 and section 147.80, subsections 21 and 22.

ITEM 21. Amend subrule 30.10(5) as follows:

30.10(5) Penalty fee for failure to complete the required continuing education by ~~June~~ *September 30* of even-numbered years is \$50. Failure to complete and return the continuing education report (~~Form G~~) *form* by ~~July~~ *October 31* of even-numbered years is \$25.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 22. Adopt new subrule 30.10(6) as follows:

30.10(6) Reinstatement fee following inactive exemption or lapsed license is \$100.

ITEM 23. Adopt new subrule 30.10(11) as follows:

30.10(11) Fee for a returned check is \$15.

ITEM 24. Amend subrule 31.1(3) as follows:

31.1(3) *Beginning October 1, 2000, The the* continuing education compliance period shall be each biennium beginning *July October* 1 of the even-numbered year to *June September* 30 of the next even-numbered year. During the continuing education compliance period, attendance at approved continuing education programs may be used as evidence of fulfilling the continuing education requirement for the subsequent biennial license renewal period beginning October 1. The biennial license renewal period shall extend from October 1 of each even-numbered year until September 30 of the next even-numbered year.

ITEM 25. Amend subrule 31.4(1) as follows:

31.4(1) A report of continuing education activities shall be submitted on a board-approved form with the application for renewal by September 30 of the even-numbered years beginning September 30, 1996. *Beginning September 30, 2000, All all* continuing education activities submitted must be completed by *June September* 30 of the even-numbered year as specified in 645—subrules 30.6(1) and 31.1(3) or a late fee will be assessed as provided in 645—subrule 30.10(5).

ITEM 26. Amend subrule 31.8(4) as follows:

31.8(4) For mental health counselors, *violation of the* code of conduct for mental health counselors.

ARC §156A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

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 155.9, the Board of Examiners for Nursing Home Administrators hereby gives Notice of Intended Action to amend Chapter 141, "Licensure of Nursing Home Administrators," Iowa Administrative Code.

These proposed amendments provide for the approval of graduates of college or university programs that are approved by the National Association of Boards of Licensure of Long Term Care Administrators (NAB) as meeting the educational qualifications for licensure, provide a new exception to the minimum education requirements for an individual who is certified as an administrator in good standing with the American College of Health Care Administrators (ACHCA), limit the period of appointment as a provisional administrator to no more than six months, establish circumstances under which approval may be granted for a provi-

sional administrator, and establish the Board's right to withdraw approval of a provisional appointment.

Any interested person may make written comment on the proposed amendments prior to August 10, 1998, addressed to Sharon Dozier, Bureau of Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

A public hearing will be held on August 10, 1998, from 1 to 4 p.m. on the Iowa Communications Network (ICN), at the following locations: ICN Classroom, 3rd Floor East, Room 326, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa (origination site); Eastern Iowa Community College, ICN Classroom 1, Room 0210, 500 Belmont Road, Bettendorf, Iowa; Northern Trails AEA 2, State Room, 9184B 265th Street, Clear Lake, Iowa; Iowa Western Community College, Bluffs 2, Looft Hall, 2700 College Road, Council Bluffs, Iowa; Western Iowa Tech Community College, ICN Classroom 1, Building A, Room 925, 4647 Stone Avenue, Sioux City, Iowa; and Hawkeye Community College, Room 110, Tama Hall, 1501 East Orange Road, Waterloo, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. The Board requests that a written copy of all oral comments presented at the hearing on that date be mailed to the Bureau of Professional Licensure.

These amendments are intended to implement Iowa Code chapters 155 and 272C.

The following amendments are proposed.

ITEM 1. Amend subrule 141.3(2), paragraph "a," as follows:

a. Each applicant must establish to the satisfaction of the board successful completion of a baccalaureate or postbaccalaureate degree in health care administration and approved by the board, from a college or university currently accredited by *one of the following*: a regional accrediting agency ~~or~~, an organization affiliated with the National Commission on Accrediting (Council of Post-secondary Accreditation), ~~and~~ or the National Association of Boards of Examiners of Long Term Care Administrators.

ITEM 2. Amend subrule 141.3(2), paragraph "b," as follows:

b. ~~If not obtained as part of~~ *In lieu of* 141.3(2)"a," a minimum of:

- (1) A baccalaureate degree from a college or university currently accredited by a regional accrediting agency or organization affiliated with the National Commission on Accrediting (Council of Post-secondary Accreditation); and
- (2) 10 semester hours of business management, accounting or business law or any combination thereof; and
- (3) 6 semester hours of gerontology; *and*
- (4) 12 semester hours in health care administration including but not limited to the areas of organizational management, regulatory management, personnel management, resident care management, environmental services, management, and financial management; *and*
- (5) 12 semester hours of long-term health care practicum (720 clock hours). There are nine areas of practicum requiring 80 clock hours each: social services; dietary; legal aspects and government organizations; nursing; environmental services; activities/community resources; business administration; administrative organization; human resource management. Substitution of one year of long-term health care administration experience supervised by a licensed administrator may be allowed at the discretion of the board.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 3. Amend subrule 141.3(3) as follows:

~~141.3(3) Exceptions to minimum education requirements. Any individual holding a valid Iowa license as a nursing home administrator as of January 1, 1999, one of the following is deemed to meet the requirements of this rule:~~

- ~~a. A valid Iowa license as a nursing home administrator as of January 1, 1999, or~~
- ~~b. Certification as an administrator in good standing with the American College of Health Care Administrators.~~

ITEM 4. Rescind rule 645—141.7(155) and adopt the following new rule in lieu thereof:

645—141.7(155) Provisional license. Effective January 1, 1999, under certain limited circumstances, and only upon the filing of an application requesting approval, a provisional administrator may be appointed to serve as the administrator of a nursing home. A provisional administrator is considered a temporary appointment, and the person appointed may serve as an administrator for a period of time not to exceed six months. The six-month appointment runs from the date approved by the board, and the months in service do not need to be consecutive. The person serving as a provisional administrator shall not be permitted to serve more than a total of six months.

141.7(1) The limited circumstances under which the request for a provisional appointment shall be granted include the inability of the licensed administrator to perform the administrator's duties, the death of the licensed administrator or circumstances which prevent the immediate transfer of the licensed administrator's duties to another licensed administrator.

141.7(2) Applications for a provisional appointment shall be in writing on a form prescribed by the board. Persons applying shall meet the following minimum qualifications:

- a. Be at least 18 years of age.
- b. Be employed on a full-time basis of no less than 32 hours per week to perform the duties of the nursing home administrator.
- c. Be knowledgeable of the nursing home administrators' domains of practice including resident care management, personnel management, financial management, environmental management, regulatory management and organizational management.

d. Be without history of unprofessional conduct or denial or disciplinary action against a license to practice nursing home administration or any other profession by any lawful licensing authority for reasons outlined in 141.12(147, 155, 272C).

141.7(3) The board expressly reserves the right to withdraw approval of a provisional appointment. Withdrawal of approval shall be based on information or circumstances warranting such action.

ARC 8154A

PROFESSIONAL LICENSURE
DIVISION[645]

BOARD OF PODIATRY EXAMINERS

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry Examiners hereby gives Notice of Intended Action to amend Chapter 220, "Podiatry Examiners," Iowa Administrative Code.

This proposed amendment changes the requirements for continuing education standards.

Any interested person may make written comments on the proposed amendment not later than August 4, 1998, addressed to Judy Manning, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on August 4, 1998, from 12 noon to 2 p.m. in the Fourth Floor Conference Room, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. 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 rule.

The Board has determined that the amendment will have no impact on small business within the meaning of Iowa Code section 17A.31.

The proposed amendment is intended to implement Iowa Code section 147.76 and chapters 149 and 272C.

The following amendment is proposed.

Rescind rule 645—220.102(272C) and insert the following new rule in lieu thereof:

645—220.102(272C) Standards for approval.

220.102(1) Continuing education is that education which is obtained by a licensee in order to maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit.

a. It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and

b. It pertains to common subjects or other subject matters which integrally relate to the practice of podiatry, such as scientific-oriented material or risk management. No office management courses will be accepted by the board of podiatry examiners; and

c. It is conducted by individuals who have a special education, training and experience by reason of which said individuals would be considered experts concerning the subject matter of the program and is accompanied by a paper, manual or written outline which substantively pertains to the subject matter of the program. Continuing medical education credits will not be awarded unless the physician is in physical attendance; and

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

d. It fulfills stated program goals or objectives, or both; and

e. It provides proof of attendance to include the following:

- (1) Date, place, course title, presenter(s).
- (2) Number of program contact hours.
- (3) Official signature of program sponsor.

220.102(2) Continuing education credit may be granted for the following:

a. An educational activity in which participants and faculty are present at the same time and attendance can be verified. Such activities include lectures, conferences, focused seminars, clinical and practical workshops, simultaneous live satellite broadcasts and teleconferences.

b. A maximum of 20 hours of credit per biennium will be given for viewing videotaped presentations if the following criteria are met:

- (1) There is an approved sponsoring group or agency.
- (2) There is a facilitator or program official present.
- (3) The program official shall not be the only attendee.
- (4) The program meets all the criteria of 220.102(1).

c. Computer-assisted instructional courses or programs pertaining to patient care and the practice of podiatric medicine and surgery will be considered for a maximum of 20 hours of credit per biennium. These courses and programs must be approved by the American Podiatric Medical Association or its affiliates and have a certificate of completion that includes the following information:

- (1) Date course/program was completed.
- (2) Title of course/program.
- (3) Number of course/program contact hours.
- (4) Official signature of course/program sponsor.

ARC §153A

PROFESSIONAL LICENSURE
DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Athletic Training Examiners hereby gives Notice of Intended Action to amend Chapter 350, “Athletic Trainer,” Chapter 355, “Petitions for Rule Making,” Chapter 356, “Declaratory Rulings,” Chapter 357, “Agency Procedure for Rule Making,” and Chapter 358, “Public Records and Fair Information Practices,” Iowa Administrative Code.

The amendments provide language converting the existing advisory board for athletic training into full regulatory examining board status.

Any interested person may make written comments on the proposed amendments on or before August 4, 1998, addressed to Roxanne Sparks, Bureau of Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

A public hearing will be held on August 5, 1998, from 1 to 3 p.m. in the Fourth Floor Conference Room, Side 1, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, per-

sons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of Iowa Code section 17A.31C.

The amendments are intended to implement Iowa Code chapter 147 as amended by 1998 Iowa Acts, Senate File 2269, and chapters 152D and 272C.

The following amendments are proposed.

ITEM 1. Amend rule 645—Chapter 350, title, as follows:

CHAPTER 350
ATHLETIC TRAINER TRAINING

ITEM 2. Amend rule 645—350.1(152D), definitions of “Administrator,” “Board,” “Department,” and “Director,” as follows:

“Administrator” means the administrator of the ~~athletic trainer advisory board Iowa board of athletic training examiners~~ office.

“Board” means the ~~athletic trainer advisory board Iowa board of athletic training examiners~~.

“Department” means the ~~Iowa department of public health~~.

“Director” means the ~~director of the Iowa department of public health~~.

ITEM 3. Amend subrule 350.2(2) as follows:

350.2(2) Information may be obtained by writing to Administrator, *Iowa Board of Athletic Training Examiners Trainer Advisory Board*, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. All official correspondence shall be in writing and directed to the board address.

ITEM 4. Amend subrule 350.3(1) as follows:

350.3(1) The ~~athletic trainer advisory board Iowa board of athletic training examiners~~ consists of seven members appointed by the governor and confirmed by the senate. The members of the board shall include three licensed athletic trainers, three physicians licensed to practice medicine ~~in all its branches and surgery~~, and one public member ~~not licensed to practice athletic training or medicine and surgery who shall represent the general public~~. Members shall serve three-year terms. A quorum shall consist of a majority of the members of the board.

ITEM 5. Rescind and reserve rule 645—350.4(152D).

ITEM 6. Rescind and reserve rule 645—350.5(152D).

ITEM 7. Amend subrule 350.6(2) as follows:

350.6(2) Successful completion of the National Athletic Trainers Association Board of Certification examination. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted to the ~~athletic trainer advisory board Iowa board of athletic training examiners~~.

ITEM 8. Amend subrule 350.7(3) as follows:

350.7(3) Each application shall be accompanied by a check or money order in the amount required payable to the *Iowa Board of Athletic Training Examiners Trainer Advisory Board*.

ITEM 9. Amend subrule 350.10(4) as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

350.10(4) The ~~department~~ *board* reserves the right to audit documentation of physician supervision with license renewal.

ITEM 10. Adopt new subrule 350.11(7) as follows:

350.11(7) Fee for a returned check is \$15.

ITEM 11. Rescind rule 645—350.12(272C) and adopt the following new rule in lieu thereof:

645—350.12(272C) License denial.

350.12(1) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing upon the board not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing as outlined herein shall specifically delineate the facts to be contested and determined at hearing.

350.12(2) If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in rule 350.28(272C).

ITEM 12. Amend subrule **350.14(2)**, paragraph “e,” as follows:

e. The ~~provider~~ *sponsor* registers annually with the ~~department~~ *board* and provides proof of continued compliance with paragraphs “a” to “d” above.

ITEM 13. Amend subrules 350.15(1) to 350.15(4) as follows:

350.15(1) An organization, institution, agency, or individual which desires to be designated as an approved ~~provider~~ *sponsor* of continuing education activities shall apply on a form provided by the board. If approved by the ~~department~~ *board upon recommendation from the board*, such organization, institution, agency, or individual shall be designated as an approved ~~provider~~ *sponsor* of continuing education activities; and the activities of such an approved ~~provider~~ *sponsor* which are relevant to the practice of athletic training shall be deemed automatically approved for continuing education credit.

350.15(2) All approved ~~providers~~ *sponsors* shall issue a certificate of attendance to each licensee who attends a continuing education activity. The certificate shall include the sponsor name and number; date of program; name of participant; total number of hours excluding breaks and meals; program title and presenter; and program site.

350.15(3) All ~~providers~~ *sponsors* shall keep on record for at least ~~two~~ *four* years a list of licensees attending the continuing education program and a content outline of that program. Upon request of the ~~department~~ *board*, these records shall be submitted to the ~~department~~ *board* within 30 calendar days of the request.

350.15(4) The ~~department~~ *board upon recommendation of the board*, may at any time reevaluate an approved ~~provider~~ *sponsor*. If, after reevaluation, the ~~department~~ *board* finds there is ~~basis~~ *cause* for ~~consideration~~ of revocation of the approval of an approved ~~provider~~ *sponsor*, the ~~department~~ *board* shall give notice by ~~ordinary~~ *certified* mail to that sponsor of ~~the revocation~~. ~~a hearing on possible revocation at least 30 days prior to the hearing~~. ~~The decision of the department, upon recommendation by the board, is final~~. ~~The sponsor shall have the right to a hearing regarding the revocation~~. ~~The request must be sent within 20 days after receipt of the notice of revocation~~. ~~The hearing shall be held within 90 days after the receipt of the request for hearing~~. ~~The~~

~~board shall give notice by certified mail to the sponsor of the date set for the hearing at least 30 days prior to the hearing. The hearing shall be conducted by the board. The final decision shall be rendered by the board.~~

ITEM 14. Amend rule 645—350.17(272C) as follows:

645—350.17(272C) Disability or illness. The ~~department, on advice from the board,~~ may, in individual cases involving disability or illness, grant a waiver of the continuing education requirements for a period of up to one calendar year. A written request for waiver shall be submitted by the licensee and shall be accompanied by acceptable documentation.

ITEM 15. Amend rule 645—350.18(272C) as follows:

645—350.18(272C) Hearings—continuing education. In the event of denial, in whole or in part, of any application for approval of continuing education program ~~of or~~ credit for continuing education activity, the applicant or licensee shall have the right to request a hearing. The request must be sent within 20 days after receipt of the notification of denial. The hearing shall be held within 90 days after the receipt of the request for hearing. The hearing shall be conducted by the ~~department~~ *board*.

ITEM 16. Amend rule 645—350.19(272C) as follows:

645—350.19(272C) Inactive licensure. A licensee who is not engaged in the practice of athletic training in the state of Iowa residing within or without the state of Iowa may be granted a waiver of compliance upon written application to the ~~department~~ *board*. The application shall contain a statement that the licensee will not hold oneself out to the public as a licensed athletic trainer during the time the license is inactive. The application for waiver of compliance shall be submitted upon a form provided by the board.

ITEM 17. Amend rule 645—350.20(272C) as follows:

645—350.20(272C) Reinstatement of inactive license. The ~~department~~ *board* may reinstate an inactive license upon completion of all of the following:

1. A written request for reinstatement;
2. Payment of the current renewal fee; and
3. Completion of continuing education requirements for the period of time the license was inactive.

ITEM 18. Amend subrule 350.21(1) as follows:

350.21(1) A license shall be considered lapsed if not renewed within 30 days of renewal date. If the license lapses, the practice of holding oneself out as licensed to practice athletic training must cease until a license is reinstated by the ~~department~~ *board*.

ITEM 19. Rescind rule 645—350.22(272C) and adopt the following new rule in lieu thereof.

645—350.22(272C) Complaints. A complaint regarding a licensed athletic trainer shall be made in writing to the Iowa Board of Athletic Training Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, or shall be made upon the board's own motion pursuant to evidence received by the board. The complaint shall include the complainant's name, address, and telephone number, the licensee's name, and a statement of the facts which apprises the board of the allegations against the licensee.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 20. Rescind rule 645—350.23(272C) and adopt the following new rule in lieu thereof:

645—350.23(272C) Report of malpractice claims or actions. Each licensee shall report to the board every adverse judgment in a malpractice action to which the licensee is a party and every settlement of a claim against a licensee alleging malpractice. A copy of the judgment or settlement must be filed with the board within 30 days from the date of said judgment or settlement.

ITEM 21. Rescind rule 645—350.24(272C) and adopt the following new rule in lieu thereof:

645—350.24(272C) Investigation of complaints or malpractice claims.

350.24(1) Investigator. The chair of the board may assign an investigation of a complaint or malpractice claim to a member of the board who will be known as the investigating board member or may request the state department of inspections and appeals to investigate the complaint or malpractice claim. The investigating board member or employee of the department of inspections and appeals may request information from any peer review committee which may be established to assist the board. The investigating board member or employee of the department of inspections and appeals may consult with an assistant attorney general concerning the investigation. A board member shall not preside at a contested case proceeding if the board member personally investigated the complaint.

350.24(2) Informal discussion. In the course of conducting or directing an investigation, the board may request the licensee to attend a voluntary informal discussion before a board committee. The licensee is not required to attend or participate in the informal discussion. An informal discussion constitutes a part of the board's investigation of a pending disciplinary case, and the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing. However, the board members who participate in the informal discussion shall not preside at a contested case proceeding.

ITEM 22. Rescind rule 645—350.25(272C) and adopt the following new rule in lieu thereof:

645—350.25(272C) Methods of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revoke license.
2. Suspend license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the engaging in specified procedures, methods, or acts.
4. Place a license on probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000 which may be imposed for any violation of 645—350.26(272C).
9. Issue a citation and warning.
10. Impose other sanctions allowed by law as may be appropriate.

ITEM 23. Amend rule 645—350.26(272C), introductory paragraph, and adopt new subrules 350.26(20) to 350.26(25) as follows:

645—350.26(272C) Grounds for discipline. The ~~department~~ *board* may impose any of the disciplinary sanctions

provided in rule 645—350.25(272C) when the ~~department~~ *board* determines that the licensee is guilty of any of the following acts or offenses:

350.26(20) Failure to maintain timely and adequate records.

350.26(21) An athletic trainer shall not engage in sexual misconduct. Sexual misconduct includes the following:

a. Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a patient.

b. Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with a patient.

350.26(22) Failure to adequately supervise personnel.

350.26(23) Violating a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

350.26(24) Obtaining third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes, but is not limited to:

a. Reporting incorrect treatment dates for the purpose of obtaining payment;

b. Reporting charges for services not rendered;

c. Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or

d. Aiding a patient in fraudulently obtaining payment from a third-party payer.

350.26(25) Violation of any board statute or administrative rule.

ITEM 24. Rescind rule 645—350.27(272C) and adopt the following new rule in lieu thereof:

645—350.27(272C) Alternative procedures and settlement.

350.27(1) Informal settlement—parties.

a. A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the state of Iowa represented by the prosecuting attorney, the respondent, or the board. The board shall designate a board member with authority to negotiate on behalf of the board.

b. The full board shall not be involved in negotiation until presentation of a final, written, signed informal settlement to the full board for approval.

350.27(2) Informal settlement—waiver of notice and opportunity to be heard. Consent to negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board.

350.27(3) Informal settlement—board approval. All informal settlements are subject to approval of the board. If the board fails to approve the informal settlement, it shall be of no force or effect to either party.

ITEM 25. Rescind rule 645—350.28(272C) and adopt the following new rule in lieu thereof:

645—350.28(272C) Disciplinary hearings.

350.28(1) Notice of hearing. If there is a finding of probable cause for a disciplinary hearing, the board shall prepare the notice of hearing and transmit the notice of hearing to the respondent by certified mail, return receipt requested, at

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least 20 days before the date of the hearing. If the licensee has absented or removed from the state, the notice of hearing and statement of charges shall be so served at least 20 days before the date of the hearing, wherever the licensee may be found. If the whereabouts of the licensee are unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by the rules.

350.28(2) Statement of charges. The statement of charges shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged. The statement of charges shall specify the statute(s) and rule(s) which are alleged to have been violated.

350.28(3) Legal representation. Every statement of charges shall be reviewed by the office of the attorney general, which shall be responsible for the legal representation of the public interest in all proceedings before the board.

350.28(4) Continuances. A party has no automatic right to a continuance or delay of the disciplinary hearing. A party may request a continuance of the board no later than seven days prior to the date set for hearing. Within seven days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating, or emergency circumstances. The board administrator shall have the authority to grant a continuance after consultation, if needed, with the chairperson of the board. A board member shall not be contacted in person, by mail, by telephone, or by any other means by a party seeking a continuance.

350.28(5) Prehearing conference. The presiding officer or hearing officer either on the presiding officer's or the hearing officer's own motion or at the request of either party may hold a prehearing conference which shall be scheduled not less than two days prior to the hearing. Notice of the date, time, and place of the prehearing conference shall be given to each party by ordinary mail.

350.28(6) Failure by respondent to appear. If a respondent, upon whom proper notice of hearing has been served, fails to appear at the hearing, the board may proceed with the conduct of the hearing, and the respondent shall be bound by the results of such hearing to the same extent as if the respondent were present.

350.28(7) Hearing procedure. To the extent not addressed in this chapter, the board adopts the rules of the department of public health found in 641—Chapter 173, Iowa Administrative Code, as the procedure for hearing before the board.

350.28(8) Application for rehearing. The filing of an application for rehearing is not necessary to exhaust administrative remedies. Within 20 days after the issuance of a final decision, any party may file an application for rehearing. The application shall state the specific grounds for rehearing and the relief sought and copies thereof shall be timely mailed to all other parties. The application shall be deemed denied if not granted with 20 days after service on the board. Upon rehearing, the board shall consider facts not presented in the original hearing only if either:

- a. Such facts arose subsequent to the original proceedings; or
- b. The party offering such evidence could not reasonably have provided such evidence at the original proceedings; or
- c. The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

350.28(9) Appeal. Any appeal to the district court from disciplinary action of the board or denial of a license shall be

taken within 30 days from the date of issuance of the decision by the board.

350.28(10) Transcript. The party who appeals the decision of the board to district court shall pay the cost of the preparation of a transcript of the administrative hearing for the district court.

350.28(11) Publication of decisions. Final decisions of the board relating to disciplinary proceedings shall be transmitted to the appropriate professional association, the news media and employer.

350.28(12) Hearing open to the public. A hearing of the board concerning licensees or an applicant shall be open to the public unless the applicant or licensee or applicant or licensee's attorney requests in writing that the hearing be closed to the public.

350.28(13) Reinstatement. Any person whose license to practice has been revoked or suspended may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the license is permanently revoked.

a. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

b. All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for reinstatement of the license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the application for reinstatement shall be subject to the same rules of procedure as other cases before the board.

c. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

d. An order denying or granting reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law. The order shall be published as provided in this rule.

350.28(14) Voluntary surrender. The board may accept the voluntary surrender of a license if accompanied by a written statement of intention. A voluntary surrender, when accepted in connection with a disciplinary proceeding, has the same force and effect as an order of revocation.

ITEM 26. Rescind rule 645—350.29(272C) and adopt the following new rule in lieu thereof:

645—350.29(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to assuring the citizens of this state a high standard of professional care.
2. The facts of the particular violation.
3. Any extenuating facts or other countervailing considerations.
4. The number of prior violations or complaints.
5. The seriousness of prior violations or complaints.
6. Whether remedial action has been taken.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

ITEM 27. Rescind rule 645—350.30(272C) and adopt the following new rule in lieu thereof:

645—350.30 (272C) Peer review committees.

350.30(1) A complaint may be assigned to a peer review committee for review, investigation, and report to the board.

350.30(2) The board shall determine which peer review committee will review a case and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the board.

350.30(3) Members of the peer review committees shall not be liable for acts, omissions, or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

350.30(4) The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code chapter 272C.

ITEM 28. Rescind rule 645—350.31(272C) and adopt the following new rule in lieu thereof.

645—350.31(272C) Disciplinary hearings—fees and costs.

350.31(1) The board may charge a fee not to exceed \$75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board. An order assessing a fee shall be included as part of the board's final decision. The order shall direct the licensee to deliver payment directly to the bureau of professional licensure as provided for in subrule 350.31(8).

350.31(2) In addition to this fee, the board may also recover from the licensee the cost for transcripts, witness fees and expenses, depositions, and medical examination fees. The board may assess these costs in the manner it deems most equitable.

350.31(3) The cost of the transcript includes the transcript of the original contested case hearing before the board, as well as transcripts of any other formal proceedings before the board which occur after the notice of the contested case hearing is filed.

350.31(4) Witness fees and expenses.

a. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing.

b. The board may assess to the licensee the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa.

c. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under this rule, the provisions of Iowa Code section 625.2 do not apply.

d. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under this rule, the provisions of Iowa Code section 625.2 do not apply.

e. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.

f. The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not

exceed the reimbursement employees of the state of Iowa receive for these expenses under the department of revenue and finance guidelines in effect January 1, 1994.

350.31(5) Depositions.

a. The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

b. Deposition costs for purposes of allocating costs against a licensee include only those deposition costs incurred by the state of Iowa. The licensee is directly responsible for the payment of deposition costs incurred by the licensee.

c. If the deposition is that of an expert witness, the deposition costs include a reasonable expert witness fee. This fee shall not exceed the expert's customary hourly or daily fee, and shall include the time reasonably and necessarily spent in connection with such depositions, including the time spent in travel to and from the deposition, but excluding time spent in preparation for that deposition.

350.31(6) Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the designated staff person shall certify any reimbursable costs to the board. The designated staff person shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on each party of record at the time of filing.

350.31(7) A final decision of the board imposing disciplinary action against a licensee shall include the amount of any fee assessed, which shall not exceed \$75. If the board also assesses costs against the licensee, the final decision shall include a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the licensee.

350.31(8) All fees and costs assessed pursuant to this chapter shall be in the form of a check or money order made payable to the State of Iowa and delivered by the licensee to the bureau of professional licensure.

350.31(9) Failure of a licensee to pay a fee and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

ITEM 29. Rescind and reserve rule 645—350.32(272C).

ITEM 30. Amend 645—Chapter 355 as follows:

CHAPTER 355
PETITIONS FOR RULE MAKING

The department Iowa board of athletic training examiners hereby adopts the petitions for rule making segment of the Uniform Rules which is printed in the first volume of the Iowa Administrative Code, with the following amendments.

645—355.1(17A) Petition for rule making. In lieu of the words "(designate office)", insert "~~Athletic Trainer Advisory Board Administrator~~ Administrator, Iowa Board of Athletic Training Examiners, Bureau of Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075."

In lieu of the word "(AGENCY NAME)", the heading of the petition should read:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

BEFORE THE
DEPARTMENT OF PUBLIC HEALTH
IOWA BOARD OF ATHLETIC TRAINING EXAMINERS

645—355.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the ~~Athletic Trainer Advisory Board~~ Administrator, *Iowa Board of Athletic Training Examiners, Bureau of Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.*

These rules are intended to implement Iowa Code section 17A.7.

ITEM 31. Amend **645—Chapter 356** as follows:

CHAPTER 356
DECLARATORY RULINGS

The ~~department~~ *Iowa board of athletic training examiners* hereby adopts the declaratory rulings segment of the Uniform Rules which is printed in the first volume of the Iowa Administrative Code, with the following amendments:

645—356.1(17A) Petition for declaratory ruling. In lieu of the words “(designate office)”, insert “~~Athletic Trainer Advisory Board~~ Administrator, *Iowa Board of Athletic Training Examiners, Bureau of Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.*”

In lieu of the words “(AGENCY NAME)”, the heading on the petition should read:

BEFORE THE
DEPARTMENT OF PUBLIC HEALTH
IOWA BOARD OF ATHLETIC TRAINING EXAMINERS

645—356.3(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, insert “~~the Athletic Trainer Advisory Board~~ Administrator, *Iowa Board of Athletic Training Examiners, Bureau of Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.*”

These rules are intended to implement Iowa Code section 17A.9.

ITEM 32. Amend **645—Chapter 357**, introductory paragraph and rules 645—357.3(17A), 357.5(17A), 357.6(17A), 357.11(17A) and 357.13(17A), as follows:

CHAPTER 357
AGENCY PROCEDURE FOR RULE MAKING

The ~~department~~ *Iowa board of athletic training examiners* hereby adopts the agency procedure for rule making segment of the Uniform Rules which is printed in the first volume of the Iowa Administrative Code, with the following amendments:

645—357.3(17A) Public rule-making docket.

357.3(2) Anticipated rule making. In lieu of the words “(commission, board, council, director)”, insert “~~Department of Public Health, Iowa Board of Athletic Trainer Advisory Board Training Examiners Office.~~”

645—357.5(17A) Public participation.

357.5(1) Written comments. In lieu of the words “(identify office and address)”, insert “~~Iowa Board of Athletic Trainer Advisory Board Training Examiners Office, Bureau of Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.~~”

645—357.6(17A) Regulatory flexibility analysis.

357.6(3) Mailing list. In lieu of the words “(designate office)”, insert “~~Iowa Board of Athletic Trainer Advisory Board Training Examiners Office, Bureau of Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.~~”

645—357.11(17A) Concise statement of reasons.

357.11(1) General. In lieu of the words “(specify the office and address)”, insert “~~Iowa Board of Athletic Trainer Advisory Board Training Examiners Office, Bureau of Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.~~”

645—357.13(17A) Agency rule-making record.

357.13(2) Contents.

c. In lieu of the words “(agency head)”, insert “~~Iowa Board of Athletic Trainer Advisory Board Training Examiners Office, Iowa Department of Public Health.~~”

These rules are intended to implement Iowa Code section 17A.4.

ITEM 33. Amend **645—Chapter 358** as follows:

CHAPTER 358
PUBLIC RECORDS AND
FAIR INFORMATION PRACTICES

645—358.1(22) Adoption by reference. The ~~department~~ *board* hereby adopts 641—Chapter 175, “Public Records and Fair Information Practices,” as 645—Chapter 358.

These rules are intended to implement Iowa Code section 22.11.

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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 Supplement section 135.11, subsection 24, as amended by 1998 Iowa Acts, House File 2369, section 1, and 1998 Iowa Acts, House File 2527, section 60, the Iowa Department of Public Health hereby amends Chapter 11, “Acquired Immune Deficiency Syndrome (AIDS),” Iowa Administrative Code.

This action is necessary as a consequence of amendments to Iowa Code Supplement section 135.11, subsection 24, made by 1998 Iowa Acts, House File 2369, and 1998 Iowa Acts, House File 2527.

These new rules describe the procedures to follow for testing a convicted offender for the human immunodeficiency virus pursuant to Iowa Code chapter 709B and the procedures to follow for testing an alleged offender for the human immunodeficiency virus pursuant to Iowa Code chapter 709B. The rules describe procedures for the provision of counseling, health care, and support services to the victim.

Any interested person may make written suggestions or comments on the proposed rules on or before August 4,

PUBLIC HEALTH DEPARTMENT[641](cont'd)

1998. Written comments may be sent to Carolyn Vogel, Bureau of Disease Prevention, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; fax (515)281-4570.

Also, there will be a public hearing on August 4, 1998, at 10 a.m. at which time persons may present their views. The public hearing will be held at the Department of Public Health, Third Floor Conference Room, Side 1, Lucas State Office Building, East 12th and Grand Avenue, Des Moines.

Any person who plans to attend the public hearing and has special requirements, such as hearing or mobility impairments, should contact the Department of Public Health and advise of special needs.

These rules are intended to implement 1998 Iowa Acts, House File 2369, and 1998 Iowa Acts, House File 2527.

The following amendment is proposed.

Rescind the segment entitled "HIV-Related Tests for Convicted Sexual Assault Offenders and the Victims" which includes rules 641—11.70(709B) through 641—11.73(709B) and adopt the following new segment in lieu thereof:

HIV-RELATED TEST FOR CONVICTED OR ALLEGED
SEXUAL-ASSAULT OFFENDERS AND THE VICTIMS

641—11.70(709B) Purpose. The purpose of these rules is to describe procedures to follow for testing of a convicted or alleged offender for the human immunodeficiency virus pursuant to 1998 Iowa Acts, House File 2369, and 1998 Iowa Acts, House File 2527, and establish procedures to follow to provide for counseling, health care, and support services to the victim.

641—11.71(709B) Definitions. For the purpose of these rules, the following definitions shall apply:

"AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

"Alleged offender" means a person who has been charged with the commission of a sexual assault or a juvenile who has been charged in juvenile court with being a delinquent as a result of actions that would constitute a sexual assault.

"Authorized representative" means an individual authorized by the victim to request an HIV test of a convicted or alleged offender who is any of the following:

1. The parent, guardian, or custodian of the victim if the victim is a minor.
2. The physician of the victim.
3. The victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to Iowa Code section 141.22.
4. The victim's spouse.
5. The victim's legal counsel.

"Convicted offender" means a person convicted of a sexual assault or a juvenile who has been adjudicated delinquent for an act of sexual assault.

"Department" means the Iowa department of public health.

"Division" means the crime victims assistance division of the office of the attorney general.

"HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.

"HIV test" means a positive result for the HIV antibody, a positive result for HIV nucleic acid, a positive result for p24 antigen, or a positive result for HIV virus isolation.

"Petitioner" means a person who is the victim of a sexual assault which resulted in alleged significant exposure, or the

parent, guardian, or custodian of a victim if the victim is a minor, for whom the county attorney files a petition with the district court to require the convicted offender to undergo an HIV test.

"Sexual assault" means sexual abuse as defined in Iowa Code section 709.1, or any other sexual offense by which a victim has allegedly had sufficient contact with a convicted or an alleged offender to be deemed a significant exposure.

"Significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with the blood or body fluids, other than tears, saliva, or perspiration, of the convicted or alleged offender. "Significant exposure" is presumed to have occurred when there is a showing that there was penetration of the convicted or alleged offender's penis into the victim's vagina or anus, contact between the mouth and genitalia, or contact between the genitalia of the convicted or alleged offender and the genitalia or anus of the victim.

"Victim" means a petitioner or a person who is the victim of a sexual assault which resulted in significant exposure, or the parent, guardian, or custodian of such a victim if the victim is a minor, for whom the victim or the peace officer files an application for a search warrant to require the alleged offender to undergo an HIV test. "Victim" includes an alleged victim.

"Victim counselor" means a person who is engaged in a crime victim center as defined in Iowa Code section 236A.1, who is certified as a counselor by the crime victim center, and who has completed at least 20 hours of training provided by the Iowa coalition against sexual assault or a similar agency.

641—11.72(709B) HIV test—convicted or alleged sexual assault offender.

11.72(1) Unless a petitioner chooses to be represented by private counsel, the county attorney shall represent the victim's interest in all proceedings under Iowa Code chapter 709B.

11.72(2) If a person is convicted of sexual assault or adjudicated delinquent for an act of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the convicted offender to submit to an HIV test, provided that all of the following conditions are met:

- a. The sexual assault for which the offender was convicted or adjudicated delinquent included sufficient contact between the victim and the convicted offender to be deemed a significant exposure pursuant to 641—11.71(709B).
- b. The authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent to the testing from the convicted offender.
- c. Written informed consent was not provided by the convicted offender.

11.72(3) If a person is an alleged offender, the county attorney, if requested by the victim, shall make application to the court for the issuance of a search warrant, in accordance with Iowa Code chapter 808, for the purpose of requiring the alleged offender to submit to an HIV test, if all of the following conditions are met:

- a. The applicant states that the victim believes that the sexual assault for which the alleged offender is charged included sufficient contact between the victim and the alleged offender to be deemed a significant exposure pursuant to 641—11.71(709B) and states the factual basis for the belief that a significant exposure exists.

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b. The authorized representative of the victim, the county attorney, or the court sought to obtain written informed consent to the testing from the alleged offender.

c. Written informed consent was not provided by the alleged offender.

11.72(4) Upon receipt of the petition or application, the court shall:

a. Prior to the scheduling of a hearing, refer the victim for counseling by a victim counselor or a person requested by the victim who is authorized to provide the counseling required pursuant to Iowa Code section 141.22, regarding the nature, reliability and significance of the HIV test and of any test results of the convicted offender. The counselor shall have a certificate of attendance from the department of public health-sponsored workshop on HIV serologic test counseling.

b. Schedule a hearing to be held as soon as is practicable.

c. Cause written notice to be served on the convicted or alleged offender who is the subject of the proceeding, in accordance with the Iowa Rules of Civil Procedure relating to the service of original notice, or if the convicted or alleged offender is represented by legal counsel, provide written notice to the convicted or alleged offender and the convicted or alleged offender's legal counsel.

d. Provide for the appointment of legal counsel for a convicted or alleged offender if the convicted or alleged offender desires but is financially unable to employ counsel.

e. Furnish legal counsel with copies of the petition or application, written informed consent, if obtained, and copies of all other documents related to the petition or application, including, but not limited to, the charges and orders.

11.72(5) A hearing under these rules shall be conducted in an informal manner consistent with orderly procedure and in accordance with the Iowa Rules of Evidence.

a. The hearing shall be limited in scope to the review of questions of fact only as to the issue of whether the sexual assault for which the offender was convicted or adjudicated delinquent or for which the alleged offender was charged provided sufficient contact between the victim and the convicted or alleged offender to be deemed a significant exposure, and to questions of law.

b. In determining whether the contact should be deemed a significant exposure for a convicted offender, the court shall base the determination on the testimony presented during the proceedings on the sexual assault charge, the minutes of the testimony or other evidence included in the court record, or if a plea of guilty was entered, based upon the complaint or upon testimony provided during the hearing. In determining whether the contact should be deemed a significant exposure for an alleged offender, the court shall base the determination on the application and the factual basis provided in the application for the belief of the applicant that a significant exposure exists.

c. The victim may testify at the hearing, but shall not be compelled to testify. The court shall not consider the refusal of a victim to testify at the hearing as material to the court's decision regarding issuance of an order or search warrant requiring testing.

d. The hearing shall be in camera unless the convicted or alleged offender and the petitioner or victim agree to a hearing in open court and the court approves. The report of the hearing proceedings shall be sealed and no report of the proceeding shall be released to the public, except with the permission of all parties and the approval of the court.

e. Stenographic notes or electronic or mechanical recording shall be taken of all court hearings unless waived by the parties.

11.72(6) Following the hearing, the court shall require a convicted or alleged offender to undergo an HIV test only if the petitioner or victim proves all of the following by a preponderance of evidence.

a. The sexual assault constituted a significant exposure.

b. An authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent from the convicted or alleged offender.

c. Written informed consent was not provided by the convicted or alleged offender.

11.72(7) A convicted offender who is required to undergo an HIV test may appeal to the court for review of questions of law only, but may appeal questions of fact if the findings of fact are clearly erroneous.

641—11.73(709B) Medical examination costs. The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing venereal disease shall be paid from the victim compensation fund as established in Iowa Code chapter 709B, and 1998 Iowa Acts, House File 2527, section 55. Information is available from the department of justice, crime victim assistance program, telephone (515)281-5044.

641—11.74(709B) Testing, reporting, and counseling—penalties.

11.74(1) The physician or other practitioner who orders the test of a convicted or alleged offender for HIV under Iowa Code chapter 709B shall disclose the results of the test to the convicted or alleged offender, and to the victim counselor or a person requested by the victim who is authorized to provide the counseling required pursuant to Iowa Code section 141.22, who shall disclose the results to the petitioner.

11.74(2) All testing under this chapter shall be accompanied by pretest and posttest counseling as required under Iowa Code section 141.22. The department of public health may be contacted for brochures that may assist in meeting the requirements of Iowa Code section 141.22.

11.74(3) Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of 641—11.70(709B) to 641—11.74(709B).

11.74(4) Results of a test performed under 641—11.70(709B) to 641—11.74(709B), except as provided in subrule 11.74(6), shall be disclosed only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to Iowa Code section 141.22, the physician of the victim if requested by the victim, the parent, guardian, or custodian of the victim, if the victim is a minor, and the county attorney who filed the petition for the HIV testing under 641—11.70(709B) to 11.74(709B), who may use the results to file charges of criminal transmission of HIV under Iowa Code chapter 709C. Results of a test performed under these rules shall not be disclosed to any other person without the written, informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under 641—11.70(709B) to 11.74(709B) is subject to the confidentiality provision of Iowa Code section 141.23, and shall not disclose the results to another person except as authorized by Iowa Code section 141.23, subsection 1.

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11.74(5) If HIV testing is ordered under 641—11.70(709B) to 11.74(709B), the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole or of the alleged offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the convicted or alleged offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted or alleged offender was HIV-infected at the time the sexual assault or alleged sexual assault was perpetrated. The results of the test conducted pursuant to subrule 11.74(6) shall be released only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to Iowa Code section 141.22, who shall disclose the results to the petitioner, the physician of the victim if requested by the victim and the county attorney who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV under Iowa Code chapter 709C.

11.74(6) The court shall not consider the disclosure of an alleged offender's serostatus to an alleged victim, prior to conviction, as a basis for a reduced plea or reduced sentence.

11.74(7) The fact that an HIV test was performed under 641—11.70(709B) to 11.74(709B) and the results of the tests shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records.

11.74(8) The fact that an HIV test was performed under 641—11.70(709B) to 11.74(709B) and the results of the test shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

11.74(9) If the serologic status of a convicted offender, which is conveyed to the victim, is based upon an HIV test other than a test which is authorized as a result of the procedures established in 641—11.70(709B) to 11.74(709B), legal protections which attach to such testing shall be the same as those which attach to an initial test under 641—11.70(709B) to 11.74(709B), and the rights to a predisclosure hearing and to appeal provided under 1998 Iowa Acts, House File 2527, section 35, shall apply.

11.74(10) HIV testing required under 641—11.70(709B) to 11.74(709B) shall be conducted by the state hygienic laboratory.

11.74(11) Notwithstanding the provision of these rules requiring initial testing, if a petition is filed with the court under 1998 Iowa Acts, House File 2527, section 35, requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted offender while under the control of the department of corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted offender, in accordance with 641—11.70(709B) to 11.74(709B).

11.74(12) Test results shall not be disclosed to a convicted offender who elects against disclosure.

11.74(13) In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided. Referral information is available at state alternate test sites. Alternate test site information is available from the Iowa department of public health, STD/HIV prevention program, telephone (515)281-4936.

11.74(14) In addition to persons to whom disclosure of the results of a convicted or alleged offender's HIV test results is authorized under these rules, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

11.74(15) A person to whom disclosure of a convicted offender's HIV test results is authorized under these rules shall not disclose the results to any other person for whom disclosure is not authorized under these rules. A person who intentionally or recklessly makes an unauthorized disclosure in violation of this subrule is subject to a civil penalty of \$1000. The attorney general or the attorney general's designee may maintain a civil action to enforce these rules. Proceedings maintained under this subrule shall provide for the anonymity of the test subject, and all documentation shall be maintained in a confidential manner.

These rules are intended to implement 1998 Iowa Acts, House File 2527 and 1998 Iowa Acts, House File 2369.

ARC §171A

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 135.11(13) and 1998 Iowa Acts, Senate File 2280, section 5(4c), the Iowa Department of Public Health hereby gives Notice of Intended Action to rescind Chapter 79, "Public Health Nursing," and adopt a new Chapter 79, "Public Health Nursing," Iowa Administrative Code.

These rules describe the standards to be used in the provision of services to low-income and elderly persons to avoid inappropriate institutionalization and to prevent illness and promote health and wellness in communities. The proposed rules meet the requirements of 1998 Iowa Acts, Senate File 2280, section 5(4)"c"(1) and (4). A team of department employees and representatives of county boards of supervisors, local boards of health and local providers (current subcontractors) was involved in developing the proposed new Chapter 79.

Any interested person may make written suggestions or comments on this proposed chapter on or before August 4, 1998. Such written materials should be directed to Karen Fread, Chief, Community Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

A public hearing will be conducted August 4, 1998, at 9 a.m. in ICN Room 326 at the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319, and on the Iowa Communications Network at the following sites:

North Iowa Area Community College
Charles City Center, Room 106
200 Harwood Drive
Charles City

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Corning National Guard Armory
Room 111
1925 210th St.
Corning

Fairfield High School
Room 16
605 East Broadway
Fairfield

Iowa Central Community College
Library Building, 2nd Floor
Room 204
330 Ave. M
Fort Dodge

Harlan High School
Room 123
2102 Durant
Harlan

University of Iowa Hospitals and Clinics
ICN Classroom 1
Room 8774C, JPP, 8th Floor
200 Hawkins Drive
Iowa City

Knoxville National Guard Armory
ICN Room
1015 North Lincoln
Knoxville

Oelwein Armory
ICN Classroom
201 10th St. SE
Oelwein

NW Iowa Community College
ICN Classroom 1
Building D, Room 402
603 West Park
Sheldon

At the hearing, persons will be asked to give their views either orally or in writing. Persons will also be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Public Health in advance of the hearing date and advise of specific needs.

These rules are intended to implement Iowa Code section 135.11.

The following amendment is proposed.

Rescind **641—Chapter 79** and adopt the following new chapter in lieu thereof:

CHAPTER 79
PUBLIC HEALTH NURSING

641—79.1(135) Program purpose. The purposes of the public health nursing program are the prevention of illness, the promotion of health and wellness in the community and the prevention or reduction of inappropriate institutionalization of low-income and elderly persons.

Public health nursing synthesizes the body of knowledge from the public health sciences and professional nursing theories for the purpose of improving the health of the entire

community. The dominant responsibility is the population as a whole. Therefore, nursing directed holistically to individuals, families, or groups contributes to the health of the total population. This goal lies at the heart of primary prevention, health promotion and protection, and is the foundation for public health nursing practice.

641—79.2(135) Definitions. For the purpose of these rules, unless otherwise defined, the following definitions apply:

“Administrative expense” means general overall administrative expenses not specific to the program. No more than 5 percent of the state funds received shall be used for administrative expenses.

“Board of health” means a county, city or district board of health as defined in Iowa Code section 137.2.

“Contractor” means a board of health or board of supervisors as agreed upon by the county board of supervisors and any local boards of health in the county.

“Core public health functions” means the functions of community health assessment, policy development, and assurance.

1. Assessment: regular collection, analysis, interpretation, and communication of information about health conditions, risks, and assets in a community.

2. Policy development: development, implementation, and evaluation of plans and policies, for public health in general and priority health needs in particular, in a manner that incorporates scientific information and community values and in accordance with state public health policy.

3. Assurance: ensuring by encouragement, regulation, or direct action that programs and interventions that maintain and improve health are carried out.

“Department” means the Iowa department of public health.

“Disease and disability client” means a person who is receiving nursing intervention under a specified medical diagnosis(es) and who has a plan of care from a licensed physician.

“Elderly” means persons 60 years of age and over.

“Essential public health services” means those activities carried out by public health entities that fulfill the core functions.

“Health and wellness” means a state of well-being, which includes soundness of mind, body, and spirit, and the presence of a positive capacity to develop one’s potential and to lead to an energetic, fulfilling, and productive life.

“Health promotion” means teaching or nursing intervention that emphasizes self and environmental awareness, and promotes a life-style change that will result in optimal health and wellness.

“Income” means all sources of revenue for the client, spouse and dependent members of the household.

“Low income” means a person whose income is not greater than the current federal Supplemental Security Income guidelines and whose resources are not greater than \$10,000.

“Nonprofit” means an entity that meets the requirements for tax-exempt status under the United States Internal Revenue Code.

“Public health nurse” means a registered nurse who is licensed by the Iowa board of nursing and who has a baccalaureate degree in nursing or related health or human service area (in which a course in community health nursing must be completed) or has completed a community health nursing course from a baccalaureate program in an accredited college or university. The public health nurse has knowledge of

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prevention, health promotion and community health nursing and public health concepts.

"Quality assurance" means a method of review using the following process to ensure that quality care is being delivered:

1. Comparison of practice against written criteria;
2. Identification of strengths, deficiencies, and opportunities for improvement; and
3. Introduction of changes in the system based on information identified.

"Resources" means assets owned by a person that the person is not legally restricted from using and that could be converted to cash to be used for support and maintenance.

"Skilled nursing care" means services that require the skills of a licensed registered nurse according to 655—Chapter 6, Iowa Administrative Code.

"Sliding fee scale" means a scale of client fee responsibility based on the person's ability to pay all or a portion of the cost of service.

641—79.3(135) Public health nursing responsibility. Public health nurses are responsible for providing leadership to safeguard the health and wellness of the community. This responsibility is met through participation in the implementation of the core public health functions: assessment, policy development and assurance and the essential public health services.

641—79.4(135) Appropriation.

79.4(1) Formula. The appropriation to each county is determined by the following formula. One-fourth of the total amount to be allocated shall be divided so that an equal amount is available for use in each county in the state. Three-fourths of the total amount to be allocated shall be divided so that the share available for use in each county is proportionate to the number of elderly and low-income persons living in that county in relation to the total number of elderly and low-income persons living in the state.

79.4(2) Reallocation process. Annually, by June 1, the department will determine the amount of unused funds from contracts with counties. If the unallocated pool is \$50,000 or more, it shall be reallocated to the counties in substantially the same manner as the original allocations. If the unallocated pool is less than \$50,000 for the fiscal year, the department may allocate the moneys to counties with demonstrated special needs for public health nursing.

641—79.5(135) Utilization of appropriation. The contractor may choose to utilize the funds directly or through subcontracts with governmental or nonprofit agencies. When the services are not provided directly by the contractor, the assignment of responsibilities to each agency must be clearly documented in a contract. All such subcontracts must be approved in advance by the department. When the services are provided by more than one agency, the contractor shall evaluate the degree to which the combination of the services meets the identified public health needs of the community. No more than 5 percent of the state funds received shall be used for administrative expenses.

79.5(1) Priorities. Utilization of state funds shall be based on the identified needs and assets of the target populations. Emphasis shall be placed on core public health functions and essential services. Priorities of service are communicable disease control, risk reduction and health promotion, and assurance of care for clients with disease or disability.

79.5(2) Alternate plan. A county may submit to the department a plan for an alternate utilization of the funding which provides for ensuring the delivery of existing services

and the essential public health services based on an assessment of community needs and targeted populations to be served under the alternate plan. The department may establish demonstration projects which provide for an alternate allocation of funds based upon the proposed plan to provide essential public health services as determined by the community health assessment and targeted populations to be served. The request for an alternate plan and demonstration project shall be included in the grant application.

641—79.6(135) Client eligibility. Every Iowan shall be eligible for nursing service when assessment identifies the need for such service and adequate resources exist to provide the service. Each contractor shall have policies for admission and discharge of clients.

641—79.7(135) Contractor requirements. In order to receive these state funds, the contractor shall meet the following requirements:

1. Operate in conformity with federal, state, and local laws and regulations.
2. Employ an administrator to whom authority and responsibility for overall administration are delegated.
3. Ensure a personnel management system.
4. Ensure that skilled nursing care to disease and disability clients is provided by a home health agency certified by the health insurance benefits program (Medicare).
5. Maintain administrative and fiscal accountability through contractor records which include, at a minimum, policies, board minutes and reports, service statistics, and accounting records which indicate all accrued revenue, income and expenses. The contractor shall submit statistical reports identified in the contract from the department.
6. Maintain clinical records appropriate to the level of service for each client who receives public health nursing service. The contractor shall provide for appropriate safety and security of the clinical records.
7. Provide authorized representatives of the department access to all administrative, fiscal, personnel, and client records. The clinical record is considered confidential and the department representatives will respect that confidentiality.
8. Ensure program standards which include outcomes, objectives and priorities for all services.
9. Ensure that population-based services are supervised by a public health nurse within two years of the effective date of these rules.
10. Provide services based on identified assets and priority needs of the community.

641—79.8(135) Quality assurance program. Each contractor shall have a written plan for quality assurance for the program. Quality assurance shall include but is not limited to provider qualification and performance, program evaluation, and plan for quality improvement.

641—79.9(135) Billing services to state grant. These grant funds shall be billed at the lower of the cost or usual charge as approved in the grant contract. Clients whose services are not covered by third-party reimbursement shall be billed according to the contractor's sliding fee scale. The state may be billed the portion not covered by the client's fee up to the approved contract rate. The specific process for expenditure and billing of state funds will be described in the contract. Services charged to and paid or credited by another third-party payer shall not be vouched to state funds.

79.9(1) Cost analysis. Each contractor shall complete, at least annually, a cost analysis using a cost methodology approved by the department. Reimbursement by the depart-

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ment to the contractor for the fiscal year shall be based on the state-approved rate and contractual conditions.

79.9(2) Sliding fee scale. A full fee and a sliding fee scale based on contractor charge shall be established and used for those persons able to pay all or a part of the cost of service. Income and resources shall be considered in the application of the sliding fee scale. A client whose income is at or above 185 percent of the federal poverty level shall be charged a fee.

Additional circumstances beyond basic living expenses may be taken into account according to contractor policy when determining the client fee. The placement on the sliding fee scale shall be determined before service begins and shall be reviewed at least annually. Payments received from clients based on sliding fee scales and donations shall be used to support nursing services.

79.9(3) No fee service. A low-income person as defined in these rules shall be provided the service at no fee. For each additional member of the household, the annual income shall be increased according to current social security income guidelines.

79.9(4) Funder of last resort. The state grant funds shall not be billed for services eligible for third-party reimbursement, e.g., Medicare, Medicaid, or insurance, or for the contractor cost above the allowed reimbursement from the third-party payer. Contractors shall review all funding options available before utilizing state grant funding for home care services.

641—79.10(135) State responsibilities. Technical assistance and consultation will be provided to the contractor by the regional community health consultants of the community services bureau of the Iowa department of public health. Additional technical assistance and consultation will be available from the chief of the community services bureau, other bureaus of the family and community health division and other divisions of the department.

641—79.11(135) Right to appeal.

79.11(1) Local appeal. All contractors shall have a written local procedure to hear appeals. Whenever a contractor denies, reduces or terminates services eligible to be funded by the state grant against the wishes of a participant, the contractor shall notify the participant of the action, the reason for the action, and of the participant's right to appeal. Service need not be provided during the appeal process. The local procedure shall at a minimum include the method of notification of the right to appeal, the procedure for conducting the appeal, the time frame limits for each step, and the method of notification of the outcome of the local appeal and notification of the participant's right to appeal to the state. Notifications of the outcome of the local appeal shall include the facts used to reach a decision and the conclusions drawn from the facts to support the local contractor decision. The written appeals procedure and the record of appeals filed (including the record and disposition of each) shall be available for inspection by authorized Iowa department of public health representatives.

79.11(2) Appeal to department. If a participant is dissatisfied with the decision of the local appeal, the participant may appeal to the state. The appeal shall be made in writing by certified mail, return receipt requested, to the Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within 15 days following the local contractor's appeal decision.

79.11(3) Department review. The department shall evaluate the appeal based upon the merits of the local appeal documentation. A decision affirming, reversing, or modifying the local appeal decision will be issued by the department within ten days of the receipt of the appeal. The decision shall be in writing and shall be sent by certified mail, return receipt requested, to the participant and the contractor.

79.11(4) Further appeal. The department's decision may be appealed by submitting an appeal, within ten days of the receipt of the department decision, to the Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Upon receipt of an appeal that meets contested case status, the department shall forward the appeal 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 continued process for appeal shall be governed by 641—Chapter 173, Iowa Administrative Code.

These rules are intended to implement Iowa Code section 135.11(15).

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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 sections 10A.202(1)"g," 10A.402(4), and 135.11(13) and 1998 Iowa Acts, Senate File 2280, section 5, subsection 4, paragraph "c," the Iowa Department of Public Health hereby rescinds Chapter 80, "Home Care Aide," Iowa Administrative Code, and adopts a new chapter with the same title.

These rules describe the standards to be used in the provision of services to low-income persons and the elderly to avoid inappropriate institutionalization and to families to preserve the family. The proposed rules meet the requirements of 1998 Iowa Acts, Senate File 2280, section 5(4)"c"(2) and (4). A team of department employees and local representatives of boards of supervisors and boards of health and representatives of local providers (current subcontractors) were involved in developing the proposed new Chapter 80.

Any interested person may make written suggestions or comments on this proposed chapter on or before August 4, 1998. Such written materials should be directed to Karen Fread, Chief, Community Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

A public hearing will be conducted August 4, 1998, at 9:30 a.m. in ICN Room 326 at the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319, and on the Iowa Communications Network at the following sites:

North Iowa Area Community College
Charles City Center, Room 106
200 Harwood Drive
Charles City

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Corning National Guard Armory
Room 111
1925 210th St.
Corning

Fairfield High School
Room 16
605 East Broadway
Fairfield

Iowa Central Community College
Library Building, 2nd Floor
Room 204
330 Ave. M
Fort Dodge

Harlan High School
Room 123
2102 Durant
Harlan

University of Iowa Hospitals and Clinics
ICN Classroom 1
Room 8774C, JPP, 8th Floor
200 Hawkins Drive
Iowa City

Knoxville National Guard Armory
ICN Room
1015 North Lincoln
Knoxville

Oelwein Armory
ICN Classroom
201 10th St. SE
Oelwein

NW Iowa Community College
ICN Classroom 1
Building D, Room 402
603 West Park
Sheldon

At the hearing, persons will be asked to give their views either orally or in writing. Persons will also be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Public Health in advance of the hearing date and advise of specific needs.

These rules are intended to implement Iowa Code sections 10A.202(1)“g,” 10A.402(4), and 135.11(13) and 1998 Iowa Acts, Senate File 2280, section 5, subsection 4, paragraph “c.”

The following amendment is proposed.

Rescind **641—Chapter 80** and adopt the following new chapter in lieu thereof:

CHAPTER 80
HOME CARE AIDE

641—80.1(135) Program purpose. The purposes of home care aide service are to avoid inappropriate institutionalization of individuals and to preserve families through the provision of supportive services by trained and supervised para-professionals. The requirements and criteria for home care aide service in this chapter also apply to chore service except where separate requirements are specified.

641—80.2(135) Definitions. For the purpose of these rules, unless otherwise defined, the following definitions apply:

“Administration” means the activities required to operate and manage an organization. These activities include but are not limited to community and program planning, financial management, office management, personnel management, and quality assurance activities.

“Board of health” means a county, city or district board of health as defined in Iowa Code section 137.2.

“Case management” means assessment of the client’s need for service, development of the plan of care, written assignment of home care aide duties which includes the frequency of task performance and the frequency and length of visits, assignment of the home care aide to the case, supervision of the home care aide’s performance on the case, review of the home care aide’s progress notes, appropriate referrals, and appropriate reassessment activities.

“Chore program” means services provided to individuals or families who, due to incapacity or illness, are unable to perform certain home maintenance functions. The services include but are not limited to yard work such as mowing lawns, raking leaves, and shoveling walks; window and door maintenance such as hanging screens, windows and doors, replacing windowpanes, and washing windows, and doing minor repairs to walls, floors, stairs, railings and handles. It also includes heavy housecleaning which includes cleaning attics or basements to remove fire hazards, moving heavy furniture, extensive wall washing, floor care, painting, and trash removal.

“Client” means an individual or family receiving home care aide service which is supported wholly or in part by the state home care aide appropriation.

“Contractor” means a board of health or board of supervisors as agreed upon by the county board of supervisors and any local boards of health in the county.

“Core public health functions” means the functions of community health assessment, policy development, and assurance.

1. Assessment: regular collection, analysis, interpretation, and communication of information about health conditions, risks, and assets in a community.

2. Policy development: development, implementation, and evaluation of plans and policies, for public health in general and priority health needs in particular, in a manner that incorporates scientific information and community values and in accordance with state public health policy.

3. Assurance: ensuring, by encouragement, regulation, or direct action, that programs and interventions that maintain and improve health are carried out.

“Court-ordered services” means those child protective services which have been ordered by the juvenile court.

“Department” means the Iowa department of public health.

“Direct service time” means the time spent by the home care aide in carrying out assigned tasks in the client’s place of residence or specific client-related services outside the place of residence in accordance with the plan of care; or for child protective services, for time spent in court when the home care aide has been subpoenaed to testify and up to one-half hour for up to three times per admission when the client misses a scheduled home care aide appointment as long as department procedure is followed, and may include the time spent by the home care aide documenting service provided.

“Elderly” means persons 60 years of age and over.

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"Essential public health services" means those activities carried out by public health entities that fulfill the core functions.

"Home care aide" means a trained and supervised paraprofessional who provides services which range from basic housekeeping to complex personal care in accordance with these rules.

"Home care aide program" means services intended to enhance the capacity of household members to attain or maintain the independence of the household members and provided by trained and supervised workers to individuals or families who, due to the absence, incapacity or limitations of the usual homemaker, are experiencing stress or crisis. The services include but are not limited to family preservation, personal care, providing information and assistance, household management, meal preparation, housekeeping, family management, child care, money management, consumer education, essential shopping, transportation and respite care.

"Home helper" means a person who assists self-directing clients with environmental services such as simple housekeeping and errands in order to preserve a safe, sanitary home. The home helper shall not provide any personal care, physical assistance, or meal preparation.

"Income" means all sources of revenue for the client, spouse and dependent members of the household.

"Low income" means a person whose income is not greater than the current federal Supplemental Security Income guidelines and whose resources are not greater than \$10,000.

"Nonprofit" means an entity that meets the requirements for tax-exempt status under the United States Internal Revenue Code.

"Protective services" means those home care aide services intended to stabilize a child's or adult's residential environment and relationships with relatives, caretakers and other persons and household members in order to alleviate a situation involving abuse or neglect or to otherwise protect the child or adult from a threat of abuse or neglect. It also includes services intended to prevent situations which could lead to abuse or neglect of a child or adult when a definite potential for abuse or neglect exists.

"Quality assurance" means a method of review using the following process to ensure that quality care is being delivered:

1. Comparison of practice against written criteria;
2. Identification of strengths, deficiencies, and opportunities for improvement; and
3. Introduction of changes in the system based on information identified.

"Resources" means assets owned by a person that the person is not legally restricted from using and that could be converted to cash to be used for support and maintenance.

"Service administration" means administrative supervision of the home care aide, which includes recruitment and hiring, scheduling, evaluation, discipline, and developing in-service training; completion of reports; and interagency and intra-agency coordination.

"Sliding fee scale" means a scale of client fee responsibility based on the person's ability to pay all or a portion of the cost of service.

641—80.3(135) Home care aide program responsibility. Home care aide program staff are responsible for participating in activities to safeguard the health and wellness of the community. This responsibility is met through participation in the implementation of the core public health functions: as-

essment, policy development and assurance and the essential public health services.

641—80.4(135) Appropriation.

80.4(1) Formula. The appropriation to each county is determined by the following formula. Fifteen percent of the total allocation shall be divided so that an equal amount is available for use in each county in the state. The following percentages of the remaining amount shall be allocated to each county according to that county's proportion of state residents with the following demographic characteristics:

1. Sixty percent according to the number of elderly persons living in the county,
2. Twenty percent according to the number of persons below the poverty level living in the county, and
3. Twenty percent according to the number of substantiated cases of child abuse in the county during the three most recent years for which data is available.

The amount appropriated for court-ordered home care aide services is part of the 20 percent allocated based on the number of substantiated cases of child abuse. Funding for services ordered by juvenile court is allocated based on the substantiated child abuse portion of the formula, past utilization and the availability of funds. The department reserves the right to reallocate court-ordered funds at any time during the contract year.

A maximum of 15 percent of the county's allocation may be used to provide chore services when identified as part of the proposal.

80.4(2) Reallocation process. Annually, by February 15, the department will determine the amount of excess funds from contracts with counties. The department shall also review the first ten months' expenditures for each county in May of the fiscal year to determine if any counties possess contracted funds which they do not anticipate spending. If such funds are identified and the county agrees to release the funds, the released funds will be considered a new reallocation pool. Annually, by June 1, the department may reallocate funds from this new reallocation pool to those counties that have experienced a high utilization of protective service hours for children and dependent adults.

641—80.5(135) Utilization of appropriation. The contractor may choose to utilize the funds directly or through subcontracts with governmental or nonprofit agencies. When the services are not provided directly by the contractor, the assignment of responsibilities to each agency must be clearly documented in a contract. All such subcontracts must be approved in advance by the department. When the services are provided by more than one agency, the contractor shall evaluate the degree to which the combination of the services meets the identified public health needs of the community.

80.5(1) Priorities. Utilization of state funds shall be based on the identified needs and assets of the target populations. Emphasis shall be placed on the core public health functions and the essential public health services. Service priorities include child and adult protective services (preventative and court-ordered), and home care aide services, which reduce, delay or prevent institutionalization.

80.5(2) Alternate plan. A county may submit to the department a plan for an alternate utilization of the funding which provides for ensuring the delivery of existing services and the essential public health services based on an assessment of community needs and targeted populations to be served under the alternate plan. The department may establish demonstration projects which provide for an alternate al-

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location of funds based upon the proposed plan to provide essential public health services as determined by the community health assessment and targeted populations to be served. The request for an alternate plan and demonstration project shall be included in the grant application.

641—80.6(135) Client eligibility. Every Iowan shall be eligible for home care aide service when assessment identifies the need for such service and adequate contractor resources exist to provide the service. Each contractor shall have written criteria for accepting and discharging home care aide service clients. Criteria shall ensure the provision of this service to children or adults and their families whenever this service is ordered by the court and may involve such factors as geographic area, social, health and environmental needs, hours of service, crisis or emergency services, safety of the home environment and others.

641—80.7(135) Contractor requirements. In order to receive these state funds, a contractor shall meet the following requirements:

1. Operate in conformity with federal, state, and local laws and regulations.
2. Employ an administrator to whom authority and responsibility for overall administration are delegated.
3. Ensure a personnel management system.
4. Maintain administrative and fiscal accountability through contractor records which include, at a minimum, policies, board minutes and reports, service statistics, and accounting records which indicate all accrued revenue, income and expenses. The contractor shall submit statistical reports identified by annual contract from the department.
5. Maintain client records appropriate to the level of service for each client or family who is provided home care aide or chore service. The contractor shall provide for appropriate safety and security of the records.
6. Provide authorized representatives of the department access to all administrative, fiscal, personnel, and client records. The client record is considered confidential and department representatives will respect that confidentiality.
7. Ensure program standards which include outcomes, objectives and priorities for all services.
8. Provide services based on identified assets and priority needs of the community.
9. Pay the employer's contribution of social security and provide workers' compensation coverage for persons providing direct home care aide service and meet any other applicable legal requirements of an employer-employee relationship.

641—80.8(135) Training and competency. The contractor shall ensure that each home helper/home care aide has completed adequate training and demonstrated competency for each task assigned. The required training shall fit one of the patterns set out in 80.8(1) to 80.8(3). Training shall be equivalent in content and depth to the most recent edition of "A Model Curriculum and Teaching Guide for the Instruction of the Homemaker-Home Health Aide," available from the Foundation for Hospice and Homecare, 513 C Street N.E., Washington, D.C. 20002.

80.8(1) Home helper. All of the following training units shall be completed before any home helper assignment is made:

Orientation to home care services	4.0 hours
Communication	2.0 hours
Understanding basic human needs	2.0 hours
Maintaining a clean, safe and healthy environment	2.0 hours

Infection control in the home	2.0 hours
Emergency procedures	<u>1.0 hour</u>
Total	13.0 hours

80.8(2) Home care aide. The home care aide training requirements may be met by:

- a. Completion of the 60-hour training according to the "Model Curriculum," or
- b. Completion of a certified nursing assistant course and 12 to 13 hours of training to include the following:

Role of the home care aide	4.0 hours
Organization policy and procedures	4.0 hours
Infection control	2.0 hours
Dependent adult abuse	2.0 hours
Child abuse if working with families with children	<u>1.0 hour</u>
Total	13.0 hours

or

c. Completion of training as set forth in the national training standards for HCA I, II, or III as recommended by the National Association for Home Care.

80.8(3) Protective service home care aide. A home care aide, who provides only protective services to children and their families and who has not completed home care aide training, shall complete a specialized training program equivalent in content and depth to the following units before any protective assignment is made.

Protective Service Overview:	4.0 hours
Legal definitions	
Dependent adult/child abuse reporter training	
Types of services	
Team approach to protective services	
Developing Relations with the Family:	5.0 hours
Identify ways to meet family needs	
Communication skills/roadblocks	
Teaching others	
Family Dynamics:	12.0 hours
Dynamics conducive to abuse/neglect	
Basic human needs	
Mental health/mental illness	
Working with disabilities	
Developing Parenting Skills:	17.0 hours
Community Resources:	<u>2.0 hours</u>
Total	40.0 hours

80.8(4) Professional staff as providers of home care aide services. An individual who is in the process of receiving or has completed the training required for an LPN or RN, or who has received an associate degree or greater in social work, sociology, home economics or other health or human service field may be assigned to provide home care aide service if the following conditions are met:

- a. Placement is appropriate to prior training.
- b. Orientation to home care is conducted, which includes adaptation of the individual's knowledge and skills from prior education to the home setting and to the role of the home care aide.

A person qualified to be a case manager/supervisor of home care aide services may provide services as appropriate without additional training providing that criteria in 80.9(2) are met.

80.8(5) In-service training. In-service training relevant to appropriate clients and assignments shall be provided. Hours of in-service shall be prorated for individuals who do not work a complete calendar year as described for each level.

- a. A home helper shall complete three hours of in-service training per calendar year, prorated as one hour of in-

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service for each four complete calendar months of employment.

b. A home care aide, a protective service home care aide, or licensed professional working as a home care aide shall complete 12 hours of in-service training per calendar year, prorated as one hour of in-service for each complete calendar month of employment.

80.8(6) Chore provider training and supervision. The contractor shall ensure that each chore provider has adequate skill for each assignment. The contractor shall also provide sufficient supervision to ensure the tasks are completed correctly and efficiently.

641—80.9(135) Case management and service administration. Case management/supervision of service as defined in this chapter shall be provided in every case by a qualified case manager or a related professional person.

80.9(1) The contractor shall establish policies and procedures for case management and supervision of client service.

80.9(2) Education, experience and special qualifications for individuals performing case management and service administration are as follows:

a. A case manager and service administrator shall possess a bachelor's degree in social work, sociology, home economics, education or other health or human service field or a license as a registered nurse or social worker.

b. A licensed practical nurse may provide case management and service administration if all the conditions of nursing board 655—subrule 6.6(1), Iowa Administrative Code, are met.

c. An individual who has provided home care aide case management or service administration prior to September 7, 1994, shall be considered qualified to continue in that position.

d. Case management and service administration activities may be delegated to an individual who is trained as a home care aide and has an equivalent of two years' full-time experience as long as a qualified person retains responsibility for supervising this individual.

e. The specific component in service administration of scheduling may be delegated to an individual not possessing these qualifications as long as the qualified person retains responsibility for supervising this individual.

641—80.10(135) Quality assurance program. Each contractor shall have a written plan for quality assurance for the program. Quality assurance shall include but is not limited to provider qualification and performance, program evaluation, and plan for quality improvement.

641—80.11(135) Court-ordered services.

80.11(1) Home care aide protective services ordered by a juvenile court shall be billed to the state home care aide grant whenever these services are not eligible for reimbursement by other funding sources and to the extent that funding from the department is available, when there is appropriate documentation that services meet the following criteria:

a. Home care aide service is named in the court order, or the court orders services as determined by the department of human services case plan. The department of human services case plan shall identify home care aide service.

b. Services are limited to the following:

(1) Teaching parents about:

1. Child behavior management including methods of discipline.

2. Child development and nurturing.

3. Child nutrition, meal planning, shopping and meal preparation.

4. Skill development.

5. Maintenance of a clean and safe home environment including laundry.

6. Money management (excluding protective payee as the only service).

7. Basic physical care and hygiene of children.

8. Obtaining routine and emergency medical care.

9. Child safety and supervision.

10. Daily schedule/routines.

(2) Supervising visits with parent, guardian or prospective custodian for skilled observation, documentation, and reporting when accompanied by teaching, coaching, and intervening as needed.

(3) Transportation secondary to teaching parents or supervising visits. Transportation shall not be the only service provided.

c. A conference on each case is held at least once every six months between the case manager and the local department of human services or the juvenile court officer to consider the manner in which home care aide protective service is meeting the goals of the court order or case permanency plan and is coordinated with other involved service providers.

80.11(2) Mediation of disputes. If a local department of human services worker or district or juvenile court requests service for a child or adult protective service client, and the contractor assessment is that the service is not needed or less service is needed than was requested, the local entities shall attempt to resolve the difference. If that is not possible, the disagreement shall be reported by telephone to the Iowa department of public health, division of family and community health.

Division staff shall provide technical assistance to attempt to resolve the difference by working with the district or juvenile court and, if appropriate, the department of human services.

641—80.12(135) Billing services to state grant. These grant funds shall be billed at the lower of the cost or usual charge as approved in the grant contract. Clients whose services are not covered by third-party reimbursement shall be billed according to the local contractor's sliding fee scale. The state may be billed the portion not covered by the client's fee up to the approved contract rate. The specific process for expenditure and billing of state funds will be described in the administrative contract.

80.12(1) Cost analysis. Each contractor shall complete, at least annually, a cost analysis using a cost methodology approved by the department. Reimbursement by the department to the contractor for the fiscal year shall be based on the state-approved rate and contractual conditions. Each contractor providing services with these funds shall maintain direct client service time at 70 percent or more of the home care aide's paid time and ensure that not more than 35 percent of the total cost of the service be for the combined costs for service administration and contractor administration.

80.12(2) Sliding fee scale. A full fee and a sliding fee scale based on contractor charge shall be established and used for those persons able to pay all or a part of the cost of service. Income and resources shall be considered in the application of the sliding fee scale. A client whose income is at or above 185 percent of the federal poverty level shall be charged a fee.

Additional circumstances beyond basic living (food, clothing and shelter) expenses may be taken into account according to contractor policy when determining the client fee. The placement on the sliding fee scale shall be determined

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before service begins and shall be reviewed at least annually. Payments received from clients based on the sliding fee scale shall be used to support home care aide/chore service.

80.12(3) No fee service. A low-income person as defined in these rules shall be provided the service at no fee. For each additional member of the household, the annual income shall be increased according to current social security income guidelines.

Service provided to children or adults to alleviate a situation where abuse or neglect is founded or under investigation shall be provided at no fee to the client/family.

80.12(4) Funder of last resort. The state shall not be billed for service eligible for third-party reimbursement, e.g., Medicare, Medicaid, or insurance, or for the contractor cost above the allowed reimbursement from the third-party payer. Services charged to and paid or credited by another third-party payer shall not be vouched to state funds.

641—80.13(135) State responsibilities. Technical assistance and consultation will be provided to the contractor by the regional community health consultants of the community services bureau of the Iowa department of public health. Additional technical assistance and consultation will be available from the chief of the community services bureau, other bureaus of the family and community health division and other divisions of the department.

641—80.14(135) Right to appeal.

80.14(1) Local appeal. All contractors shall have a written local procedure to hear appeals. Whenever a contractor denies, reduces or terminates services eligible to be funded by the state grant against the wishes of a participant, the contractor shall notify the participant of the action, of the reason for the action, and of the participant's right to appeal. Service need not be provided during the appeal process. The local procedure shall at a minimum include the method of notification of the right to appeal, the procedure for conducting the appeal, the time frame limits for each step, and the method of notification of the outcome of the local appeal and notification of the participant's right to appeal to the state. Notifications of the outcome of the local appeal shall include the facts used to reach a decision and the conclusions drawn from the facts to support the local contractor decision. The written appeals procedure and the record of appeals filed (including the record and disposition of each) shall be available for inspection by authorized Iowa department of public health representatives.

80.14(2) Appeal to department. If a participant is dissatisfied with the decision of the local appeal, the participant may appeal to the state. The appeal shall be made in writing by certified mail, return receipt requested, to the Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within 15 days following the local contractor's appeal decision.

80.14(3) Department review. The department shall evaluate the appeal based upon the merits of the local appeal documentation. A decision affirming, reversing, or modifying the local appeal decision will be issued by the department within ten days of the receipt of the appeal. The decision shall be in writing and shall be sent by certified mail, return receipt requested, to the participant and the contractor.

80.14(4) Further appeal. The department's decision may be appealed by submitting an appeal, within ten days of the receipt of the department decision, to the Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Upon receipt of an appeal that

meets contested case status, the department shall forward the appeal 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 continued process for appeal shall be governed by 641—Chapter 173, Iowa Administrative Code.

These rules are intended to implement Iowa Code sections 10A.202(1)“g,” 10A.402(4), and 135.11(13) and 1998 Iowa Acts, Senate File 2280, section 5, subsection 4, paragraph “c.”

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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 135.11 and 1998 Iowa Acts, Senate File 2280, section 5(4c), the Iowa Department of Public Health hereby gives Notice of Intended Action to rescind Chapter 83, “Well Elderly Screening Clinics,” and adopt a new Chapter 83, “Iowa Senior Health Program,” Iowa Administrative Code.

These rules describe the standards to be used in the provision of services to older adults. The proposed rules meet the requirements of 1998 Iowa Acts, Senate File 2280, section 5(4c). A team of department employees and representatives of county boards of supervisors, local boards of health and local providers (current subcontractors) were involved in developing the proposed new Chapter 83.

Any interested person may make written suggestions or comments on these proposed rules on or before August 4, 1998. Such written materials should be directed to Karen Fread, Chief, Community Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

A public hearing will be conducted August 4, 1998, at 10 a.m. in ICN Room 326 at the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319, and on the Iowa Communications Network at the following sites:

North Iowa Area Community College
Charles City Center, Room 106
200 Harwood Drive
Charles City

Corning National Guard Armory
Room 111
1925 210th St.
Corning

Fairfield High School
Room 16
605 East Broadway
Fairfield

Iowa Central Community College
Library Building, 2nd Floor
Room 204
330 Ave. M
Fort Dodge

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Harlan High School
Room 123
2102 Durant
Harlan

University of Iowa Hospitals and Clinics,
ICN Classroom 1
Room 8774C, JPP, 8th Floor
200 Hawkins Drive
Iowa City

Knoxville National Guard Armory
ICN Room
1015 North Lincoln
Knoxville

Oelwein Armory
ICN Classroom
201 10th St. SE
Oelwein

NW Iowa Community College
ICN Classroom 1
Building D, Room 402
603 West Park
Sheldon

At the hearing, persons will be asked to give their views either orally or in writing. Persons will also be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Public Health in advance of the hearing date and advise of specific needs.

These rules are intended to implement Iowa Code chapter 135.

The following amendment is proposed.

Rescind **641—Chapter 83** and adopt the following **new** chapter in lieu thereof:

CHAPTER 83

IOWA SENIOR HEALTH PROGRAM

641—83.1(135) Program purpose. The purpose of the Iowa senior health program is to promote wellness and improve the health of older adults by providing health assessment and health education and to serve as an entry point into the health care system for medically underserved.

641—83.2(135) Definitions. For the purpose of these rules, unless otherwise defined, the following definitions apply:

“Administrative expense” means general overall administrative expenses not specific to the program. No more than 5 percent of the state funds received shall be used for administrative expense.

“Board of health” means a county, city or district board of health as defined in Iowa Code section 137.2.

“Comprehensive assessment” means, at a minimum, a health history, a physical assessment and care planning which includes nursing diagnosis, goal setting, health teaching and referrals. The physical assessment includes all body systems and may include age-appropriate Pap smears or a prostate exam. The history and exam are focused on the review of body systems, functional abilities and medication review.

“Contractor” means a board of health or board of supervisors as agreed upon by the county board of supervisors and any local boards of health in the county.

“Core public health functions” means the following functions: community health assessment, policy development, and assurance.

1. Assessment: regular collection, analysis, interpretation, and communication of information about health conditions, risks, and assets in a community.

2. Policy development: development, implementation, and evaluation of plans and policies, for public health in general and priority health needs in particular, in a manner that incorporates scientific information and community values in accordance with state public health policy.

3. Assurance: ensuring, by encouragement, regulation, or direct action, that programs and interventions that maintain and improve health are carried out.

“Department” means the Iowa department of public health.

“Essential public health services” means those activities carried out by public health entities that fulfill the core functions.

“Health and wellness” means a state of well-being, which includes soundness of mind, body, and spirit, and the presence of a positive capacity to develop one’s potential and to lead an energetic, fulfilling, and productive life.

“Health promotion” means teaching or nursing intervention that emphasizes self-awareness and environmental awareness and promotes a life-style change that will result in optimal health and wellness.

“Health screening” means laboratory tests that may include, but are not limited to: hemoglobin, glucose, urine, and cholesterol; and vision screening, hearing screening, and hypertension screening. It also means use of assessment tools which may include, but are not limited to: assessing for depression, activities of daily living, risk for breast and cervical cancer and nutritional status.

“Low income” means a person whose income is not greater than the current federal Supplemental Security Income guidelines.

“Match” means \$1 of local funding is provided for each \$2 of program grant dollars. Match may either be a hard dollar match or soft “in-kind” match. Match may not include federal or state funds received from other funders or from funds, fees or donations that have already been considered as match for another funder. Soft “in-kind” match includes resources provided for the program and covered by local funds. Examples include office space, utilities, value of clinic sites donated, telephone, supplies, office supplies, advertising, discounts of lab tests, and administrative costs. Volunteer time may be used if there is a job description, a record of time provided by the volunteer, and a reasonable value assigned.

“Nonprofit” means an entity that meets the requirement for tax-exempt status under the United States Internal Revenue Code.

“Older adult” means the age of the adult to be determined by the local contractor.

“Partial assessment” means a shortened version of the comprehensive health assessment that includes review of at least one body system, nursing diagnosis, goal setting, health teaching and referrals.

“Public health nurse” means a registered nurse who is licensed by the Iowa board of nursing and who has a baccalaureate degree in nursing or related health or human service area (in which a course in community health nursing must be

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completed) or has completed a community health nursing course from a baccalaureate program in an accredited college or university. The public health nurse has knowledge of prevention, health promotion and community health nursing and public health concepts.

"Quality assurance" means a method of review using the following process to ensure that quality care is being delivered:

1. Comparison of practice against written criteria;
2. Identification of strengths, deficiencies, and opportunities for improvement; and
3. Introduction of changes in the system based on information identified.

"Registered nurse" means a nurse licensed to practice as a registered nurse by the Iowa board of nursing.

641—83.3(135) Senior health program responsibility. Senior health program staff are responsible for participating in activities to safeguard the health and wellness of the community. This responsibility is met through participation in the core public health functions of assessment, policy development and assurance, and the essential public health services.

641—83.4(135) Appropriation.

83.4(1) Formula. The appropriation to each county is determined by the following formula. Each county electing to participate will receive the same base amount. Seventy-five percent of the remaining funds will be allocated based on the percent of the county's population aged 55 and older and the remaining 25 percent based on the percent of county population that is low-income.

83.4(2) Reallocation process. Annually, by June 1, the department will determine the amount of unused funds from contracts with counties. If the unallocated pool is \$50,000 or more, it shall be reallocated to the counties in substantially the same manner as the original allocations. If the unallocated pool is less than \$50,000 for the fiscal year, the department may allocate the moneys to counties with demonstrated special needs for the older adult population.

83.4(3) Local match. The appropriation shall be distributed to counties providing funding on a matching basis of \$1 of local funding for each \$2 of state funding. Match may either be a hard dollar match or soft "in-kind" match. Match may not include federal or state funds received from other funders or from funds, fees or donations that have already been considered as match for another funder. Record of match shall be maintained by the contractor and shall be available to the department upon request.

641—83.5(135) Utilization of appropriation. The contractor may choose to utilize the funds directly or through subcontracts with governmental or nonprofit agencies. When the services are not provided directly by the contractor, the assignment of responsibilities to each agency must be clearly documented in a contract. All such subcontracts must be approved in advance by the department. When the services are provided by more than one agency, the contractor shall evaluate the degree to which the combination of the services meets the identified public health needs of the community. No more than 5 percent of the state funds received shall be used for administrative expenses.

83.5(1) Priorities. Utilization of state funds shall be based on the community health identified needs and assets of the older adult population. Emphasis shall be placed on the core public health functions and the essential public health services with a focus on the special needs of older adults.

Service priorities are health assessments, health screenings, health promotion, and health teaching.

83.5(2) Alternate plan. A county may submit to the department a plan for an alternate utilization of the funding which provides for ensuring the delivery of existing services and the essential public health services based on an assessment of community needs and targeted populations to be served under the alternate plan. The department may establish demonstration projects which provide for an alternate allocation of funds based upon the proposed plan to provide essential public health services as determined by the community health assessment and targeted populations to be served. The request for an alternate plan and demonstration project shall be included in the grant application.

641—83.6(135) Client eligibility. Every older adult Iowan shall be eligible for senior health program services when assessment identifies the need for such service and adequate contractor resources exist to provide the service.

641—83.7(135) Contractor requirements. In order to receive these state funds, a contractor shall meet the following requirements:

1. Operate in conformity with federal, state, and local laws and regulations.
2. Employ an administrator to whom authority and responsibility for overall administration are delegated.
3. Ensure a personnel management system.
4. Maintain administrative and fiscal accountability through contractor records which include, at a minimum: policies, board minutes and reports, service statistics, accounting records, which indicate all accrued revenue, income and expenses. The contractor shall submit statistical reports identified by annual contract from the department.
5. Maintain clinical records appropriate to the level of service for each client who receives senior health services. The contractor shall provide for appropriate safety and security of the clinical records.
6. Provide authorized representatives of the department access to all administrative, fiscal, personnel, and client records. The clinical record is considered confidential, and department representatives will respect that confidentiality.
7. Ensure program standards which include outcomes, objectives and priorities for all services.
8. Ensure that any comprehensive or partial health assessments are performed by a physician or by a registered nurse who has completed a course in adult health assessment.
9. Ensure that population-based services are supervised by a public health nurse within two years of the effective date of these rules.
10. Provide services based on identified community assets and priority needs of the older adult population.

641—83.8(135) Quality assurance program. Each contractor shall have a written plan for quality assurance for the program. Quality assurance shall include, but is not limited to, provider qualification and performance, program evaluation, and plan for quality improvement.

641—83.9(135) Billing services to state grant. These grant funds shall be billed at the lower of the cost or usual charge as approved in the grant contract. The state shall not be billed for services eligible for third-party reimbursement. The specific process for expenditure and billing of state funds shall be described in the administrative contract.

83.9(1) Cost analysis. Each contractor shall complete, at least annually, a cost analysis using a cost methodology ap-

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proved by the department. Reimbursement by the department to the contractor for the fiscal year shall be based on the state-approved rate and contractual conditions.

83.9(2) Client participation. Donations from clients shall be encouraged, and each participant shall be given the opportunity to give a confidential donation. Donations shall be used to expand services in the program.

641—83.10(135) Right to appeal.

83.10(1) Local appeal. All contractors shall have a written local procedure to hear appeals. Whenever a contractor denies, reduces or terminates services eligible to be funded by the state grant against the wishes of a participant, the contractor shall notify the participant of the action, the reason for the action, and of the participant's right to appeal. Service need not be provided during the appeal process. The local procedure shall at a minimum include the method of notification of the right to appeal, the procedure for conducting the appeal, the time frame limits for each step, and the method of notification of the outcome of the local appeal and notification of the participant's right to appeal to the state. Notifications of the outcome of the local appeal shall include the facts used to reach a decision and the conclusions drawn from the facts to support the local contractor decision. The written appeals procedure and the record of appeals filed (including the record and disposition of each) shall be available for inspection by authorized Iowa department of public health representatives.

83.10(2) Appeal to department. If a participant is dissatisfied with the decision of the local appeal, the participant may appeal to the state. The appeal shall be made in writing by certified mail, return receipt requested, to the Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within 15 days following the local contractor's appeal decision.

83.10(3) Department review. The department shall evaluate the appeal based upon the merits of the local appeal documentation. A decision affirming, reversing, or modifying the local appeal decision will be issued by the department within ten days of the receipt of the appeal. The decision shall be in writing and shall be sent by certified mail, return receipt requested, to the participant and the contractor.

83.10(4) Further appeal. The department's decision may be appealed by submitting an appeal, within ten days of the receipt of the department decision, to the Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Upon receipt of an appeal that meets contested case status, the department shall forward the appeal 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 continued process for appeal shall be governed by 641—Chapter 173, Iowa Administrative Code.

These rules are intended to implement Iowa Code chapter 135.

ARC 8140A**PUBLIC SAFETY
DEPARTMENT[661]****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 80A.15, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 2, "Private Investigation and Private Security Businesses," Iowa Administrative Code.

Iowa Code chapter 80A authorizes the Department of Public Safety to license private investigation and security businesses operating in the state. The Iowa General Assembly modified that authority in significant ways in 1998. 1998 Iowa Acts, Senate File 2374, added bail enforcement agents to the persons covered by Iowa Code chapter 80A and the rules of the Department of Public Safety which implement that chapter. 1998 Iowa Acts, Senate File 2331, exempted transportation of prisoners under contract with a county sheriff, the Iowa Department of Corrections, a similar agency from another state, or a federal agency from the provisions of Iowa Code chapter 80A and the corresponding rules of the Department. Most of the amendments proposed here address modifications to the rules required by these two legislative changes, although some additional administrative issues are also addressed. The following is a more detailed explanation of these proposed amendments:

Item 1 changes the title of Chapter 2 of the rules to include bail enforcement agents.

Item 2 updates directions to contact the Department for information, inquiries, or applications for private investigator, private security, or bail enforcement licensing.

Item 3 amends the definitions of moral turpitude, peace officer, and proof of financial responsibility and adds new definitions for bail enforcement agent, bail enforcement business, chief law enforcement officer, conviction resulting from domestic abuse, and defendant. The definition of peace officer is amended to clarify that only peace officers with authority to act as such in Iowa are covered by these rules. The definition of proof of financial responsibility is amended by adding bail enforcement business to the definition and recognizing the different levels of proof required for different businesses.

Item 4 clarifies that a person exempt from the provisions of these rules based on working for an employer solely on the affairs of that employer must only be working for that single employer and it includes language to exempt persons engaged in transport of prisoners from application of these rules.

Item 5 adds references to bail enforcement businesses to existing provisions regarding licensing requirements for private investigative and security businesses. Similar language is contained in several other items. Item 5 also adds language to the subrule regarding proof of financial responsibility which authorizes the Commissioner of Public Safety to accept alternate forms of proof of financial responsibility and clarifies language requiring that each licensed business

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have at least one licensee who has successfully passed the written examination required for the business.

Item 6 contains language clarifying that licensees must have valid proof of financial responsibility and must reestablish valid proof of financial responsibility within 60 days of the expiration of previous proof.

Item 9 eliminates a requirement that licenses be returned to the Department upon expiration.

Item 12 provides that no metal badges will be approved for bail enforcement agents. This is parallel to an existing provision for private investigative and private security businesses.

A public hearing on these proposed amendments will be held on August 10, 1998, at 9:30 a.m. in the third floor conference room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Plans and Research Bureau, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail; by telephone at (515) 281-5524; or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing. Any written comments or information regarding these proposed amendments may be directed to the Plans and Research Bureau by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Plans and Research Bureau by telephone or in person at the Bureau office at least one day prior to the public hearing.

These amendments are also being Adopted and Filed Emergency and are published herein as ARC §141A to become effective July 1, 1998. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 80A as amended by 1998 Iowa Acts, Senate Files 2331 and 2374.

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PUBLIC SAFETY DEPARTMENT[661]

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 321J.2 as amended by 1998 Iowa Acts, Senate File 2391, the Iowa Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 7, "Devices and Methods to Test Body Fluids for Alcohol or Drug Content," Iowa Administrative Code.

1998 Iowa Acts, Senate File 2391, contains language which requires the Department to adopt "nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances." The standards being proposed here include those for five controlled substances which were established by the Substance Abuse and Health Services Administration of the U.S. De-

partment of Health and Human Services for testing of urine samples in federal workplace drug testing programs. Additionally, the Department is proposing language regarding the detection of controlled substances other than those which will be governed by the federal standards.

A public hearing on this proposed amendment will be held on August 10, 1998, at 9 a.m. in the third floor conference room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Plans and Research Bureau, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail; by telephone at (515)281-5524; or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing. Any written comments or information regarding this proposed rule may be directed to the Plans and Research Bureau by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Plans and Research Bureau by telephone or in person at the Bureau office at least one day prior to the public hearing.

A portion of this proposed rule is also being Adopted and Filed Emergency and is published herein as ARC §175A. Subrule 7.9(1), in the same form as proposed here, was adopted and became effective July 1, 1998. Subrule 7.9(1) involves the adoption of national standards for testing of drugs most commonly found in urine drug testing which have been codified by federal action, while the additional language in this Notice proposes standards for detection of other drugs which are generally accepted but which have not been specifically codified by federal action.

This amendment is intended to implement Iowa Code chapter 321J as amended by 1998 Iowa Acts, Senate File 2391.

This amendment became effective July 1, 1998.

The following amendment is proposed.

Amend 661—Chapter 7 by adopting the following new rule:

661—7.9(321J) Detection of drugs other than alcohol.

7.9(1) Adoption of federal standards. Initial test requirements adopted by the federal Substance Abuse and Health Services Administration in "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 59 FR 29908, as amended in "Revisions to the Mandatory Guidelines," 62 FR 51118, are hereby adopted as standards for determining detectable levels of controlled substances in the division of criminal investigation criminalistics laboratory initial screening for controlled substances detected by the presence of the following: marijuana metabolites, cocaine metabolites, opiate metabolites, phencyclidine, and amphetamines. The following table shows the minimum levels of these substances which will result in a finding that a controlled substance is present at a detectable level:

Substance	Minimum Level (ng/ml)
Marijuana metabolites	50
Cocaine metabolites	300
Opiate metabolites	2000
Phencyclidine	25
Amphetamines	1000

NOTE: "ng/ml" means "nanograms per milliliter."

PUBLIC SAFETY DEPARTMENT[661](cont'd)

7.9(2) Standards for substances other than those covered by federal standards. For any controlled substance or other drug not covered by the provisions of subrule 7.9(1), initial screening for the detectable presence of the substance shall result in a finding that the substance is present in a urine sample if an immunoassay test detects the presence of the substance at or above the lowest control or standard for the test designated by the manufacturer of the testing device.

This rule is intended to implement Iowa Code chapter 321J as amended by 1998 Iowa Acts, Senate File 2391.

ARC 8176A**PUBLIC SAFETY
DEPARTMENT[661]****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 692A.10, the Iowa Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 8, "Criminal Justice Information," Iowa Administrative Code.

The Iowa Sex Offender Registry was established by the adoption of Iowa Code chapter 692A by the Iowa General Assembly in 1995. The Registry is intended to facilitate the tracking of sex offenders by criminal and juvenile justice agencies in order to accomplish two related purposes: (1) enhance the capability of criminal and juvenile justice agencies to obtain information about convicted sex offenders useful in investigation, apprehension, and prosecution of crimes, especially sex offenses, and (2) enable members of the public to obtain information about convicted sex offenders which may assist them in protecting themselves. The General Assembly amended Iowa Code chapter 692A in several regards this year. Most of these amendments were contained in 1998 Iowa Acts, Senate File 2292. These proposed amendments would make changes in the rules governing the operation of the Registry required by the statutory changes made by the legislature this year. Following is a more detailed description and explanation of the proposed amendments:

Item 1 revises several of the definitions used in these rules and adds some additional definitions, all in response to language contained in 1998 Iowa Acts, Senate File 2292.

Item 2 amends rule 661—8.303(692A) which specifies forms and procedures used by the Iowa Sex Offender Registry. Included in these changes are language clarifying that name changes, as well as changes of telephone number and address, are required to be reported to the Registry, language requiring a registrant who moves from one county to another to notify both county sheriffs of the change, language clarifying that a "decision of determination" regarding whether a registrant's criminal record requires registration or not is final agency action which may be appealed to district court, and language adding police departments to the agencies of whom citizens may inquire for registry information.

Item 3 amends rule 661—8.304(692A) which governs procedures for release of information from the Iowa Sex Offender Registry. It strikes language requiring prior authori-

zation from the division of criminal investigation prior to affirmative public notification by another criminal or juvenile justice agency and replaces it with language requiring that a completed risk assessment finding that the registrant is "at risk" precede affirmative public notification. Language specifying the factors to be considered in risk assessment is struck and replaced with language specifying that risk assessment procedures will be prescribed by the Iowa Department of Corrections. Language is added which specifies that information about any registrant convicted of an offense which requires registration which occurred on or after July 1, 1998, and who has been found to be "at risk" based on a completed risk assessment shall be provided to the public by the Department of Public Safety via the Internet. Existing language is retained which allows for posting of such information on the Internet regarding registrants who have been assessed as "at risk" and who are required to register based on offenses which occurred prior to July 1, 1998, if the Internet or computer bulletin boards were used by them to contact victims or potential victims in the past. With regard to appeals of departmental decisions to engage in affirmative public notification, language regarding the burden of proof in such cases is amended to place the burden of proof upon the Department. Language is also added regarding affirmative public notification initiated by agencies other than the Iowa Department of Public Safety. This language provides that due process be afforded to the registrant prior to affirmative public notification occurring by requiring that the registrant be notified of the intent to undertake affirmative public notification and of the right to appeal the decision to engage in this notification.

A public hearing on these proposed amendments will be held on August 10, 1998, at 10 a.m. in the third floor conference room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Plans and Research Bureau, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing. Any written comments or information regarding these proposed amendments may be directed to the Plans and Research Bureau by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Plans and Research Bureau by telephone or in person at the Bureau office at least one day prior to the public hearing.

The substance of these amendments is also Adopted and Filed Emergency and is published herein as **ARC 8177A**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 692A as amended by 1998 Iowa Acts, Senate File 2292.

ARC 8167A

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 Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 50, "Apportionment of Income for Resident Shareholders of S Corporations," Iowa Administrative Code.

Item 1 amends rule 701—50.5(422) to remove references to line numbers on the 1996 federal individual income tax return.

Item 2 amends rule 701—50.7(422) to remove references to value-added S corporations which are no longer needed.

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than August 4, 1998, to the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 14, 1998. Such written comments should be directed to the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact the Policy Section, Compliance Division, Iowa 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 August 7, 1998.

These amendments are intended to implement Iowa Code section 422.8.

The following amendments are proposed.

ITEM 1. Amend rule 701—50.5(422) to read as follows:

701—50.5(422) Computation of federal tax on S corporation income. The amount of federal income tax related to the items of income, losses, and expenses from an S corporation

is to be computed by dividing the sum of the items of income, losses, and expenses by federal adjusted gross income, and the result multiplied times the sum of the federal income tax ~~line 38~~ and the federal alternative minimum tax ~~line 46~~, of the ~~1996 federal individual income tax return or the appropriate lines from the current year's return.~~ This resulting tax figure is to be reduced by the *nonrefundable federal tax credits* ~~on lines 39 through 42 of the federal individual income tax return or the appropriate lines from the current year's return~~ relating to the S corporation income which are a reduction in tax rather than a payment of tax. A noninclusive list of credits that are deemed to be a payment of tax are backup withholding on interest, dividends and other types of income, and credit for motor vehicle fuel taxes.

This rule is intended to implement Iowa Code section 422.8, subsection 2.

ITEM 2. Amend rule 701—50.7(422) to read as follows:

701—50.7(422) Credit for taxes paid to another state. If a taxpayer ~~takes~~ *elects to take* advantage of the apportionment provisions for a resident shareholder of a ~~value-added~~ *an* S corporation, then the taxpayer may not take a credit against Iowa income tax for income taxes or taxes measured by income paid to another state or foreign country on the ~~value-added~~ S corporation income.

This rule is intended to implement Iowa Code section 422.8 as amended by 1996 Iowa Acts, chapter 1197.

ARC 8161A

WORKFORCE DEVELOPMENT
BOARD/SERVICES DIVISION[877]

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 84A.1B(9) and 96.11, the Department of Workforce Development proposes to adopt Chapter 4, "Coordinating Service Provider," Iowa Administrative Code.

On June 24, 1998, the Workforce Development Board approved the proposed new chapter. The new chapter provides guidance to local workforce development service providers, regional advisory boards and other interested parties on the formation of a coordinating service provider in each workforce development region, its function, and the services provided by workforce development centers.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on August 4, 1998. Interested persons may submit written or oral comments by contacting JoAnn Callison, Office of Workforce Development Policy, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309; telephone (515)281-9017.

A public hearing to receive comments about the proposed chapter will be held at 1 p.m. on August 4, 1998, at the above address in Room 135. Individuals interested in providing comments at the hearing should contact Margaret Wilcox

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

(515)281-9019 by 4 p.m. on August 3, 1998, to be placed on the hearing agenda.

These rules were also Adopted and Filed Emergency and are published herein as ARC §162A. The content of that filing is incorporated by reference.

These rules are intended to implement Iowa Code section 84A.5(8) and chapter 84B.

ARC §163A

WORKFORCE DEVELOPMENT
BOARD/SERVICES DIVISION[877]

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 84A.1B(9) and 96.11, the Department of Workforce Development hereby gives Notice of Intended Action to amend Chapter 10, "Youth Affairs," Iowa Administrative Code.

On June 24, 1998, the Workforce Development Board approved the proposed amendments, which provide for higher local matching contributions required in 1998 Iowa Acts, Senate File 2296, change the percent of funds that must be spent for youth wages and fringe benefits, change the authority for the selection of sponsoring agencies from the Department of Workforce Development to the 15 regional advisory boards, and other minor technical amendments.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on August 4, 1998. Interested persons may submit written or oral comments by contacting JoAnn Callison, Policy Office, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309; telephone (515)281-9017.

A public hearing to receive comments about the proposed amendments will be held at 10:30 a.m. on August 4, 1998, at the above address in Room 135. Individuals interested in providing comments at the hearing should contact Margaret Wilcox at (515)281-9019 by 4 p.m. on August 3, 1998, to be placed on the hearing agenda.

These amendments were also Adopted and Filed Emergency and are published herein as ARC §164A. The content of that filing is incorporated by reference.

These amendments are intended to implement Iowa Code section 84A.7 and 1998 Iowa Acts, Senate File 2296, section 9(5).

ARC §159A

WORKFORCE DEVELOPMENT
BOARD/SERVICES DIVISION[877]

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 84A.1B(9) and 96.11, the Department of Workforce Development

hereby gives Notice of Intended Action to amend 877—Chapter 11, "Work Force Investment Program," Iowa Administrative Code.

On June 24, 1998, the Workforce Development Board approved the proposed amendments, which provide for a local matching contribution required in 1998 Iowa Acts, Senate File 2296, change the authority for the selection of sponsoring agencies from the Department of Workforce Development to the 15 regional advisory boards, and other minor technical amendments.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on August 4, 1998. Interested persons may submit written or oral comments by contacting JoAnn Callison, Policy Office, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309; telephone (515)281-9017.

A public hearing to receive comments about the proposed amendments will be held at 10 a.m. on August 4, 1998, at the above address in Room 135. Individuals interested in providing comments at the hearing should contact Margaret Wilcox at (515)281-9019 by 4 p.m. on August 3, 1998, to be placed on the hearing agenda.

These amendments were also Adopted and Filed Emergency and are published herein as ARC §160A. The content of that filing is incorporated by reference.

These amendments are intended to implement Iowa Code section 84A.8 and 1998 Iowa Acts, Senate File 2296, section 9(5).

ARC §165A

WORKFORCE DEVELOPMENT
BOARD/SERVICES DIVISION[877]

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 84A.1B(9) and 96.11, the Department of Workforce Development proposes to adopt Chapter 14, "Iowa Welfare-to-Work Program," Iowa Administrative Code.

On June 24, 1998, the Workforce Development Board approved the proposed new chapter. The new chapter provides guidance to county officials, regional advisory board members, private industry councils, administrators, and welfare recipients on the implementation and operation of the federally authorized Welfare-to-Work Program. The purpose of the program, planning guidelines, programmatic requirements, and eligible services are described.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on August 4, 1998. Interested persons may submit written or oral comments by contacting JoAnn Callison, Office of Workforce Development Policy, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309; telephone (515) 281-9017.

A public hearing to receive comments about the proposed chapter will be held at 9 a.m. on August 4, 1998, at the above address in Room 135. Individuals interested in providing comments at the hearing should contact Margaret Wilcox at

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

(515)281-9013 by 4 p.m. on August 3, 1998, to be placed on the hearing agenda.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 8166A**. The content of that filing is incorporated by reference.

These rules are intended to implement Iowa Code chapter 84A and P.L.105-33.

ARC 8157A**WORKFORCE DEVELOPMENT
BOARD/SERVICES DIVISION[877]****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 84A.1B(9) and 96.11, the Department of Workforce Development proposes to adopt Chapter 15, "Strategic Workforce Development Fund," Iowa Administrative Code.

On June 24, 1998, the Workforce Development Board approved the proposed new chapter. The new chapter provides guidance to the regional advisory boards and other interested parties on the purpose, allowable activities and administrative procedures for the Strategic Workforce Development Fund established by 1998 Iowa Acts, Senate File 2296, section 9(5).

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on August 4, 1998. Interested persons may submit written or oral comments by contacting JoAnn Callison, Office of Workforce Development Policy, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309; telephone (515) 281-9017.

A public hearing to receive comments about the proposed chapter will be held at 11 a.m. on August 4, 1998, at the above address in Room 135. Individuals interested in providing comments at the hearing should contact Margaret Wilcox at (515)281-9013 by 4 p.m. on August 3, 1998, to be placed on the hearing agenda.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 8158A**. The content of that filing is incorporated by reference.

These rules are intended to implement 1998 Iowa Acts, Senate File 2296, section 9(5).

ARC S144A

CRIMINAL AND JUVENILE
JUSTICE PLANNING DIVISION[428]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 17A.3, the Criminal and Juvenile Justice Planning Division hereby amends Chapter 4, "Juvenile Crime Prevention Community Grant Fund," Iowa Administrative Code.

These amendments to Chapter 4 implement changes in policy governing the Juvenile Crime Prevention Community Grant Fund. These changes are the result of legislation in 1998 Iowa Acts, Senate File 2280.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 20, 1998, as ARC 8013A.

In compliance with Iowa Code section 17A.4(1)"b," a public hearing was held on June 10, 1998.

The Division finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon publication on July 15, 1998. These amendments confer a benefit upon the public requesting grant funds for juvenile crime prevention programs by easing control requirements on the match funding which must be secured by the recipient.

This emergency filing permits the Division to immediately upon publication begin the process to make funding available to cities, counties and entities organized under Iowa Code chapter 28E.

These amendments are intended to implement Iowa Code section 232.190 as amended by 1998 Iowa Acts, Senate File 2280.

These amendments will become effective July 15, 1998.

The following amendments are adopted.

ITEM 1. Amend subrule 4.3(4), paragraphs "b" and "c," as follows:

b. Amount of matching funds. Subgrantees shall provide matching funds in an amount not less than 25 percent of the amount of funds requested from the division for the first year of grant funding. *The match amount of the same project shall progressively increase if grant money is requested and awarded for the allowable two subsequent years. Subgrantees shall provide 35 percent match for the second year of funding and 50 percent for the third year of funding. For subgrantees receiving funding prior to July 1, 1998, the match requirement shall remain at the 25 percent level for the first of the two allowable additional grant years and increase to the 35 percent level for the second year. Communities shall keep subsequent grant requests consistent with program needs, increased match requirements and the goal of full community support at the end of grant eligibility.* The applicant's proposed budget shall clearly document the program costs that will be supported with the matching funds.

c. Accounting for match and grant funds. Subgrantees ~~must be able to~~ shall account for all program funds, ~~including (match and grant award) via a separate budget or program designated line items within an existing management system. Also, subgrantees must be able to~~ awards, and shall demonstrate that program funds were used only for program services and activities.

ITEM 2. Amend subrule 4.3(5) as follows:

4.3(5) Continuation funding. Subject to the availability of funding, ~~applicants receiving~~ subgrantees who receive

initial grant awards *on or after July 1, 1998, may only reapply for two subsequent annual grant awards for a total of three years of funding. Subgrantees who received funds prior to July 1, 1998, may apply for an additional two years of funding.* During any year when it is anticipated that the request for proposal process will involve requests for both initial and continuation applications, the request for proposals may identify criteria that ~~accords accord~~ greater priority to continuation proposals.

ITEM 3. Amend subrule 4.4(2) as follows:

4.4(2) Content of applications. Required elements of the applications will be published in the request for proposals and will be based on a point system established by the ~~department of human services division,~~ and according to the requirements of the Title V Delinquency Prevention Program. *The division shall develop the application and selection criteria with consultation from the departments of education, human services, public health and public safety and the governor's alliance on substance abuse.* Required inclusions may include, but not be limited to:

a. No change.

b. ~~Evidence~~ Documentation of commitment of community leaders to support a comprehensive, communitywide delinquency prevention effort *both during and after the grant period.*

c. to k. No change.

l. A plan for collecting data for the monitoring and evaluation of the community's delinquency prevention strategy *which conforms to the guidelines in the request for proposal.*

ITEM 4. Amend subrule 4.4(3), paragraph "b," as follows:

b. Members of the grant review committee shall review each application and shall assign numerical scores to each proposal using criteria and point values established by the ~~department of human services division~~ and listed in the request for proposals. *Selection criteria shall include the nature and breadth of the program and the ability of the program to sustain funding and local support after the proposed grant period.* The rank order of scores assigned to the applications by the review committee shall be the basis of funding recommendations to be made by the grant review committee for each application reviewed.

ITEM 5. Amend rule 428—4.7(232) as follows:

428—4.7(232) Compliance with state and federal laws. In acceptance of a grant through this program, the subgrantee shall agree to comply with all applicable state and federal rules and laws including, but not limited to, the Juvenile Justice and Delinquency Prevention Act of 1974 as amended in 1992 and its ~~mandates requirements~~ prohibiting the commingling of juveniles with adults in secure facilities, the placement of juveniles in adult jails and lockups, and the placement of juvenile status offenders in secure facilities.

[Filed Emergency After Notice 6/23/98, effective 7/15/98]

[Published 7/15/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/98.

ARC 8172A

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 455D.7(1), the Environmental Protection Commission hereby rescinds Chapter 217, "Waste Tire Processor Incentive Program," Iowa Administrative Code, and adopts in lieu thereof a new Chapter 217, "Waste Tire End-User Incentive Program," Iowa Administrative Code.

This rule making rescinds the chapter which provided the awarding of moneys to eligible waste tire processors and replaces the rescinded rules with a new chapter which provides for the awarding of moneys to eligible end-users of waste tire products processed within Iowa, as an incentive to increase the use of processed waste tire products so as to facilitate the establishment of future markets for processed waste tires. This change is the result of waste tire management legislation in 1998 Iowa Acts, House File 2546.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impracticable because of the immediate need for rule change to implement new provisions of this law.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing as it confers a benefit on potential end-users of processed waste tire products.

This chapter was adopted by the Environmental Protection Commission on June 15, 1998.

This amendment is intended to implement Iowa Code section 455D.11F as amended by 1998 Iowa Acts, House File 2546.

This amendment became effective upon filing on June 26, 1998.

The following amendment is adopted.

Rescind 567—Chapter 217 and insert the following new chapter in lieu thereof:

CHAPTER 217

WASTE TIRE END-USER INCENTIVE PROGRAM

567—217.1(455D) Goal. The goal of this program is to provide a financial incentive to increase the use of processed waste tire products, so as to facilitate the establishment of future markets for processed waste tires.

567—217.2(455D) Purpose. The purpose of this chapter is to establish a waste tire end-users incentive program for the allocation of moneys to such end-users. This chapter establishes the guidelines that the department will use to determine eligible end-users and the procedures for the allocation of funding to such end-users.

567—217.3(455D) Definitions. As used in this chapter:

"Beneficial use" means the use or application of processed waste tires in a manner that provides a benefit to an end-user, other than from processing, and which does not pose a threat to the environment, or to public health and safety. Use of processed waste tires primarily as means for land disposal shall not be considered a beneficial use.

"Department" means Iowa department of natural resources.

"End-user" means an industry, utility, business, governmental agency or department, or individual that recycles, re-uses, or consumes for energy recovery processed waste tires. A tire processor shall not be considered an end-user.

"Passenger tire equivalent" means a conversion measurement used to estimate waste tire amounts from a total weight figure where one passenger car tire is equal to 20 pounds.

"Processing site" means a site which is used for the processing of waste tires and which is owned or operated by a tire processor who has a permit for the site.

"Site of end use" means a site where processed waste tires are recycled or reused in a beneficial manner authorized by the department.

"Tire processor" means a person who reduces waste tires into a processed form suitable for recycling or producing fuel for energy or heat. "Tire processor" does not mean a person who retreads tires or processes and stores tires.

"Waste management assistance division" means the waste management assistance division of the department of natural resources established by Iowa Code section 455B.483.

"Waste tire" as defined in Iowa Code section 455D.11 means a tire that is no longer suitable for its originally intended purpose due to wear, damage, or defect. "Waste tire" does not include a nonpneumatic tire.

567—217.4(455D) Role of the department of natural resources. The department is responsible for the administration of funds awarded to end-users under these rules. The department will ensure that funds disbursed meet guidelines established in Iowa Code section 455D.11F.

567—217.5(455D) Funding source. The department will use funds available from the waste tire management fund, authorized by Iowa Code section 455D.11C. Pursuant to Iowa Code section 455D.11F, \$300,000 in annual funding is provided from the waste tire management fund for the waste tire end-user incentive program beginning in fiscal year 1999 through fiscal year 2002. Funds shall be made available to eligible end-users as specified in rule 217.6(455D) on a quarterly basis.

567—217.6(455D) Eligibility. Any end-user as defined in rule 217.3(455D) may request funding through this program subject to the requirements of this chapter and the following conditions:

217.6(1) The end-user must be a facility, industry, or business located within Iowa, with the site or end use of the processed waste tire products also located within Iowa.

217.6(2) The end-user shall annually consume or use the equivalent of more than 250,000 processed waste tires at a site of end use, based on the passenger tire equivalency defined in rule 217.3(455D). End uses eligible for funding through this program include, but are not limited to, the following:

- a. Tire-derived fuel consumption;
- b. Use of shredded waste tires for leachate collection systems in permitted sanitary landfills;
- c. Use of shredded tires for civil engineering applications for lightweight fill in public roads, public road embankment structures, and other civil engineering projects as designed by an Iowa-registered professional engineer;
- d. Use of crumb rubber materials as a modifier in asphalt paving materials, as surfacing for recreational or athletic surfaces, as a soil amendment, or as incorporated into finished products including, but not limited to, belts, hoses, mats, rubberized compounds and sealants; and
- e. Other uses of processed waste tire products determined by the department to be a beneficial use.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Whole waste tires consumed or placed into a beneficial use, or whole waste tires that have been compressed and banded into a tire bundle or bale and then placed into a beneficial use by an end-user, shall not be eligible for funding through this program.

217.6(3) The end-user must not have a pending enforcement action from the department relating to Iowa Code sections 455D.11 through 455D.11H.

217.6(4) State board of regents institutions of higher education, as defined in Iowa Code section 262.7, which receive funding for the consumption of tire-derived fuel as authorized in Iowa Code section 455D.11F shall not be eligible for funding consideration through this chapter.

567—217.7(455D) Allocation of funds. The department shall determine the total amount of funding available for allocation to an end-user or end use project during a fiscal year, based upon consideration of the following:

217.7(1), Maximum allocation. Eligible end-users may receive up to \$150,000 from the waste tire management fund in a fiscal year, at a reimbursement rate equal to no more than 50 percent of the costs incurred or paid per ton by the end-user to receive the processed waste tire materials, with a maximum reimbursement of not more than 10 cents per passenger tire equivalent processed and delivered to the site of end-user. The passenger tire equivalency ratio shall apply directly to the weight of the processed waste tire material received by the end-user and shall not reflect any allowances for any nonrecyclable portions of processed waste tires not included in the tonnage delivered to the end-user.

217.7(2) Allocation requests in excess of funding availability. An individual end-user's request for funds shall be compared to the total amount of annual program funding available. If the total amount of requests for funds exceeds the total amount of annual funds available, funding allocations shall be made proportionately among end-users, based on the passenger tire equivalent number of processed waste tires received by an end-user or site of end use during the fiscal year for which funding has been requested.

567—217.8(455D) Intent to participate. Eligible end-users of processed waste tire products desiring to obtain cost reimbursement through the waste tire end-user incentive program shall submit a letter of intent to the department, which shall describe their intent to participate in the program, by June 1 prior to the beginning of the fiscal year for which funds are anticipated to be requested. The letter of intent shall provide the following information:

1. Address and location of the site of end use for the processed waste tires.
2. Estimated quantity of processed waste tire materials to be purchased, consumed or reused during the fiscal year as measured on a tonnage basis.
3. Estimated costs to be incurred or paid per ton by the end-user to receive the processed waste tire materials. The end-user shall obtain bid estimates or a contract for the purchase of processed waste tire products, and this documentation shall be provided to the department. Procedures that the end-user follows to make contract award determinations shall also be described. If multiple bids or price estimates were obtained by the end-user, such bid and pricing information shall be included in the narrative submitted to the department.
4. A description of the proposed method of consumption, recycling, or reuse of the processed waste tire products.

567—217.9(455D) Submittal of requests for funds. Funds through the program shall be disbursed to end-users approved by the department. Funds shall be disbursed as reim-

bursement for approved expenditures on a quarterly fiscal year basis; ending dates of each quarter of a fiscal year are September 30, December 31, March 31, and June 30.

The department will issue reimbursement payments to the end-user only. In order to disburse funds, an end-user must submit the following information within 45 days following the end of the fiscal year quarter for which reimbursement is requested:

1. Copies of statements, invoices, and tonnage receipts that clearly denote the quantity of processed waste tire products consumed, reused, or recycled by the end-user, and the cost incurred or paid per ton by the end-user to receive the product, during the past fiscal year quarter for which funds have been requested.

2. If not included on the statements, invoices, or tonnage receipts, evidence that the processed waste tire materials were obtained from an Iowa-based waste tire processor, collector, or other documented source for waste tire materials.

3. A correctly completed state claim voucher to the department.

4. A narrative summary describing the type of end use that the processed waste tires were incorporated into or consumed by.

567—217.10(455D) Disbursement of funds. Funds through the program shall be disbursed to end-users that have submitted a request for funds to the waste management assistance division and have had such a request approved by the department. The department will disburse funds to the eligible end-user only. Within 30 days of an end-user's notification of approval of the request for funds by the department, the end-user shall submit a correctly completed state claim voucher to the department. Payment to the end-user will then be issued.

567—217.11(455D) Funding denial. An end-user may be denied funding through this program for any of the following reasons:

1. An end-user does not meet the definition of "end-user" as defined in rule 217.3(455D);
2. An end-user does not meet the eligibility requirements pursuant to rule 217.6(455D);
3. An end-user has a pending enforcement action issued by the department relating to Iowa Code sections 455D.11 through 455D.11H; or
4. An end-user does not provide sufficient information as requested in rules 217.8(455D) and 217.9(455D).

These rules are intended to implement Iowa Code section 455D.11F as amended by 1998 Iowa Acts, House File 2546, section 4.

[Filed Emergency 6/26/98, effective 6/26/98]

[Published 7/15/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/98.

ARC §149A

HUMAN SERVICES
DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 225C.6 and 1998 Iowa Acts, House File 2545, section 8, subsection 2, paragraph "c," and section 9, the Department of Human

HUMAN SERVICES DEPARTMENT[441](cont'd)

Services hereby amends Chapter 25, "Disabilities Services Management," appearing in the Iowa Administrative Code.

The Seventy-seventh General Assembly in 1998 Iowa Acts, House File 2545, appropriated allowable growth funds for county mental health, mental retardation, and developmental disabilities services funds. The total amount appropriated, \$18.1 million, amounts to funds previously appropriated plus the 2.48 percent allowable growth factor recommended in the Governor's budget. House File 2545 appropriates funds to each of four priority areas as follows: Growth - \$12 million, Per Capita Expenditure Target Pool - \$2.1 million, Risk Pool - \$2 million, and the Incentive and Efficiency Pool - \$2 million.

These amendments establish requirements for counties to receive funding from the Incentive and Efficiency Pool created by the Seventy-seventh General Assembly in 1998 Iowa Acts, House File 2545, section 8. To be eligible for these funds, a county must collect and report performance measure data in the desired results areas of Equity of Access, Community-Based Supports, Consumer Participation, and Administration; select five performance indicators, three from at least two of four desired results areas and two indicators from either the desired results areas or indicators proposed by the counties; and propose a percentage change for each of the five selected indicators.

The State County Management Committee shall review all proposals and decide whether to accept or reject the proposals or request modifications. The Department of Human Services shall analyze each county's reports to determine the extent to which the county achieved the levels contained in the proposal accepted by the State County Management Committee. The amount actually paid to a county shall be the product of the county's percentage score on the five selected performance indicators and the county's maximum amount, which is the county's percentage share of the state's general population applied to the amount available for distribution from the pool.

These amendments contain a phase-in provision for the first two years. A county which collects and reports all required data by December 1, 1999, shall be deemed to have received a 100 percent score on the county's performance indicators and be eligible for the full payment in January of 2000. A county which submits a proposal for improvement with its management plan for the fiscal year which begins July 1, 1999, and reports the levels achieved on the selected performance measures by December 1, 2000, shall be deemed to have received a 100 percent score on the county's performance indicators, regardless of the actual levels achieved, and be eligible for the full payment in January of 2001.

These amendments were developed by a work group from the State County Management Committee and recommended by the State County Management Committee for adoption by the Mental Health and Developmental Disabilities Commission as required by the General Assembly in 1998 Iowa Acts, House File 2545, section 8, subsection 2, paragraph "c."

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are unnecessary because these amendments implement 1998 Iowa Acts, House File 2545, section 9, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments be

made effective July 1, 1998, as authorized by 1998 Iowa Acts, House File 2545, section 9.

These amendments are also published herein under Notice of Intended Action as ARC 8148A to allow for public comment.

The Mental Health and Developmental Disabilities Commission adopted these amendments June 19, 1998.

These amendments are intended to implement 1998 Iowa Acts, House File 2545, section 8, subsection 2.

These amendments became effective July 1, 1998.

The following amendments are adopted.

ITEM 1. Amend 441—Chapter 25, Preamble, as follows:

PREAMBLE

~~This chapter provides for a payment by the state to an eligible county established at 50 percent of the amount by which the county's qualified expenditures were in excess of the amount of the county's base year expenditures for persons reporting of county expenditures, development and submission of management plans, data collection, and applications for funding as they relate to county service systems for people with mental illness, chronic mental illness, mental retardation, developmental disabilities, or brain injury.~~

ITEM 2. Reserve rules 441—25.42 to 441—25.50.

ITEM 3. Amend 441—Chapter 25 by adopting the following new Division IV consisting of rules 441—25.51(77GA, HF2545) to 441—25.55(77GA, HF2545):

DIVISION IV

INCENTIVE AND EFFICIENCY POOL FUNDING

PREAMBLE

These rules establish requirements for counties to receive funding from the incentive and efficiency pool. To be eligible for these funds, a county must select five performance indicators, submit a proposal, collect data, report data, and show improvement over time on the selected performance indicators.

441—25.51(77GA, HF2545) Desired results areas. In order to receive funds from the incentive and efficiency pool established in 1998 Iowa Acts, House File 2545, section 8, subsection 2, each county shall collect and report performance measure data in the following areas:

25.51(1) Equity of access. Each county shall measure the extent to which services are available and used. Each county shall:

a. Report annually the total number of consumers served, as well as an unduplicated total of the number of consumers served by disability category.

b. Calculate and report annually the percentage of service provision by dividing the number of consumers served in a year by the county's population as defined in 1998 Iowa Acts, House File 2545, section 7.

c. Calculate and report annually the percentage of denial of access by dividing the number of new, completed applications denied by the total number of new applications for service that year. A new, completed application shall be defined as an initial application of a consumer or any former consumer who is reapplying for service eligibility after more than 30 days of not being enrolled in the system, for which the consumer has supplied the information required on the application form.

d. Report annually the county's eligibility guidelines, which may include, but are not limited to, the income level below which an individual or family must be in order to be

HUMAN SERVICES DEPARTMENT[441](cont'd)

eligible for county-funded services, the maximum amount of resources which an individual or family may have in order to be eligible for county-funded services, covered populations, and service access criteria.

25.51(2) Community-based supports. Each county shall measure the extent to which community-based supports are available and used. Each county shall calculate and report annually:

a. The service setting percentage by dividing the unduplicated number of persons served in each of the following service settings in a fiscal year by the total unduplicated number of consumers served, both in total and by population group: mental health institutes, state hospital schools, intermediate care facilities for the mentally retarded, other living arrangements over five beds as captured by the county chart of accounts, and employment settings which include sheltered workshops, enclaves and supported employment.

b. The home-based percentage by subtracting the number of consumers currently being served in residential placements from the total unduplicated number of consumers served, and dividing the difference by the total number of consumers served. The calculation shall be made both in total and by population group.

c. The inpatient spending percentage by dividing the amount the county spent for inpatient services by the amount the county spent for outpatient services. Each county shall also divide the unduplicated number of consumers who received inpatient services during the fiscal year by the total unduplicated number of consumers who received services during that same fiscal year. Inpatient services shall be defined as any acute care for which the county is wholly or partially financially responsible.

25.51(3) Consumer participation. Each county shall measure the extent to which consumers participate in all aspects of the service system.

a. Each county shall report annually on the number of opportunities during the year for consumers to participate in planning activities, which may include, but are not limited to, open forums, focus groups, consumer advisory committee meetings, and planning council meetings by calculating the total number of consumers participating in these activities and dividing by the unduplicated number of consumers served and also by the total population of the county. In addition, the county shall report duplicated and unduplicated total attendance at all of these meetings. These calculations shall be made for consumers and family members separately.

b. Each county which has a planning group shall calculate and report annually the planning group percentage by dividing the number of consumers who actively serve on the planning group by the total number of people on the planning group. This calculation shall be made for consumers and family members separately. For the purposes of this subrule, a planning group is any group of individuals designated by the board of supervisors, or if no designation has been made, any group acknowledged by the central point of coordination administrator as assisting in the development of the county management plan.

c. Each county shall conduct a consumer satisfaction survey following adoption of more detailed rules for the survey.

25.51(4) Administration. Each county shall measure the extent to which the county services system is administered efficiently and effectively. Each county shall:

a. Calculate and report annually the administrative cost percentage by dividing the amount spent administering the

county services system by the total amount spent from the services fund for the fiscal year.

b. Calculate and report annually the service responsiveness average by measuring the number of days between the date a new, completed application was submitted and the date a notice of decision of eligibility was sent to the consumer, adding all of these numbers of days, and dividing by the total number of new, completed applications for the fiscal year. A new, completed application shall be defined as an initial application of a consumer or an application of any former consumer who is reapplying for service eligibility after more than 30 days of not being enrolled in the system, for which the consumer has supplied the information required on the application form.

c. Report annually the number of appeals filed as a percent of the unduplicated total number of consumers served per year.

441—25.52(77GA, HF2545) Methodology for applying for incentive funding. Beginning with the county management plan for the fiscal year which begins July 1, 1999, each county applying for funding under 1998 Iowa Acts, House File 2545, section 8, subsection 2, shall include with its county management plan a performance improvement proposal for improving the county's performance on at least five performance measures. Three of the measures must be selected from at least two of the desired results areas stated in 441—25.51(77GA, HF2545). For the remaining two measures, the county may either propose measures not identified in these rules or may use measures described in these rules. A performance improvement proposal is not a mandatory element of a county management plan.

25.52(1) Performance improvement proposal. Each county shall identify the performance measures which the county has targeted for improvement and shall propose a percentage change for each indicator. The proposal shall include the county's rationale for selecting the indicators and may include any supporting information the county deems necessary. The proposal shall describe the process the county will use to involve consumers in the evaluation.

25.52(2) Committee responsibility. The state county management committee shall review all county proposals, and may either accept the proposal, request modifications, or reject the proposal. In order to interpret and provide context for each county's performance improvement proposal, the state county management committee shall, by January 1, 1999, establish the background data to be collected and aggregated for all counties.

25.52(3) County ineligibility. A county which does not have an accepted proposal prior to July 1 will be ineligible to receive incentive funds for that fiscal year. A county may apply for an extension by petitioning the state county management committee prior to July 1. The petition shall describe the circumstances which will cause the proposal to be delayed and identify the date by which the proposal will be submitted. In addition, the state county management committee may grant an extension for the purposes of negotiation.

441—25.53(77GA, HF2545) Methodology for awarding incentive funding. Each county shall report on all performance measures listed in this division, plus any additional performance measures the county has selected, by December 1 of each year.

25.53(1) Reporting. Each county shall report performance measure information on forms, or by electronic

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means, developed for the purpose by the department in consultation with the state county management committee.

25.53(2) Scoring. The department shall analyze each county's report to determine the extent to which the county achieved the levels contained in the proposal accepted by the state county management committee. Prior to distribution of incentive funding to counties, results of the analysis shall be shared with the state county management committee.

25.53(3) County ineligibility. A county which does not report performance measure data by December 1 will be ineligible to receive incentive funds for that fiscal year. A county may apply for an extension by petitioning the state county management committee prior to December 1. The petition shall describe the circumstances which will cause the report to be delayed and identify the date by which the report will be submitted.

441—25.54(77GA, HF2545) Subsequent year performance factors. For any fiscal year which begins after July 1, 1999, the state county management committee shall not apply any additional performance measures until the county management information system (CoMIS) developed and maintained by the division of mental health and developmental disabilities has been modified, if necessary, to collect and calculate required data elements and performance measures and each county has been given the opportunity to establish baseline measures for those measures.

441—25.55(77GA, HF2545) Phase-in provisions.

25.55(1) State fiscal year 1999. For the fiscal year which begins July 1, 1998, each county shall collect data as required above in order to establish a baseline level on all performance measures. A county which collects and reports all required data by December 1, 1999, shall be deemed to have received a 100 percent score on the county's performance indicators.

25.55(2) State fiscal year 2000. A county which submits a proposal with its management plan for the fiscal year which begins July 1, 1999, and reports the levels achieved on the selected performance measures by December 1, 2000, shall be deemed to have received a 100 percent score on the county's performance indicators, regardless of the actual levels achieved.

These rules are intended to implement 1998 Iowa Acts, House File 2545, section 8, subsection 2.

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[Published 7/15/98]

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ARC §151A

HUMAN SERVICES
DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 1998 Iowa Acts, Senate File 2410, section 7, subsection 12, and section 80, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

This amendment reinstates the four-month work transition period for Medicaid.

The work transition period (WTP) is a four-month disregard of earnings for certain people who begin new employment. The WTP was originally established as a welfare reform waiver policy in the Family Investment Program (FIP) that was designed to be an incentive for welfare participants to begin new employment. The Medicaid and Food Stamp programs also adopted the WTP policy. During an evaluation of the welfare reform policies, it was recommended by the Welfare Reform Advisory Council that this disregard be discontinued because it was not meeting the goal for which it was intended and was very complex to administer. The General Assembly supported the recommendation and on April 18, 1997, Governor Branstad signed 1997 Iowa Acts, chapter 41, section 35, which directed the Department to eliminate the WTP as of October 1, 1997, for the FIP, Food Stamp, and Medicaid programs.

In the meantime, the Balanced Budget Act (BBA) of 1997 was signed into law on August 5, 1997. The BBA added Title 21 to the Social Security Act and appropriated \$39.6 billion to enable states to develop health care programs for uninsured children. Section 2105 of the BBA contains a maintenance of effort provision which prohibits states from adopting more restrictive income and resources methodologies than those that were in place as of June 1, 1997.

The Department proceeded to eliminate the WTP effective October 1, 1997, and submitted a State Plan amendment to the Health Care Financing Administration (HCFA) in December of 1997. HCFA has advised the state that even though the Iowa General Assembly passed legislation to eliminate the WTP prior to the passage of the BBA and the maintenance of effort date, if Iowa does not withdraw the State Plan amendment, Iowa will lose approximately \$32 million annually in federal child health care funding.

The 1998 Iowa General Assembly passed legislation authorizing the Department to reinstate the WTP for Medicaid only if the disregard must be reinstated to ensure federal funding. The Department is working with the Iowa Congressional Delegation to find a legislative remedy.

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are unnecessary because this amendment implements 1998 Iowa Acts, Senate File 2410, section 80, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of this amendment should be waived and this amendment be made effective July 1, 1998, as authorized by 1998 Iowa Acts, Senate File 2410, section 80.

This amendment is also published herein under Notice of Intended Action as ARC §150A to allow for public comment.

The Council on Human Services adopted this amendment June 10, 1998.

This amendment is intended to implement Iowa Code section 249A.4 and 1998 Iowa Acts, Senate File 2410, section 7, subsection 12.

This amendment became effective July 1, 1998.

The following amendment is adopted.

Amend subrule 75.57(7) by adding the following new paragraph:

af. Earnings from new employment of any person whose income is considered when determining eligibility during the first four calendar months of the new employment. The date the new employment or self-employment begins shall be verified before approval of the exemption. This four-

HUMAN SERVICES DEPARTMENT[441](cont'd)

month period shall be referred to as the work transition period (WTP).

(1) The exempt period starts the first day of the month in which the client receives the first pay from the new employment and continues through the next three benefit months, regardless if the job ends during the four-month period.

(2) To qualify for this disregard, the person shall not have earned more than \$1,200 in the 12 calendar months prior to the month in which the new job begins, the income must be reported timely in accordance with rule 441—76.10(249A), and the new job must have started after the date the application is filed. For purposes of this policy, the \$1,200 earnings limit applies to the gross amount of income without any allowance for exemptions, disregards, work deductions, diversions, or the costs of doing business used in determining net profit from any income test in rule 441—75.57(249A).

(3) If another new job or self-employment enterprise starts while a WTP is in progress, the exemption shall also be applied to earnings from the new source that are received during the original 4-month period, provided that the earnings were less than \$1,200 in the 12-month period before the month the other new job or self-employment enterprise begins.

(4) An individual is allowed the 4-month exemption period only once in a 12-month period. An additional 4-month exemption shall not be granted until the month after the previous 12-month period has expired.

(5) If a person whose income is considered enters the household, the new job must start after the date the person enters the home or after the person is reported in the home, whichever is later, in order for that person to qualify for the exemption.

(6) When a person living in the home whose income is not considered subsequently becomes an assistance unit member whose income is considered, the new job must start after the date of the change that causes the person's income to be considered in order for that person to qualify for the exemption.

(7) A person who begins new employment or self-employment that is intermittent in nature may qualify for the WTP. "Intermittent" includes, but is not limited to, working for a temporary agency that places the person in different job assignments on an as-needed or on-call basis, or self-employment from providing child care for one or more families. However, a person is not considered as starting new employment or self-employment each time intermittent employment restarts or changes such as when the same temporary agency places the person in a new assignment or a child care provider acquires another child care client.

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ARC 8142A

INDUSTRIAL SERVICES
DIVISION[873]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 86.8, the Industrial Commissioner hereby amends Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

This amendment provides reference to current tables which determine payroll taxes.

In compliance with Iowa Code section 17A.4(2), the Industrial Commissioner finds that notice and public participation are unnecessary. Rule 8.8(85,17A) is noncontroversial and, further, Iowa Code section 85.61(6) requires adoption of current tables to determine payroll taxes by July 1 of each year. The Division must wait until the Internal Revenue Service and Iowa Department of Revenue and Finance determine whether there will be changes in their publications on July 1 of the current year.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 1998, as it confers a benefit upon the public to ensure speedy and uniform compliance with the Division's legislative mandate.

The Division has determined that the amendment will have no impact on small business within the meaning of Iowa Code section 17A.31.

This amendment is intended to implement Iowa Code section 85.61(6).

This amendment became effective on July 1, 1998.
The following amendment is adopted.

Amend rule 873—8.8(85,17A) as follows:

873—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, 1997 1998, through June 30, 1998 1999, are the tables in effect on July 1, 1997 1998, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Circular E, *Employer's Tax Guide*, Publication 15 [Rev. January 1997 1998].)

2. Iowa income tax withholding computer formula for weekly payroll period. (Iowa Department of Revenue and Finance *Iowa Withholding Tax Guide*, Publication 44-002 44-001, [Rev. ~~May 1995~~ January 1998] for all wages paid on or after July 1, 1995 January 1, 1998.)

3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent (Internal Revenue Service, Circular E, *Employer's Tax Guide*, Publication 15 [Rev. January 1997 1998].)

This rule is intended to implement Iowa Code section 85.61(6).

[Filed Emergency 6/23/98, effective 7/1/98]
[Published 7/15/98]

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ARC 8141A

PUBLIC SAFETY
DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 80A.15, the Department of Public Safety hereby amends Chapter 2, "Private Investigation and Private Security Businesses," Iowa Administrative Code.

Iowa Code chapter 80A authorizes the Department of Public Safety to license private investigation and security businesses operating in the state. The Iowa General Assem-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

bly modified that authority in significant ways in 1998. 1998 Iowa Acts, Senate File 2374, added bail enforcement agents to the persons covered by Iowa Code chapter 80A and the rules of the Department of Public Safety which implement that chapter. 1998 Iowa Acts, Senate File 2331, exempted transportation of prisoners under contract with a county sheriff, the Iowa Department of Corrections, a similar agency from another state, or a federal agency from the provisions of Iowa Code chapter 80A and the corresponding rules of the Department. Most of the amendments proposed here address modifications to the rules required by these two legislative changes, although some additional administrative issues are also addressed. The following is a more detailed explanation of these proposed amendments:

Item 1 changes the title of Chapter 2 of the rules to include bail enforcement agents.

Item 2 updates directions to contact the Department for information, inquiries, or applications for private investigator, private security, or bail enforcement licensing.

Item 3 amends the definitions of moral turpitude, peace officer, and proof of financial responsibility and adds new definitions for bail enforcement agent, bail enforcement business, chief law enforcement officer, conviction resulting from domestic abuse, and defendant. The definition of peace officer is amended to clarify that only peace officers with authority to act as such in Iowa are covered by these rules. The definition of proof of financial responsibility is amended by adding bail enforcement business to the definition and recognizing the different levels of proof required for different businesses.

Item 4 clarifies that a person exempt from the provisions of these rules based on working for an employer solely on the affairs of that employer must only be working for that single employer and it includes language to exempt persons engaged in transport of prisoners from application of these rules.

Item 5 adds references to bail enforcement businesses to existing provisions regarding licensing requirements for private investigative and security businesses. Similar language is contained in several other items. Item 5 also adds language to the subrule regarding proof of financial responsibility which authorizes the Commissioner of Public Safety to accept alternate forms of proof of financial responsibility and clarifies language requiring that each licensed business have at least one licensee who has successfully passed the written examination required for the business.

Item 6 contains language clarifying that licensees must have valid proof of financial responsibility and must reestablish valid proof of financial responsibility within 60 days of the expiration of previous proof.

Item 9 eliminates a requirement that licenses be returned to the Department upon expiration.

Item 12 provides that no metal badges will be approved for bail enforcement agents. This is parallel to an existing provision for private investigative and private security businesses.

Pursuant to Iowa Code subsection 17A.4(2), the Department finds that notice and public participation prior to the adoption of these amendments is impracticable, as the intent of the General Assembly is clear that the Department should implement licensing requirements for bail enforcement agents, pursuant to 1998 Iowa Acts, Senate File 2374, as of the effective date of the Act (July 1, 1998).

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of this amendment, 35 days after publication, should be waived and

the amendment made effective July 1, 1998, after filing with the Administrative Rules Coordinator. This amendment confers a benefit upon the public by providing for immediate implementation of licensing and registration requirements for bail enforcement agents operating in Iowa. Further, immediate implementation of the exemption from the licensing requirements of Iowa Code chapter 80A for persons engaged in transport of prisoners will facilitate the engagement of such services by the Iowa Department of Corrections and by county sheriffs.

A Notice of Intended Action is published herein as ARC 8140A and the text of the amendments is identical to the amendments adopted here. The Notice of Intended Action provides for a period of public comment and participation, including a public hearing. This process will culminate in amendments being adopted through the normal rule-making process with any public input received during the comment period having been taken into account.

These amendments are intended to implement Iowa Code chapter 80A as amended by 1998 Iowa Acts, Senate Files 2331 and 2374.

These amendments became effective July 1, 1998. The following amendments are adopted.

ITEM 1. Amend 661—Chapter 2, title, as follows:
CHAPTER 2

**BAIL ENFORCEMENT, PRIVATE INVESTIGATION
AND PRIVATE SECURITY BUSINESSES**

ITEM 2. Amend rule 661—2.1(80A) as follows:

661—2.1(80A) Licensing. The administrative services division shall administer the *bail enforcement*, private investigation and private security statute. Any questions, comments, information, requests for information, or application for a license or an identification card shall be directed to the *Iowa Department of Public Safety, Administrative Services Division Field Services Bureau, Iowa Department of Public Safety, Wallace State Office Building, Third Floor, Des Moines, Iowa 50319-0045*, or, with the exception of applications, by electronic mail via the Internet to piinfo@dps.state.ia.us.

ITEM 3. Amend rule 661—2.2(80A) as follows:
Amend the following definitions:

"Moral turpitude" is an act of baseness, vileness, or depravity or conduct which is contrary to justice, honesty, or good morals. The following is a nonexclusive list of examples of moral turpitude:

1. Any act or pattern of conduct involving dishonesty, fraud, or deception;
2. Any act or pattern of conduct of harassment or stalking;
3. Any act of sexual misconduct;
4. Any offense with a specific criminal intent;
5. Domestic abuse assault or other assault conviction resulting from domestic abuse.

"Peace officer" means such persons as may be so designated by law and who have the lawful authority and power to so act in the state of Iowa.

"Proof of financial responsibility" means proof of the ability of a licensee to respond in damages for liability on account of accidents or wrongdoings occurring subsequent to the effective date of the proof, arising out of ownership and operation of a *bail enforcement business*, private security business or a private investigative business in amounts as follows:

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1. With respect to agencies holding only a *bail enforcement*, private investigative or private security agency license and having five or fewer permanent and temporary employees, the amount of \$5,000.

2. With respect to agencies holding ~~both a private investigative and private security~~ *more than a single* agency license and having five or fewer permanent and temporary employees, the amount of \$10,000.

3. With respect to agencies holding only a *bail enforcement*, private investigative or private security agency license and having more than 5 and fewer than 30 permanent and temporary employees, the amount of \$20,000.

4. With respect to agencies holding ~~both a private investigative and private security~~ *more than a single* agency license and having more than 5 and fewer than 30 permanent and temporary employees, the amount of \$30,000.

5. With respect to agencies holding only a *bail enforcement*, private investigative or private security agency license and having ~~more than 30 or more~~ permanent and temporary employees, the amount of \$50,000.

6. With respect to agencies holding ~~both a private investigative and private security~~ *more than a single* agency license and having ~~more than 30 or more~~ permanent and temporary employees, the amount of \$100,000.

Adopt the following new definitions in alphabetical order:

“Assault conviction resulting from domestic abuse” means a conviction at any level that has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

“Bail enforcement agent” means a person engaged in the bail enforcement business, including licensees and persons engaged in the bail enforcement business whose principal place of business is in a state other than Iowa.

“Bail enforcement business” means the business of taking or attempting to take into custody the principal on a bail bond issued or a deposit filed in relation to a criminal proceeding to ensure the presence of the defendant at trial, but does not include such actions that are undertaken by a peace officer or law enforcement officer in the course of the officer’s official duties.

“Chief law enforcement officer” means the county sheriff, or the sheriff’s designee, in the county where the defendant is located, or the chief of police, or the chief’s designee, when the defendant is located within the city limits of a city or town which has a police force.

“Defendant” means the principal on a bail bond issued or deposit filed in relation to a criminal proceeding in order to ensure the presence of the defendant at trial.

ITEM 4. Amend rule 661—2.3(80A) as follows:

Amend subrule 2.3(3) as follows:

2.3(3) A person employed full- or part-time *exclusively* by one employer in connection with the affairs of the employer.

Adopt new subrule 2.3(15) to read as follows:

2.3(15) A person engaged in the business of transporting prisoners under a contract with the Iowa department of corrections or a county sheriff, a similar agency from another state, or the federal government.

ITEM 5. Amend rule 661—2.4(80A) as follows:

Amend rule 661—2.4(80A), introductory paragraph, as follows:

661—2.4(80A) Licenses. Each person who engages in, who performs any service as, or who in any way represents or holds out as engaging in, a *bail enforcement business*, private investigative business or private security business or activity in this state shall be licensed prior to such activity. Each business requires a separate license. *For a license to be valid, the business shall have at least one current valid licensee who is a director, officer, partner or person who is actively involved in the business in Iowa. Failure to maintain a valid license shall be grounds for revocation of the license.*

Amend subrule 2.4(1) as follows:

2.4(1) Application for licenses—generally. Anyone who wishes to be considered for a *bail enforcement*, private investigative or private security license or ID card should contact the ~~administrative services division~~ *field services bureau* as indicated in rule 661—2.1(80A) and request application information.

Amend subrule 2.4(2) as follows:

2.4(2) Forms. An applicant for a license or ID card shall execute forms provided by the department. These forms must be submitted to the commissioner and will not be processed by the commissioner unless complete. The forms used in the administration of this chapter are as follows:

a. “Application for ~~Licensee~~ *Bail Enforcement Agency License, Private Investigative Agency License and/or Private Security Agency License*” Form #PD1

b. “Application for a ~~Private Investigator and/or Security Guard~~ *Private Investigator/Private Security Guard/Bail Enforcement Officer* Identification Card” Form #PD2

c. “Application for License Renewal” Form #PD3

d. “Temporary Identification Card” Form #PD4

e. “Fingerprint Card” Form #FD-258

f. “Reference Form” Form #PD5

g. “Surety Bond” Form #PD6

h. “Corporate Information” Form #PD7

i. “Identification Card” Form #PD8

Amend subrule 2.4(3) as follows:

2.4(3) Application requirements. An applicant for a license as a *bail enforcement agency*, private investigative agency or private security agency must submit the following to complete the application process:

a. A completed Application for *Bail Enforcement Agency License, Private Investigative Agency License and/or Private Security Agency License* (Form #PD1) for each individual.

With respect to an applicant who is a corporation, Form #PD1 must be completed by the president of the corporation and by each officer or director who is actively involved in the licensed business in Iowa.

With respect to an applicant who is a partnership or association, Form #PD1 must be completed by each partner or association member.

b. Two completed Fingerprint Cards (Form #FD-258) for each individual identified in this subrule, paragraph “a.”

c. A completed Surety Bond Form (Form #PD6) issued by a surety company authorized to do business in this state.

d. If the applicant is a corporation, a completed Corporate Information Form (Form #PD7).

e. Two color photographs 1” wide × 1¼” high of the head and shoulders of each individual identified in this subrule, paragraph “a,” taken not more than one year prior to application.

f. A fee of \$100 for each agency license requested plus \$10 for each identification card requested pursuant to this subrule.

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g. Proof of financial responsibility.

Amend subrule 2.4(5) by adding the following new paragraph:

d. Such other proof of assets that the commissioner may agree to accept.

Amend subrule 2.4(7) as follows:

~~2.4(7) Mandatory examinees. Each director, officer, partner, or person who is actively involved in the private investigation or security business in Iowa shall take the written examination. However, if the applicant is a foreign corporation, the employee responsible for its operations in the state of Iowa shall take the examination. Each licensed business shall have at least one licensee who has taken and successfully completed the written examination and who has met all other licensing requirements.~~

Amend subrule 2.4(9) as follows:

2.4(9) Reexaminations. An applicant who fails to pass the examination or who fails to appear for the examination shall not be permitted to take any subsequent examination unless the applicant has duly filed a request for reexamination.

A written request for reexamination should be addressed to the department at the following address: Iowa Department of Public Safety, ~~Administrative Field Services Division Bureau, Third Floor,~~ Wallace State Office Building, ~~Third Floor,~~ Des Moines, Iowa 50319-0045.

ITEM 6. Amend rule 661—2.5(80A) as follows:

Amend subrule 2.5(9) as follows:

2.5(9) Not have a history of mental illness or instability; and

Amend subrule 2.5(10) as follows:

2.5(10) Comply with the bonding requirements in the amount and for the purpose delineated in the Iowa Code; and

Adopt the following new subrule:

2.5(11) Comply with the proof of financial responsibility requirements in the amount and for the purpose delineated in the Iowa Code and administrative rules. Licensees will have no more than 60 days to comply with these requirements following any specified expiration dates.

ITEM 7. Amend rule 661—2.6(80A) as follows:

661—2.6(80A) ID cards. Each prospective ID cardholder must satisfy the qualifications required by rule 2.5(80A) and complete the appropriate forms.

An applicant for an ID card as an employee of a *bail enforcement business*, private investigative agency or private security agency must submit the following:

1. A completed Application for a *Bail Enforcement Agent*, Private Investigator and/or *Private Security Guard Identification Card*, Form #PD2;

2. Two 1" x 1" color photographs of the head and shoulders of the applicant;

3. A fee of \$10 for each ID card; and

4. Two Fingerprint Cards, Form #FD-258.

For purposes of this rule, an employee is an agent or employee who is engaged in the activities of the business which render it subject to the regulation of Iowa Code chapter 80A.

EXAMPLE: A person engaged strictly in clerical functions shall not be considered an employee under this definition.

ITEM 8. Amend rule 661—2.7(80A) as follows:

661—2.7(80A) License fee. A fee of \$100 must accompany each application for a *bail enforcement*, private investigative or private security license. Upon approval of the application,

the money shall be applied to the license fee, but if disapproved, the entire amount deposited shall be refunded to the applicant.

ITEM 9. Amend rule 661—2.8(80A) as follows:

661—2.8(80A) Display of license. Immediately upon receipt of the license issued by the department, the licensee named therein shall cause such license to be posted and at all times displayed in a conspicuous place in the licensee's principal place of business within the state, so that all persons visiting such place may readily see it. If there is more than one place of business, then there shall be a copy of the original license issued by the department posted in every such place of business which is located in Iowa, and in a county contiguous to the state of Iowa. The licensee shall notify the commissioner of each location where a copy of the license is posted. If the licensee has no office in the state of Iowa, the licensee shall post the license at the principal place of business and notify the commissioner of the address where such license is posted. Such license shall at all reasonable times be subject to inspection by the commissioner. It shall be unlawful for any person holding such license to post such license or to permit such license to be posted upon premises other than those authorized therein. Every license, and each copy thereof, shall be surrendered to the department within seven days after its terms have expired or after written notice to the holder that such license has been revoked. Failure to comply with any of the provisions of this rule is sufficient cause for the revocation of the license.

ITEM 10. Amend rule 661—2.10(80A) as follows:

661—2.10(80A) License renewal. Each applicant for a license renewal must execute Form #PD3 provided by the department. This form must be submitted to the commissioner not less than 30 days prior to expiration of the applicant's current license and is not required to be processed unless complete. In order to be complete, the applicant must satisfy the *bail enforcement*, private investigation and private security rules 661—2.4(80A), 661—2.5(80A), and 661—2.7(80A), and for license renewals after July 1, 1999, 661—2.22(80A). The reference date for any deadline enumerated in these rules will be determined by the postmark on the piece of mail.

In no event will a renewal license be granted if the application for renewal is received more than 30 days after the expiration date of the existing license.

Upon the passage of 30 days subsequent to the expiration date, the license will become invalid, and if the former licensee wishes to continue the *bail enforcement*, private investigative or *private security business*, the former licensee must reapply as if the former licensee were making an initial application.

Upon satisfying all the pertinent rules, the applicant's license remains valid until the applicant receives a renewal license or a notification that the license will not be renewed.

ITEM 11. Amend subrule 2.11(1) as follows:

2.11(1) Temporary ID cards. The Application for a *Bail Enforcement Agent*, Private Investigator and/or Security Guard Identification Card, Form #PD2, shall contain a temporary identification card that shall be valid for 14 calendar days from the date of issuance. This temporary identification card shall be issued to new employees of a licensee so that the requirement that employees have in their possession a valid identification card may be met while the application for a permanent identification card is being processed.

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ITEM 12. Amend rule 661—2.12(80A), introductory paragraph, as follows:

661—2.12(80A) Badges, uniforms, insignia and equipment. No badges, uniforms, or insignia will be approved for private investigative or bail enforcement agents. No holder of a license or ID card while performing the duties of a private security guard shall wear any uniform, or wear, display, or likewise use any badge, insignia, device, shield, or the like, without the prior written approval of such by the commissioner.

ITEM 13. Amend rule 661—2.17(80A), introductory paragraph, as follows:

661—2.17(80A) Licensee's duty regarding employees. The licensee shall be held responsible for ascertaining that all the licensee's employees meet the requirements of the bail enforcement, private investigation and private security statute and rules.

[Filed Emergency 6/23/98, effective 7/1/98]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/98.

ARC 8175A

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 321J.2 as amended by 1998 Iowa Acts, Senate File 2391, the Iowa Department of Public Safety hereby amends Chapter 7, "Devices and Methods to Test Body Fluids for Alcohol or Drug Content," Iowa Administrative Code.

1998 Iowa Acts, Senate File 2391, contains language which requires the Department to adopt "nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances." The standards being adopted here were established by the Substance Abuse and Health Services Administration of the U.S. Department of Health and Human Services for testing of urine samples in federal workplace drug testing programs.

Pursuant to Iowa Code subsection 17A.4(2), the Department finds that notice and public participation prior to the adoption of these amendments is impracticable, as the implementation of provisions regarding drugged driving contained in 1998 Iowa Acts, Senate File 2391, depends upon the enactment of standards for determining detectable levels of controlled substances.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 1998, after filing with the Administrative Rules Coordinator. This amendment confers a benefit upon the public by providing for immediate implementation of new standards for testing of urine samples of suspected drugged drivers and for clear understand-

ing that these provisions of 1998 Iowa Acts, Senate File 2391, will be in force on the effective date of the law.

A Notice of Intended Action is also being submitted and is published in this issue of the Iowa Administrative Bulletin as ARC 8174A. The text of the amendments proposed in the Notice of Intended Action includes the amendment adopted here, although additional language is also proposed in the Notice. The language adopted here involves the adoption of national standards for testing of drugs most commonly found in urine drug testing which have been codified by federal action, while the additional language in the Notice proposes standards for detection of other drugs which are generally accepted but which have not been specifically codified by federal action. The Notice of Intended Action provides for a period of public comment and participation, including a public hearing. This process will culminate in amendments being adopted through the normal rule-making process with any public input received during the comment period having been taken into account.

This amendment is intended to implement Iowa Code chapter 321J as amended by 1998 Iowa Acts, Senate File 2391.

This amendment became effective July 1, 1998.

Amend 661—Chapter 7 by adopting the following new rule:

661—7.9(321J) Detection of drugs other than alcohol.

7.9(1) Adoption of federal standards. Initial test requirements adopted by the federal Substance Abuse and Health Services Administration in "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 59 FR 29908, as amended in "Revisions to the Mandatory Guidelines," 62 FR 51118, are hereby adopted as standards for determining detectable levels of controlled substances in the division of criminal investigation criminalistics laboratory initial screening for controlled substances detected by the presence of the following: marijuana metabolites, cocaine metabolites, opiate metabolites, phencyclidine, and amphetamines. The following table shows the minimum levels of these substances which will result in a finding that a controlled substance is present at a detectable level:

Table with 2 columns: Substance, Minimum Level (ng/ml). Rows include Marijuana metabolites (50), Cocaine metabolites (300), Opiate metabolites (2000), Phencyclidine (25), and Amphetamines (1000).

NOTE: "ng/ml" means "nanograms per milliliter."

7.9(2) Reserved.

This rule is intended to implement Iowa Code chapter 321J as amended by 1998 Iowa Acts, Senate File 2391.

[Filed Emergency 6/26/98, effective 7/1/98]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/98.

ARC §177A

PUBLIC SAFETY
DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 692A.10, the Iowa Department of Public Safety hereby amends Chapter 8, "Criminal Justice Information," Iowa Administrative Code.

The Iowa Sex Offender Registry was established by the adoption of Iowa Code chapter 692A by the Iowa General Assembly in 1995. The Registry is intended to facilitate the tracking of sex offenders by criminal and juvenile justice agencies in order to accomplish two related purposes: (1) enhance the capability of criminal and juvenile justice agencies to obtain information about convicted sex offenders useful in investigation, apprehension, and prosecution of crimes, especially sex offenses, and (2) enable members of the public to obtain information about convicted sex offenders which may assist them in protecting themselves. The General Assembly amended Iowa Code chapter 692A in several regards this year. Most of these amendments were contained in 1998 Iowa Acts, Senate File 2292. These proposed amendments make changes in the rules governing the operation of the Registry required by the statutory changes made by the legislature this year. Following is a more detailed description and explanation of the proposed amendments:

Item 1 revises several of the definitions used in these rules and adds some additional definitions, all in response to language contained in 1998 Iowa Acts, Senate File 2292.

Item 2 amends rule 661—8.303(692A) which specifies forms and procedures used by the Iowa Sex Offender Registry. Included in these changes are language clarifying that name changes, as well as changes of telephone number and address, are required to be reported to the Registry, language requiring a registrant who moves from one county to another to notify both county sheriffs of the change, language clarifying that a "decision of determination" regarding whether a registrant's criminal record requires registration or not is final agency action which may be appealed to district court, and language adding police departments to the agencies of whom citizens may inquire for registry information.

Item 3 amends rule 661—8.304(692A) which governs procedures for release of information from the Iowa Sex Offender Registry. It strikes language requiring prior authorization from the division of criminal investigation prior to affirmative public notification by another criminal or juvenile justice agency and replaces it with language requiring that a completed risk assessment finding that the registrant is "at risk" precede affirmative public notification. Language specifying the factors to be considered in risk assessment is struck and replaced with language specifying that risk assessment procedures will be prescribed by the Iowa Department of Corrections. Language is added which specifies that information about any registrant convicted of an offense which requires registration which occurred on or after July 1, 1998, and who has been found to be "at risk" based on a completed risk assessment shall be provided to the public by the Department of Public Safety via the Internet. Existing language is retained which allows for posting of such information on the Internet regarding registrants who have been assessed as "at risk" and who are required to register based on offenses which occurred prior to July 1, 1998, if the Internet or computer bulletin boards were used by them to contact

victims or potential victims in the past. With regard to appeals of departmental decisions to engage in affirmative public notification, language regarding the burden of proof in such cases is amended to place the burden of proof upon the Department. Language is also added regarding affirmative public notification initiated by agencies other than the Iowa Department of Public Safety. This language provides that due process be afforded to the registrant prior to affirmative public notification occurring by requiring that the registrant be notified of the intent to undertake affirmative public notification and of the right to appeal the decision to engage in this notification.

Pursuant to Iowa Code subsection 17A.4(2), the Department finds that notice and public participation prior to the adoption of these amendments is impracticable, as the intent of the General Assembly is clear that the Department should implement new procedures for the Iowa Sex Offender Registry, pursuant to 1998 Iowa Acts, Senate File 2292, as of the effective date of the Act (July 1, 1998).

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective July 1, 1998, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by providing for immediate implementation of new procedures for the Iowa Sex Offender Registry and for clear understanding that the provisions of 1998 Iowa Acts, Senate File 2292, will be in force on the effective date of the law.

A Notice of Intended Action is also being submitted and is published herein as ARC §176A. The text of the amendments proposed in the Notice of Intended Action is identical to the amendments adopted herein. The Notice of Intended Action provides for a period of public comment and participation, including a public hearing. This process will culminate in amendments being adopted through the normal rule-making process with any public input received during the comment period having been taken into account.

These amendments are intended to implement Iowa Code chapter 692A as amended by 1998 Iowa Acts, Senate File 2292.

These amendments became effective July 1, 1998.

The following amendments are adopted.

ITEM 1. Amend rule 661—8.302(692A) as follows:
Rescind and reserve subrule 8.302(4), paragraph "b."
Rescind and reserve subrule 8.302(4), paragraph "c."
Amend subrule 8.302(4), paragraph "j," as follows:

j. Incest in violation of Iowa Code section 726.2, *when committed against a minor.*

Renumber subrule 8.302(6) as 8.302(7) and 8.302(7) as 8.302(9) and adopt a new subrule 8.302(6) as follows:

8.302(6) "Other relevant offenses" means any of the following offenses:

a. Telephone dissemination of obscene materials in violation of Iowa Code section 728.15.

b. Rental or sale of hard-core pornography in violation of Iowa Code section 728.4.

c. Indecent exposure in violation of Iowa Code section 709.9.

d. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through "c" if committed in this state.

Amend renumbered subrule 8.302(9) as follows:

8.302(9) "Sexually violent offense" means any of the following indictable offenses:

a. Sexual abuse as defined in Iowa Code section 709.1.

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b. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.

c. Sexual misconduct with offenders in violation of Iowa Code section 709.16.

~~d. Telephone dissemination of obscene materials in violation of Iowa Code section 728.15.~~

~~e. Rental or sale of hard core pornography in violation of Iowa Code section 728.4.~~

~~f. Indecent exposure in violation of Iowa Code section 709.9.~~

g d. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, *false imprisonment*, burglary, or manslaughter.

h e. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through "e" and "g" "d" of this subrule if committed in this state.

Adopt the following new subrule:

8.302(10) "Sexually violent predator" means a person who has been convicted of an offense under the laws of this state or another state which would qualify the person as a sexually violent predator under the federal Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1798.

ITEM 2. Amend rule 661—8.303(692A) as follows:

Amend subrule **8.303(2)**, paragraph "b," as follows:

b. Form DCI-145 shall also be used to report changes of residence, ~~and~~ telephone number, ~~or name~~ of registrants. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of the county of residence each time the registrant's place of residence, ~~or~~ telephone number, ~~or name~~ changes within ten days of the change of residence, ~~or~~ telephone number, ~~or name~~, whether within or outside the state of Iowa. The original of each completed Form DCI-145 shall be forwarded to the division of criminal investigation by the registering agency within three days of receiving the completed form.

If a registrant moves from one county to another, the registrant shall submit copies of completed Form DCI-145 reporting the change of residence to the sheriff of the prior county of residence and the sheriff of the new county of residence. The sheriff of the new county of residence shall be responsible for transmitting a copy of completed Form DCI-145 to the Iowa sex offender registry.

Amend subrules 8.303(3) to 8.303(6) as follows:

8.303(3) Annual verification. Form DCI-146, "Annual Verification of Address," shall be mailed by the division of criminal investigation to each registrant to the last address known to the registry annually during the month of original registration. Form DCI-146 shall be returned by the registrant to the division of criminal investigation within ten days of receipt. Form DCI-146 shall be mailed to the registrant in an envelope clearly stating that it is to be returned to the division of criminal investigation if the addressee no longer resides at the address indicated and that Iowa law prohibits its being forwarded.

~~The division of criminal investigation shall provide monthly to the sheriff of each county a list of all registrants whose last known addresses are within the respective county and to whom annual verification forms have been mailed.~~

EXCEPTION: Form DCI-146 shall be mailed quarterly by the division of criminal investigation to each registrant who is a sexually violent predator, as defined in Public Law 103-322, to the last address known to the registry and shall be completed and returned to the division of criminal inves-

igation by the registrant within ten days of receipt. ~~The division of criminal investigation shall provide monthly to the sheriff of each county a list of all registrants whose last known addresses are within the respective county and to whom quarterly verification forms have been mailed.~~

8.303(4) Application for determination. Form DCI-148, "Application for Determination," shall be completed by a registrant to initiate a request that the ~~division of criminal investigation~~ *department* review whether one or more offenses of which the registrant has been convicted require registration with the Iowa sex offender registry or whether the time period during which the registrant is required to register has expired. A registrant who submits a completed copy of Form DCI-148 for review shall provide with it copies of any sentencing or adjudicatory orders related to each offense for which a determination of whether registration is required is being requested. The completed application (Form DCI-148) shall specify the exact grounds for the application and shall include a statement of any additional facts which the registrant intends to present to the department in support of the application. Failure to submit any of the required orders shall constitute grounds for denial of the application. If the application sets forth an issue of fact which cannot be evaluated based upon the record of convictions, sentencing and adjudicatory orders, and relevant statutory provisions, the commissioner may refer the matter to an administrative law judge or presiding officer for a hearing.

8.303(5) Decision of determination. Form DCI-149, "Decision of Determination," shall be used by the division of criminal investigation to notify a registrant who has submitted a request for determination (Form DCI-148) of the results of that review. A completed Form DCI-149 shall be mailed to any registrant who has filed a completed Form DCI-148 within 90 days of the receipt by the division of criminal investigation of the completed Form DCI-148 and all required supporting documents. *A decision of determination shall be signed by the commissioner and shall constitute final agency action for the purposes of Iowa Code chapter 17A.*

If an administrative law judge or presiding officer has been assigned to hold a hearing regarding an application for determination, the administrative law judge or presiding officer shall prepare a proposed decision of determination. The proposed decision of determination shall be reviewed by the commissioner who may uphold or modify the proposed decision of determination and shall then sign a final decision of determination. The final decision of determination shall constitute final agency action for the purposes of Iowa Code chapter 17A.

8.303(6) Request for information. Form DCI-150, "Request for Registry Information," shall be used by a member of the public to request information about whether a specific person is registered with the Iowa sex offender registry. A person requesting information about whether a specific individual is registered with the Iowa sex offender registry shall submit a completed copy of Form DCI-150 to a sheriff *or police department*. A separate form shall be submitted for each person about whom information is being requested.

ITEM 3. Amend rule 661—8.304(692A) as follows:

661—8.304(692A) Release of information. The purpose of release of information from the Iowa sex offender registry is to afford protection to the public. The procedures specified here are intended to maximize the degree of protection afforded the public from potential risks presented by registrants while ensuring registrants their due process rights.

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8.304(1) Affirmative public notification for public protection. A criminal or juvenile justice agency wishing to make *may initiate* affirmative public notification regarding the identity and location of a specific registrant shall make a request for authorization for affirmative public notification to the division of criminal investigation, indicating the name, address, and sex offender registry number of the registrant about whom authorization for community notification is being requested, along with a statement of the reasons for requesting such authorization. ~~The request subsequent to the completion of a risk assessment of the registrant by the division of criminal investigation, the department of corrections, or the department of human services which has resulted in a finding that the registrant is "at risk."~~ A request for confirmation that a risk assessment resulting in classifying the registrant as "at risk" has been completed may be sent to the division of criminal investigation by mail, electronic mail via the Internet to isor@dps.state.ia.us, fax transmission or via the Iowa on-line warrants and articles (IOWA) system. ~~Affirmative public notification may be made only after authorization has been received from the department of public safety. The department of public safety may authorize affirmative public notification regarding a registrant without having received a request for authorization of community notification from another criminal justice agency, when the department has received or is in possession of information suggesting that the registrant presents a risk to the community.~~

In making a request for authorization for affirmative public notification, a criminal or juvenile justice agency may consider information provided by any person, group, or organization.

a. Risk assessment. The department of public safety shall ensure that an assessment of the risk presented by a registrant is *shall be* prepared prior to authorizing or engaging in any affirmative community public notification regarding that registrant. *The assessment of risk for a registrant shall be prepared by the division of criminal investigation for a registrant who has moved to Iowa but is not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; federal parolees or probationers; persons who have been released from a county jail but are not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; juveniles who are not incarcerated but who are placed under the supervision of juvenile court services; and persons who are convicted and released by the courts and are not incarcerated or placed under supervision pursuant to the court's sentencing order. Risk assessments shall be prepared by the department of corrections or the department of human services for registrants as specified in 1998 Iowa Acts, Senate File 2292, section 11. During the preparation of a risk assessment, the department may solicit information about the registrant being assessed from any agency or individual who may have information relevant to assessing the potential risk presented by the registrant. The department shall consult local law enforcement agencies and the county attorneys with jurisdiction in the areas in which the registrant resides, works, attends school, or is known to frequent and may consult with, utilize the assistance of, or receive information from the Iowa department of corrections, departments of correctional services in each judicial district, the Iowa department of human services, juvenile court officers, the Iowa attorney general, other county attor-*

neys, or local law enforcement agencies, or any other person, group or organization to gather information relevant to risk assessment of a registrant. Risk assessments shall be completed following procedures prescribed by the department of corrections.

b. Risk assessment factors. Determination of the risk presented by a registrant shall take into account available information regarding the following factors. The factors set forth may not have the same importance in each instance and other factors may present themselves in the consideration of a request to authorize affirmative public notification. The factors are not listed in any order of priority.

(1) Conditions of release, such as probation or parole supervision;

(2) Participation in, and response of the registrant to, therapeutic support, such as counseling, therapy, or other medical treatment;

(3) Residential situation, including stability of residence, presence and support of family members, and location in proximity to, or removed from, potential victims;

(4) Physical condition of the registrant;

(5) Criminal history factors indicative of the potential risk presented by the registrant, including but not limited to whether the registrant's conduct was characterized by repetitive and compulsive behavior, whether the registrant served the maximum term or terms, and age(s) of the registrant's victim or victims.

(6) Criminal history factors indicative of the seriousness and frequency of past offenses, such as the relationship between the registrant and the registrant's victims, whether the registrant's past offense or offenses involved the use of a weapon, violence, or infliction of serious bodily injury, and the number, date, and nature of prior offenses.

(7) Whether psychological or psychiatric profiles of the registrant indicate a risk of reoffending.

(8) Recent behavior of the registrant, including but not limited to behavior while confined, under supervision in a community setting, or following service of sentence, and including but not limited to threats against persons or expressions of intent to commit additional crimes.

(9) Compliance with registration requirements of the Iowa sex offender registry or the sex offender registry of other jurisdictions.

(10) Circumstances of previous sex offenses, including characteristics of victims, modus operandi, and geographic location of contact with victims and offending behavior.

Any additional information available to the department, including, but not limited to, court orders, victim impact statements, and pre-sentence investigation reports, may be considered in preparing the assessment, if deemed relevant by the department.

c. Risk categories. The assessment of risk presented to the community by a registrant shall result in placement of the registrant into one of the following two categories: "low risk" or "at risk."

All registrants are by virtue of their presence on the registry classified as low-risk "low-risk" offenders, unless they are classified as offenders at risk "at risk" on the basis of the factors specified in paragraph "b." assessments completed by the division of criminal investigation, department of corrections, or department of human services. For individuals in this category, the risk assessment results in an estimate that there is a low likelihood that the registrant presents a risk to the community.

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~~A registrant shall be classified as at risk if the assessment of risk based on the factors specified in paragraph "b" results in an estimate that the registrant presents more than a low risk to the community. In order to support classification of a registrant in this category, the registrant must have characteristics correlating with more than one factor which support the conclusion that the registrant presents a risk to the community, or strong evidence supporting such a conclusion with regard to a single factor.~~

d.c. Affirmative public notification procedures. The means, method, and scope of release of information shall be based upon the determination of level of risk presented by a registrant. The following forms of notification may be utilized for each level of risk assessed.

(1) Low risk. For a registrant classified as presenting a low risk to the community, notification of the registrant's name, current address, criminal history, and a current photograph of the registrant may be provided to any law enforcement agency likely to encounter the registrant. These ~~may~~ shall include, but are not limited to, any county or municipal agency with jurisdiction over the registrant's place of residence, place of employment or school or any other place to which the registrant is known to travel on a frequent basis.

(2) At risk. For a registrant classified as "at risk," the notification described in subparagraph (1) shall be completed. Also, persons likely to encounter the registrant may be notified through the following means. The department shall consult with the county attorney, sheriff, and local law enforcement agencies with jurisdiction in the registrant's place of residence, employment, school attendance, and other locations that the registrant is known to frequent, regarding appropriate forms of affirmative public notification. Form DCI-153 shall be used to carry out affirmative public notification *initiated by the division of criminal investigation*.

1. Notification of agencies or organizations in the community in which the registrant lives, is employed or attends school, or is known to frequent, where there are potential victims, ~~based on the record before the department~~.

2. Personal or written notification of neighbors in the vicinity of the residence of the registrant, the registrant's place of employment or school, or other places the registrant is known to frequent.

3. Releases to media outlets which cover the community or communities in which the registrant resides, is employed or attends school, or is known to frequent including but not limited to the registrant's name and photograph.

4. Distribution of leaflets to residences and businesses in the vicinity of the registrant's residence, place of employment or school, or places the registrant is known to frequent.

5. Posting of notices in public locations in the vicinity of the registrant's residence, place of employment or school, or places the registrant is known to frequent.

(3) Responsibility for affirmative public notification. ~~Carrying out affirmative public notification shall be the responsibility of the agency that initially requested authority for affirmative public notification within its jurisdiction. The agency which initially requested authorization for affirmative public notification regarding any registrant is authorized to request assistance from other law enforcement agencies with jurisdiction in areas in the vicinity of the registrant's residence, place of employment or school, or other places which the registrant is known to frequent to carry out affirmative public notification as authorized by the department of public safety.~~

Affirmative public notification is intended to be a process of cooperation between the department of public safety and

local law enforcement agencies with jurisdiction in locations where the registrant resides, is employed, attends school, or is known to frequent.

(4) Any county sheriff or police department shall provide a listing of all registrants classified as "at risk" within the county in which the sheriff or police department has jurisdiction to any person who requests such a list.

(5) A registrant who has been classified as "at risk" and whose history of offending includes the use of computer bulletin boards, the Internet, or other electronic means of contact with victims or potential victims may be the subject of a notice containing, but not limited to, the registrant's name and photograph, on the Internet.

(6) *Information regarding any registrant who has been convicted of criminal offense against a minor, sexual exploitation, another relevant offense, or a sexually violent offense on or after July 1, 1998, who has been assessed as "at risk" shall be made available electronically by the department of public safety to the public via the Internet.*

e.d. Findings—prior notice—right to appeal—affirmative public notification by department.

~~(1) In response to a request from any criminal or juvenile justice agency or on its own initiative, the division of criminal investigation may initiate an investigation, in cooperation with local law enforcement agencies where the registrant resides, is employed, attends school, or is known to frequent, of any registrant to determine whether affirmative community notification regarding that registrant is appropriate and shall ensure that the risk assessment of that registrant, as described in this rule, is undertaken. Based upon the risk assessment, the director of the division of criminal investigation shall make an initial finding of the level of risk presented by the registrant, whether affirmative community notification regarding the registrant is appropriate, and what form or forms of affirmative public notification may be permitted regarding the registrant.~~

~~(2) (1) If the initial finding outcome of a risk assessment performed by the division of criminal investigation, the department of corrections, or the department of human services results in a finding that the registrant is "at risk" and the department intends to undertake or cause to be undertaken affirmative public notification with regard to the registrant, regarding a registrant permits affirmative community notification, the division of criminal investigation shall notify, or cause to be notified, the registrant of the initial finding, by providing to the registrant a completed copy of Form DCI-152. Notice shall be given by personal service or by certified mail, return receipt requested, 14 days prior to the commencement of any affirmative public notification, unless it is impracticable to give timely notice. No additional notice is required. Notice is deemed provided if the registrant refuses delivery of certified mail or if certified mail is undeliverable because the registrant has not complied with registry requirements to provide a current address. The notice shall contain the following information:~~

1. The proposed scope and specific manner and details of public notification;

2. That unless application is made for a hearing on or before the date mentioned in the notice, affirmative public notification may take place at any time thereafter while the person remains a registrant;

3. That the offender may make application for a hearing by filing a written request for a hearing and mailing or serving it on the department at an address prescribed on the notice so it is received on or by the date mentioned in the notice;

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4. That if application is made and received by the department by 4:30 p.m. on or by the date mentioned in the notice, there will be no affirmative public notification until and unless the initial determination is affirmed, or is modified, through the hearing process.

(3) (2) A registrant who has received notice that an initial finding has been made which may result in affirmative public notification may appeal the initial finding in writing to the administrative services division of the department of public safety within 14 days of the date on which the notice is sent to the registrant by the division of criminal investigation.

(4) (3) Affirmative public notification shall not proceed until at least 14 days after notice of the initial determination has been mailed or delivered to the registrant.

EXCEPTION: If the director of the division of criminal investigation finds that the registrant presents an immediate threat to the safety of the public, affirmative public notification may proceed at the same time as notice is sent to the registrant. In such a case, the notice shall inform the registrant that affirmative public notification may proceed immediately, based upon the finding that the registrant presents an immediate threat to the safety of the public.

(5) (4) If the department does not receive a written application for a hearing within the time guidelines set forth above, the department may authorize may undertake affirmative public notification.

(6) (5) When the department receives an application for a hearing, the department shall refer the matter to an administrative law judge or a presiding officer pursuant to Iowa Code section 17A.11. The department shall submit all written documents supporting the initial determination finding to the presiding officer with the application for hearing. The administrative law judge or presiding officer shall set a hearing within seven days after receiving the application for hearing from the department and provide notice to the parties along with the documentary evidence received from the department. The administrative law judge or presiding officer shall set the hearing as expeditiously as possible in recognition of the public protection interests of Iowa Code chapter 692A.

(7) (6) All documents relating to the hearing shall be confidential prior to, during, and after the hearing. The hearing itself shall be conducted in camera.

(8) (7) Rule 661—10.306(17A), which governs introduction and consideration of evidence, shall apply to proceedings under this rule.

(9) (8) The department shall have the burden of going forward with evidence proof by a preponderance of the evidence to support its initial determination finding. Upon such proof, the offender shall have the burden of persuasion on all remaining issues. The level of proof is by a preponderance of the evidence.

(10) (9) After hearing the evidence and argument of the parties, the administrative law judge or presiding officer shall issue a written order affirming, reversing, or modifying the initial determination finding. The order shall contain concise findings of fact and conclusions of law. A copy of the order shall be promptly mailed to each party. The order itself shall remain confidential, in accordance with Iowa Code section 692A.13.

(11) (10) The registrant or the director of the division of criminal investigation may appeal the administrative law judge's or presiding officer's order to the commissioner of public safety. Appeal must be served in writing within 14 days from the date of the order. If the order is not appealed within the 14-day time period, it shall be considered a final

decision, and the department or other criminal or juvenile justice agency may authorize undertake affirmative public notification.

(12) (11) The commissioner shall consider an appeal on the record made before the administrative law judge or presiding officer. The commissioner shall not consider any additional facts on appeal. The commissioner may, at the commissioner's discretion, request written briefs or oral argument in an appeal. The commissioner shall issue a written decision affirming, reversing, or modifying the order of the presiding officer. A copy of the decision shall be promptly mailed to each party. The decision, and all related information, shall remain confidential, in accordance with Iowa Code section 692A.13. The commissioner's decision shall constitute final agency action for purposes of Iowa Code section 17A.19.

§ (12) Subsequent affirmative public notification. For a registrant who has been assessed as "at risk" and who has been notified of authorization for the intent to initiate affirmative public notification, the department of public safety on its own initiative, or in response to a request from another criminal or juvenile justice agency, may authorize initiate affirmative public notification in any area in which the registrant resides, is employed or attends school, or frequents subsequent to the initial notification to the registrant of the possibility of affirmative public notification. If the form of notice is consistent with that described in the notice given to the registrant of the initial finding that the registrant is "at risk" and subject to affirmative public notification, no further notice to the registrant is required. If the form or content of affirmative public notification differs substantially from that described in the notice to the registrant of the initial finding, a new notice of initial finding shall be prepared and sent to the registrant, as provided in paragraph "e," "d," subparagraph (2) (1), of this subrule.

e. Affirmative public notification initiated by other criminal or juvenile justice agency. A criminal or juvenile justice agency may initiate affirmative public notification with regard to a registrant subsequent to the completion by the division of criminal investigation, the department of corrections, or the department of human services of a risk assessment finding that the registrant is "at risk." Prior to initiating affirmative public notification, the agency initiating it shall provide notice to the registrant of the agency's decision to initiate affirmative public notification, of the intended scope and manner of affirmative public notification, and of the registrant's right to contest the decision. A copy of the notice shall be submitted to the division of criminal investigation at the same time as it is transmitted to the registrant. The notice shall contain instructions to the registrant as to the procedures for contesting the decision and the time allowed to do so. Affirmative public notification shall not proceed until the time allowed for contesting the decision has expired or, if the decision is contested, until the decision has been upheld. Any written or published form of affirmative public notification shall prominently display the identity of the agency initiating the notification and the signature of the chief executive of that agency.

Any criminal or juvenile justice agency initiating affirmative public notification regarding any registrant is authorized to request assistance in carrying out affirmative public notification from other law enforcement agencies with jurisdiction in areas in the vicinity of the registrant's residence, place of employment or school, or other places which the registrant is known to frequent.

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8.304(2) Release of information in response to individual request. A sheriff or police department who receives a completed Form DCI-150 shall inquire of the division of criminal investigation as to whether the person about whom information was requested is registered with the Iowa sex offender registry. If the division of criminal investigation notifies the sheriff or police department that the person about whom inquiry is made is not on the registry, the sheriff or police department shall so notify the person who submitted the request. If the division of criminal investigation notifies the sheriff or police department that the subject about whom inquiry was made is a registrant with the Iowa sex offender registry, the sheriff or police department shall notify the person making the inquiry that the subject about whom the inquiry was made is a registrant and shall provide the requester with the following information: name of registrant, address of registrant, age of registrant, gender of registrant, and physical description of registrant. ~~No additional information may be released in response to an individual request for information.~~

EXCEPTION: 8.304(3) Release of information for confidential background investigations. The division of criminal investigation may release additional information regarding a registrant to personnel of criminal justice agencies or to personnel of government agencies conducting confidential background investigations.

8.304(3) 8.304(4) Release of information for bona-fide research. Information from the Iowa sex offender registry may be released to persons conducting bona-fide research. A person conducting bona-fide research may request access to information from the Iowa sex offender registry by submitting a completed Form DCI-155 to the division of criminal investigation. Information identifying persons who have requested information about registrants using Form DCI-150 shall not be released to researchers unless permission has been obtained from each person who would be identified.

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ARC 8162A

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development hereby adopts Chapter 4, "Coordinating Service Provider," Iowa Administrative Code.

On June 24, 1998, the Workforce Development Board adopted the new chapter. The new chapter provides guidance to local workforce development service providers, regional advisory boards and other interested parties on the formation of a coordinating service provider in each workforce development region, its function, and the services provided by workforce development centers.

In accordance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary, impracticable, and contrary to the public interest. The new chapter is necessary to provide guidance to local

workforce development organizations that desire to form a regional coordinating service provider beginning July 1, 1998.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment, 35 days after publication, should be waived and the amendment made effective on July 1, 1998. The Department finds that the rules confer a benefit of distributing funding to coordinating service providers' fiscal agents at the start of the fiscal year and providing uninterrupted services to participants.

These rules are also published herein under Notice of Intended Action as **ARC 8161A** to provide for public comment.

This amendment became effective on July 1, 1998.

These rules are intended to implement Iowa Code section 84A.5(8) and chapter 84B.

The following new chapter is adopted.

CHAPTER 4

COORDINATING SERVICE PROVIDER

877—4.1(84A,84B) Purpose. A coordinating service provider will be established in each region to manage the workforce development centers, design products and services, integrate them into a seamless delivery system, and accept responsibility for the performance of the workforce development system.

877—4.2(84A,84B) Definitions.

"Coordinating service provider" means the entity that will be responsible for ensuring that all workforce development services are delivered throughout the region.

"Department" means the department of workforce development.

"JTPA grantee" means any organization, agency, or unit of government that is designated by the private industry council to receive and administer Job Training Partnership Act funds within a region.

"Participating provider" means a member organization of the coordinating service provider that is not the department of workforce development or Job Training Partnership Act grantee.

"Regional advisory board" means an advisory board as defined in 877—Chapter 6, Iowa Administrative Code.

"Service provider" means an agency or organization in a region that provides direct services to customers and receives funding directly from the department of workforce development. The coordinating service provider is also a service provider.

"Vendor" means an agency or organization in a region that provides direct services to customers and receives funding from the coordinating service provider.

877—4.3(84A,84B) Regional advisory boards. The regional advisory board in each region initiates the formation of the coordinating service provider by convening a meeting of all workforce development service providers and other interested parties. Each regional advisory board conducts a regional needs assessment and analysis plan, which the coordinating service provider shall utilize in designing its annual service delivery plan. The regional advisory board approves the 28E agreement that creates the coordinating service provider and the regional customer service plan before they are submitted to the state workforce development board for final approval. The regional advisory board also provides oversight and guidance to the coordinating service provider on service delivery and the performance of the regional system.

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877—4.4(84A,84B) Membership. All interested public and private workforce development organizations in the region are encouraged to be members of the coordinating service provider.

4.4(1) Member requirements. Each participating provider shall:

a. Be a corporation duly organized, validly existing and in good standing under the laws of the state of Iowa or another state and have the full power and authority to carry on its business in Iowa as now conducted;

b. Demonstrate, to the satisfaction of the department, that it has sufficient funds to participate in the coordinating service provider and to satisfy potential liabilities arising from its participation in the agreement;

c. Integrate products and services agreed to be offered through the region's workforce development system;

d. Use and share customer information through the department's integrated customer service system;

e. Accept financial responsibility and liability for its actions related to financial and audit matters, personal injury, property damage, performance outcomes, employment matters, and all other matters arising out of its respective performance in the agreement; and

f. Actively participate in the management of the delivery of workforce development services.

4.4(2) Additional members. After the original formation of the coordinating service provider, organizations wishing to join the coordinating service provider and meeting the eligibility criteria may do so with the approval of the coordinating service provider and regional advisory board on July 1 of each year.

4.4(3) Member contributions. Each member organization is expected to contribute resources to the regional workforce development system (for example, funds, staff, equipment or office space).

877—4.5(84A,84B) 28E agreement. The coordinating service provider will be formed through the execution of a 28E agreement. The format of the 28E agreement shall be provided by the department, must meet the requirements of Iowa Code chapter 28E, and be approved by the attorney general's office. The 28E agreement shall also be approved by the regional advisory board and the state workforce development board before final execution. The fully executed 28E agreement will be filed by the department with the county recorder in Polk County and with the secretary of state.

877—4.6(84A,84B) Responsibilities. The coordinating service provider is responsible for:

1. Developing a budget and approving the expenditure of funds received by the fiscal agent on behalf of the coordinating service provider.

2. Coordinating the delivery of workforce development services, the design and implementation of integrated products and services, and the management of the workforce development center system.

3. Utilizing the department's integrated customer service system.

4. Marketing and maintaining the identity of the regional workforce development center system.

5. Developing and implementing a regional workforce development customer service plan based upon the results of the regional assessment and analysis, product and service priorities established by the department and the regional advisory board, and developing and implementing a service redesign process.

6. Deciding how best to deliver its products and services and allocating available funds for the delivery of products and services subject to all applicable laws and restrictions.

7. Having the authority to enter into contracts necessary to deliver approved products and services subject to all applicable laws and restrictions. Any such contracts must be in a form satisfactory to counsel for the department. The coordinating service provider shall also have authority to purchase personal property subject to applicable law and regulations.

8. Providing reports to the department, the workforce development board, the regional advisory board, local elected officials, and the private industry council as required.

877—4.7(84A,84B) Fiscal agent. Each coordinating service provider shall select an entity to serve as the fiscal agent to receive and disburse funds on behalf of the coordinating service provider. If the fiscal agent selected is not a member of the coordinating service provider, a competitive process must be used to select the fiscal agent. In order to be a fiscal agent, an organization must be a legal entity that meets the following criteria annually:

1. Its most recent audit report including a statement of financial position and an operating statement must substantiate the financial capability and viability of the organization;

2. At the time of entering into a contract with the department, the organization has a successful preaward survey completed by the state auditor's office or has a successful preaward survey on file with the state auditor's office. Community colleges and political subdivisions of the state of Iowa are exempt from this requirement. In accordance with the state workforce development board's authority to review grants and contracts, an organization shall not be denied a contract if the state auditor is not timely in completing the preaward survey; and

3. Leases held by the department shall be transferred to the fiscal agent according to transfer provisions of current leases or as they are renewed.

877—4.8(84A,84B) Workforce development centers. The purpose of workforce development centers is to provide a one-stop career center within each region of the state to deliver an integrated network of information resources and workforce development services to job seekers, businesses, employees, students, schools and colleges, and the public at large.

4.8(1) Core services. The following services shall be provided in each workforce development center in the state:

1. Individual career and employment consulting.

2. Employment readiness training.

3. Occupational skill development.

4. Basic skills development.

5. Individual income and support services.

6. Business employment consulting.

7. Employment networking and placement.

8. Labor market information services.

9. Special assistance with plant closings and layoffs.

10. Community workforce development consulting.

4.8(2) Optional services. Other services may be offered in a workforce development center by the coordinating service provider based upon needs identified by each regional advisory board.

4.8(3) Satellite centers. In addition to a full-service workforce development center in each region, full-time or part-time satellite offices may be established to provide ease of customer access.

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4.8(4) **Electronic access.** Workforce development services may be accessed electronically via the Internet and other means.

4.8(5) **Service coverage.** Every county in each region must have access to services either through electronic means or through a satellite office or workforce development center.

4.8(6) **Accessibility.** All locations must meet the requirements of the Americans with Disabilities Act. All locations are also encouraged to provide office hours which meet customers' needs for accessibility.

4.8(7) **Other service providers.** Other public and private workforce development vendors are encouraged, but not required, to locate within the workforce development centers to expand services available to the public. Organizations locating within the centers will be required to share the cost of the lease and maintenance of the building and their share of actual secretarial and other required support costs.

4.8(8) **Training assistance.** Training assistance shall not be provided in occupations for which there is a current oversupply of trained persons or in subjects which are considered as general life improvement, as compared to educational, job-keeping, job-retention, or skill improvement.

877—4.9(84A,84B) **Performance measures.** The coordinating service provider will be required to meet performance measures issued periodically, but not more than annually, by the department.

877—4.10(84A,84B) **Supervision of department staff.** If a member organization of the coordinating service provider is responsible for the supervision of department staff within the region, the supervision must be in accordance with department personnel policies, state collective bargaining contract provisions, and the administrative rules of the department of personnel. In addition, the member organization and the department shall enter into a separate 28E agreement specifically detailing the responsibilities of the supervision of department staff.

877—4.11(84A,84B) **Rules and regulations.** The coordinating service provider shall comply with federal and state laws, regulations, rules, and policies for the Job Training Partnership Act programs, Wagner-Peyser programs, veterans services programs, unemployment insurance programs, food stamps employment and training program, PROMISE JOBS, Iowa welfare-to-work program, the strategic workforce development fund, and other programs deemed appropriate and contained in the coordinating service provider guide.

877—4.12(84A,84B) **Contract.** The department shall issue a contract to the fiscal agent authorized by each coordinating service provider in the provider's 28E agreement. The contract is a financial contract and is contingent upon the annual receipt of federal and state appropriations. The contract shall be modified each year to reflect changes in budget, performance and customer satisfaction measures and other federal and state requirements.

877—4.13(84A,84B) **Vendors.** Organizations which are not a part of the coordinating service provider but receive funding for services from the coordinating service provider shall be selected through a procurement process. In most cases, a competitive bidding process shall be required, but, when appropriate, sole source selection is allowable. Examples of allowable sole source selection include, but are not limited to, procuring on-the-job training providers and classroom training courses for a single participant.

877—4.14(84A,84B) **Incentives and sanctions.** If the coordinating service provider meets all of its performance outcome requirements and a required level of customer satisfaction, incentives consistent with federal and state laws and regulations could be given. In the event the coordinating service provider does not meet performance outcome requirements, the department will assist the coordinating service provider to improve its performance. If a coordinating service provider does not meet performance outcome requirements for two consecutive years, a new coordinating service provider shall be selected using a competitive process.

877—4.15(84A,84B) **Planning process.** The planning process should be conducted to allow opportunity for employers, labor organizations, communities, community-based organizations and the public to provide input into the plan. At a minimum, one public hearing shall be conducted and a public notice of the planning process issued no later than ten days prior to the public hearing.

4.15(1) **Public notice.** The public notice describes the region's planning process, location of where and how the draft and final regional plan may be obtained, and how to provide input into the planning process. The notice also includes a federal funds contribution statement, including the percentage of total cost of programs which will be financed with federal funds, dollar amounts of federal funds for each program, and the percentage and dollar amounts of the total cost of each program that will be financed from nongovernmental sources.

4.15(2) **Legislative notice.** Ten days prior to the submittal of the plan to the regional advisory board and local elected officials for review and approval, the proposed plan shall be made available to each house of the state legislature. Copies should be sent to the Secretary of the Senate, State Capitol, Des Moines, Iowa 50319, and the Chief Clerk of the House, State Capitol, Des Moines, Iowa 50319.

4.15(3) **Education notice.** Ten days prior to the submittal of the plan to the regional advisory board and local elected officials for review and approval, the proposed plan shall be made available to the primary area education agency of the region, the primary community college, and the local vocational area planning council.

4.15(4) **Labor notice.** Ten days prior to the submittal of the plan to the regional advisory board and local elected officials for review and approval, the proposed plan shall be made available to local labor unions and local labor-management committees.

4.15(5) **Final plan.** The final plan shall be submitted to the regional advisory board and local elected officials for review and approval. After their joint approval, the plan shall be submitted to the department by June 1 of each year for review and approval by the state workforce development board. If the regional advisory board and local elected officials are unable to agree on the approval of the plan, the department will facilitate a process for agreement to be reached locally.

877—4.16 to 4.25 Reserved.

These rules are intended to implement Iowa Code section 84A.5(8) and chapter 84B.

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ARC 8164A

WORKFORCE DEVELOPMENT
BOARD/SERVICES DIVISION[877]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development adopts amendments to Chapter 10, "Youth Affairs," Iowa Administrative Code.

On June 24, 1998, the Workforce Development Board adopted these amendments, which provide for higher local matching contributions required in 1998 Iowa Acts, Senate File 2296, change the percent of funds that must be spent for youth wages and fringe benefits, change the authority for the selection of sponsoring agencies from the Department of Workforce Development to the 15 regional advisory boards, and other minor technical amendments.

In accordance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary, impracticable, and contrary to the public interest. The amendments are necessary to allow the regional advisory boards to select and award summer and young adult programs during the summer of 1998.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments, 35 days after publication, should be waived and the amendments be made effective on July 1, 1998. The Department finds that the rules confer a benefit by allowing young people the opportunity to be employed this summer in constructive, supervised work experience.

These amendments are also published herein under Notice of Intended Action as ARC 8163A to provide for public comment.

These amendments became effective on July 1, 1998.

These amendments are intended to implement Iowa Code section 84A.7 and 1998 Iowa Acts, Senate File 2296, section 9(5).

The following amendments are adopted.

ITEM 1. Amend rule 877—10.1(84A), introductory paragraph, as follows:

877—10.1(84A) Iowa conservation corps. The department of workforce development is responsible for administering the Iowa conservation corps. The purpose of the Iowa conservation corps (ICC) is to provide meaningful and productive public service jobs for the young, the unemployed, and the handicapped, and the elderly.

ITEM 2. Amend subrule 10.1(1) as follows:

10.1(1) Components. The Iowa conservation corps consists of ~~four~~ *three* program components: an in-school public service employment program for disadvantaged and handicapped youth; a summer employment program for youth from all social and economic classifications; ~~a year-round volunteer program~~; and a program for unemployed young adults.

ITEM 3. Amend subrule 10.2(2) as follows:

10.2(2) Participating agencies. Nonprofit private and public agencies will be chosen to operate summer employment programs through a request for proposal process. *For fiscal year 1999, regional advisory boards have the option of selecting participating agencies from the agencies that have been participating agencies of this component from previous fiscal years using sole source procurement procedures. Sole*

source procurement will ensure the timely implementation of the program during the summer of 1998. The request for proposal, application form, and selection criteria are available upon request in writing or orally from the Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309. Selection criteria for participating agencies will follow 10.2(3). Each participating agency is required to provide 35 percent of its total project costs as the local matching requirement. Of the 35 percent, no more than 10 percent may be in-kind services. The remaining 25 percent shall be in the form of cash.

ITEM 4. Amend subrule 10.2(3) as follows:

10.2(3) Selection system. ~~Before applications are rated for funding, the department of workforce development will review the applications for the following five mandatory items:~~

~~a.—Thirty five percent of the total project costs shall be provided from local sources with a minimum of 25 percent cash and a maximum of 10 percent in-kind services;~~

~~b.—Proposed objectives shall be related to the goals of the summer component of the Iowa conservation corps;~~

~~c.—An environmental awareness component is included in the proposed program;~~

~~d.—A health and safety plan for staff and participants is outlined;~~

~~e.—The description of proposed work projects demonstrates the applicant's understanding of the program's goals. Deletion of any one of the five items will automatically disqualify the application from consideration.~~

After the applications are screened for the five mandatory items, three persons designated by the director of the department of workforce development will independently score each application using a 100-point system. The three scores will then be averaged and the applications ranked from highest to lowest average score. The applications receiving the highest scores will be awarded contracts for a summer program of the Iowa conservation corps. A maximum of 25 points will be given for budget factors (includes, for example, accuracy of budget calculations, budget detail provided, allowability of costs, firm commitments of local match); 50 points for program design factors (includes, for example, variety and quality of work projects, quality of environmental program, comprehensiveness of health and safety program, equitability and fairness of recruiting and selection system, completeness of responses); and 25 points for training and education; degree to which the proposal provides enrollees with work skills, job retention skills, job search techniques and work ethics. Each regional advisory board shall develop a regional request for proposal (RFP), including at a minimum the RFP selection criteria, work projects and environmental awareness activities to be conducted, health and safety plan, staff roles and responsibilities, and a detailed budget. The RFP will be widely distributed throughout the region to potential participating agencies.

ITEM 5. Amend subrule 10.2(6) as follows:

10.2(6) Local contribution. ~~Thirty five~~ *Fifty* percent of the total project cost shall be provided from local sources. Up to a maximum of ~~10~~ *25* percent of the total project costs may be in the form of in-kind services.

ITEM 6. Amend subrule 10.2(7), paragraph "h," as follows:

~~h.~~ *All* sponsoring agencies are required to conduct an audit performed by a certified public accountant within 90 days following the termination date of the contract.

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If an agency conducts an agencywide audit in accordance with the federal OMB Circular A-128 A-133, the audit shall be due within 90 days of the end of the agency's fiscal year. *In the case of agencies utilizing the state auditor, the audit will be required 30 days after the state auditor issues the audit report.*

ITEM 7. Amend subrule 10.2(8), paragraph "a," as follows:

a. Enrollee wages based on the minimum wage for an average of 32 hours per week. Youth leaders may be paid an additional 25 cents per hour. A minimum of 55 85 percent of the budget state funds awarded shall be allocated to enrollee wages and benefits.

ITEM 8. Rescind and reserve subrule 10.2(9).

ITEM 9. Amend subrule 10.2(10) as follows:

~~10.2(10) Program reporting. Sponsoring agencies shall submit monthly financial reports and a final performance report as required by the department and the regional advisory board. The format and due dates of the reports shall be specified by the department of workforce development. All contractors shall report the amount of grant funds expended for wages and fringe benefits for all minority youth employed.~~

ITEM 10. Amend subrule 10.3(2) as follows:

~~10.3(2) Participating agencies. Nonprofit private and public agencies will be chosen to operate in-school programs through a request for proposal process. The request for proposal, application form and selection criteria are available upon request in writing or orally from the Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309. Selection criteria for participating agencies are specified in 10.3(3). Applicant agencies may apply to serve youth in a school district, a county, a planning area as designated in 10.3(11), or a combination of counties.~~

ITEM 11. Amend subrule 10.3(3) as follows:

~~10.3(3) Selection system. Only applicants who meet the program procedures and requirements, as found in the request for proposal package, will be funded. In order to be considered for funding, each proposal shall satisfy the following four items:~~

~~a. Thirty-five percent of the total project costs shall be provided from local sources as the agency's match with a minimum of 25 percent cash and a maximum of 10 percent in-kind services;~~

~~b. Proposed objectives shall be related to the goals of the in-school component of the Iowa conservation corps;~~

~~c. Proposed project shall include work experience, support services and project administration components;~~

~~d. The description of the proposed job slots will demonstrate the applicant's understanding of the program goals.~~

~~After the applications are screened for the four mandatory items, three persons designated by the director of the workforce development department shall independently score each application using a 100-point system. The three scores will then be averaged and the applications ranked from highest to lowest average score for each school district, county or area served. Contracts for each school district, county, counties or planning areas will be awarded to the applicant agencies scoring the highest point average. A maximum of 25 points will be given for budget factors (includes, for example, accuracy of budget calculations, budget detail provided, allowability of costs, firm commitments of local match); 50 points for program design factors (includes, for example, variety and quality of work projects, quality of support services program, comprehensiveness of program, completeness of~~

~~responses); and 25 points for training and education; degree to which enrollees are provided with work skills, job retention skills, job search techniques, and work ethics. Each regional advisory board shall develop a regional request for proposal (RFP), including at a minimum the RFP selection criteria, participant work sites, career awareness activities to be conducted, staff roles and responsibilities, and a detailed budget. The RFP will be widely distributed throughout the region to potential participating agencies.~~

ITEM 12. Amend subrule 10.3(6) as follows:

~~10.3(6) Local contribution. Thirty-five Fifty percent of the total project costs shall be provided from local sources. Up to a maximum of 20 percent of the total project costs may be in the form of in-kind services.~~

ITEM 13. Amend subrule 10.3(8), paragraph "d," as follows:

~~d. Notes to the financial statements and comments on questioned costs and accounting systems weaknesses.~~

~~If the audit of the contract is included as a part of an annual agencywide audit conducted in accordance with the federal OMB Circular A-128 A-133, the audit will meet the requirements of the subrule. The audit report shall be due within 90 days of the end of the agency's fiscal year, rather than 90 days within the end of the contract. In the case of agencies utilizing the state auditor, the audit will be required 30 days after the state auditor issues the audit report.~~

ITEM 14. Amend subrule 10.3(9), paragraph "c," as follows:

~~c. Administrative costs. Administrative costs including those for support services may not exceed 20 percent of the total project budget, unless a higher amount, not to exceed 30 percent, is specifically allowed in writing by the department of workforce development regional advisory board based on adequate justification submitted by the contractor.~~

~~Allowable administrative costs are limited to: project management (job development, placement, supervision, recruitment, certification), bookkeeping, payroll activities, travel, consumable supplies, printing, audit, postage, telephone, and rent. Every effort should be made to share costs with other programs and agencies to minimize administrative expenses.~~

~~Where extreme circumstances exist and the contractor receives specific written permission from the department of workforce development, interest on commercial bank 30-day loans is allowable.~~

~~Travel reimbursements shall not exceed mileage, meals and lodging allowed for state employees.~~

ITEM 15. Amend subrule 10.3(10) as follows:

~~10.3(10) Funds allocation. One-fourth of the state funds available for operation in the in-school component of the Iowa conservation corps shall be allocated to each county based on that county's share of the total number of dropouts in the state, as shown by the most recent department of education statistics; one-fourth shall be allocated to each county based on that county's share of the total number of youth aged 16 to 21 in the state, as shown by the most current available census data; one-fourth shall be allocated to each county based on that county's share of the total number of persons living at or below the poverty level in the state as most recently reported by the Iowa department of revenue and finance; and the final one-fourth shall be allocated to each county based on that county's share of the state's total number of persons unemployed, as shown by the most recent department of workforce development report. Money allo-~~

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~~ated to counties in which no in-school component operates shall be reallocated to counties in which in-school projects do operate. Regional advisory boards will determine funds available for this component on an annual basis.~~

ITEM 16. Rescind and reserve subrule 10.3(11).

ITEM 17. Rescind and reserve rule 877—10.4(84A).

ITEM 18. Amend subrule 10.5(2) as follows:

~~10.5(2) Participating agencies. Nonprofit private and public agencies will be chosen to operate programs through a request for proposal process. The request for proposal, application form, and selection criteria are available upon request from the Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309. Selection criteria for participating agencies are stated in subrule 10.5(3). Each participating agency is required to provide 35 percent of the total project costs as the local matching requirement. Of the 35 percent, no more than 10 percent may be in-kind services. The remaining 25 percent shall be in the form of cash. For fiscal year 1999, regional advisory boards have the option of selecting participating agencies from the agencies that have been participating agencies of this component from previous fiscal years using sole source procurement procedures. Sole source procurement will ensure the timely implementation of the program during the summer of 1998.~~

ITEM 19. Amend subrule 10.5(3) as follows:

~~10.5(3) Selection system. Three persons designated by the director of the department of workforce development will independently score each application using a 100-point system. The scores will be averaged and the applications receiving the highest scores will be recommended for funding. The director will review the recommendations and issue a final decision based on various factors, such as, for example, geographical distribution of the projects, and economic impact. A maximum of 25 points will be given for budget factors (includes, for example, accuracy of budget calculations, budget detail provided, allowability of costs, and firm commitments of local match); 50 points for program design factors (includes variety and quality of work projects, comprehensiveness of health and safety program, equitability and fairness of recruiting and selection system, completeness of responses, degree to which the proposal provides corps members with work skills, job retention skills, job search techniques, and work ethics); and 25 points for demonstrated need for the project. Each regional advisory board shall develop a regional request for proposal (RFP), including at a minimum the RFP selection criteria, work projects and environmental awareness activities to be conducted, health and safety plan, staff roles and responsibilities, and a detailed budget. The RFP will be widely distributed throughout the region to potential participating agencies.~~

ITEM 20. Amend subrule 10.5(6) as follows:

~~10.5(6) Local contribution. Thirty-five Fifty percent of the total project cost shall be provided from local sources. Twenty-five percent shall be in the form of cash and 10 25 percent may be in the form of in-kind services directly to the operation of the project.~~

ITEM 21. Amend subrule 10.5(7), paragraph "g," as follows:

~~g. All participating agencies are required to conduct an audit performed by a certified public accountant within 90 days following the termination date of the contract. If an agency conducts an agencywide audit in accordance with the federal OMB Circular A-128 A-133, the audit shall be due~~

within 90 days of the end of the agency's fiscal year. In the case of agencies utilizing the state auditor, the audit will be required 30 days after the state auditor issues the audit report.

ITEM 22. Amend subrule 10.5(8), paragraph "a," as follows:

~~a. Corps members' wages based on the minimum wage for an average of 40 hours per week. A minimum of 55 percent of the budget One hundred percent of state funds awarded shall be allocated to corps members' wages and fringe benefits.~~

ITEM 23. Rescind and reserve subrule 10.5(9).

ITEM 24. Amend subrule 10.5(10) as follows:

~~10.5(10) Program reporting. Participating agencies shall submit monthly financial reports and a final performance report as required by the department and the regional advisory board. The format will be provided by the department of workforce development. All contractors shall report the amount of grant funds expended for wages and fringe benefits for all minority youth employed.~~

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ARC 8160A

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development hereby emergency adopts and implements amendments to 877—Chapter 11, "Work Force Investment Program," Iowa Administrative Code.

On June 24, 1998, the Workforce Development Board adopted these amendments, which provide for a local matching contribution required in 1998 Iowa Acts, Senate File 2296, change the authority for the selection of sponsoring agencies from the Department of Workforce Development to the 15 regional advisory boards, and other minor technical amendments.

In accordance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary, impracticable, and contrary to the public interest. The amendments are necessary to provide guidance to the regional advisory boards to select and award contracts beginning July 1, 1998.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments, 35 days after publication, should be waived and the amendments made effective on July 1, 1998. The Department finds that the rules confer a benefit of accessing funding early in the fiscal year providing uninterrupted services to participants.

These amendments are also published herein under Notice of Intended Action as ARC 8159A to allow for public comment.

These amendments became effective on July 1, 1998.

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

These amendments are intended to implement Iowa Code section 84A.8 and 1998 Iowa Acts, Senate File 2296, section 9(5).

The following amendments are adopted.

ITEM 1. Amend subrule 11.3(3) as follows:

~~11.3(3) Required inclusions in the proposal. DWD, in consultation with the WDB, The regional advisory board~~ will determine the required elements of the proposal which will be published in the request for proposal. Required inclusions may include, but are not limited to: identification of the target group(s) to be served, statement of financial need, signatures of project collaborators verifying coordination and collaboration efforts, proposed budget, description of the program design, goals and expected outcomes, evaluation of performance methods, past performance information, and signature of authorized official.

ITEM 2. Amend subrule 11.3(5) as follows:

~~11.3(5) Selection process. Selection of projects to be funded will be made by the director of the DWD or the director's designee the regional advisory board~~ after the proposals have been scored and recommended by ~~an~~ a three-person evaluation team appointed by the regional advisory board.

a. Each reviewer on the evaluation team will evaluate each proposal independently for acceptability and will assign a numerical score to each proposal using the review criteria and point values listed in the request for proposal.

b. All reviewers' scores for each proposal will be averaged to obtain the final average score for the proposal.

c. A project must obtain a final average score of at least 70 out of a maximum of 100 points to be considered for funding.

ITEM 3. Amend subrule 11.3(6) as follows:

~~11.3(6) Continuing projects. DWD The regional advisory board reserves the right to designate, in consultation with the WDB, the amount of funds available for continuing projects.~~

ITEM 4. Amend rule 877—11.4(84A) as follows:

~~877—11.4(84A) Maximum grant amounts. DWD in consultation with the WDB The regional advisory board~~ will set maximum grant amounts and publish the limitations in the request for proposal.

ITEM 5. Rescind and reserve rule 877—11.5(84A).

ITEM 6. Amend subrule 11.6(1) as follows:

~~11.6(1) Allowable training activities and support services. The allowable training activities and support services under this program will be determined by DWD in consultation with the WDB the regional advisory board~~ and published in the request for proposal.

ITEM 7. Amend rule 877—11.7(84A), introductory paragraph, as follows:

~~877—11.7(84A) Eligible participants. The target groups for this program will be established by DWD in consultation with the WDB the regional advisory board.~~ The list of target groups and the definition of each will be published in the request for proposal.

ITEM 8. Amend subrule 11.7(3) as follows:

~~11.7(3) JTPA definition used. The JTPA definitions of the target groups will be used whenever possible. If no JTPA definition exists for a target group, DWD the regional advisory board~~ will develop the definition ~~in consultation with the WDB~~ and publish it in the request for proposal.

ITEM 9. Amend rule 877—11.8(84A) as follows:

~~877—11.8(84A) Displaced homemaker set-aside. Funds will be set aside for displaced homemaker projects as prescribed by legislation, or if not prescribed by law, as determined by DWD in consultation with the WDB the regional advisory board.~~

ITEM 10. Amend subrule 11.9(1) as follows:

~~11.9(1) Contracts. Upon selection of a proposal for funding, the DWD will issue a contract to the fiscal agent of the appropriate coordinating service provider. These rules and applicable federal and state laws and regulations become a part of the contract by reference.~~

ITEM 11. Amend rule 877—11.10(84A) as follows:

~~877—11.10(84A) Redistribution of funds. DWD The regional advisory board~~ reserves the right to recapture and redistribute funds based upon projected expenditures, if it appears that funds will not be expended in accordance with the proposed budget for a project.

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ARC 8166A

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development hereby adopts Chapter 14, "Iowa Welfare-to-Work Program," Iowa Administrative Code.

On June 24, 1998, the Workforce Development Board adopted the new chapter. The new chapter provides guidance to county officials, regional advisory board members, private industry councils, administrators, and welfare recipients on the implementation and operation of the federally authorized Welfare-to-Work Program. The purpose of the program, planning guidelines, programmatic requirements, and eligible services are described.

In accordance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary, impracticable, and contrary to the public interest. The amendment is necessary to provide guidance to the regional advisory boards to select and award contracts beginning July 1, 1998.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment, 35 days after publication, should be waived and the amendment made effective on July 1, 1998. The Department finds that the rules confer a benefit of accessing funding at the beginning of the fiscal year and providing needed services to eligible participants.

These rules are also published herein under Notice of Intended Action as ARC 8165A to allow for public comment.

This amendment became effective on July 1, 1998.

These rules are intended to implement Iowa Code chapter 84A and P.L. 105-33.

The following new chapter is adopted.

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

CHAPTER 14

IOWA WELFARE-TO-WORK PROGRAM

877—14.1(84A,PL105-33) Designation of responsibility. The department of workforce development was designated by the governor as the department responsible for activities and services under the Welfare-to-Work Program authorized by the Balanced Budget Act of 1997 (P.L. 105-33).

877—14.2(84A,PL105-33) Purpose. The purpose of the Iowa welfare-to-work program is to provide transitional assistance which moves welfare recipients into unsubsidized employment providing good career potential for achieving economic self-sufficiency. In addition, the program is intended to assist the state and local communities to achieve welfare reform goals and to meet the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193).

877—14.3(84A,PL105-33) Definitions.

“Coordinating service provider” means an organization formed through a 28E agreement to deliver workforce development products and services within a service delivery area.

“Department” means the department of workforce development.

“Private industry council” means a council as defined in 877—Chapter 12, Iowa Administrative Code.

“Program operator” means an entity designated by the private industry council and regional advisory board to directly receive funds and administer a welfare-to-work program in a service delivery area.

“Regional advisory board” means an advisory board as defined in 877—Chapter 6, Iowa Administrative Code.

“Service delivery area” means a region within the state designated by the state workforce development board for the purposes of the Job Training Partnership Act.

“Subrecipient” means an entity that receives funds from a program operator to deliver direct client services.

877—14.4(84A,PL105-33) Private industry council and regional advisory board. In each region that is to receive funding, the private industry council and regional advisory board jointly approve a welfare-to-work proposal which designates a local program operator(s) to serve as the grantee to receive and expend welfare-to-work funds. In addition to proposal approval, the private industry council and regional advisory board are jointly responsible for the local oversight of the implementation of the welfare-to-work program.

877—14.5(84A,PL105-33) Certifications. All program operators must certify, as a condition to receive funding, compliance with the following laws and implementing regulations:

1. Title IV, Part A of the Social Security Act, as amended by the Balanced Budget Act of 1997 (P.L. 105-33).

2. U.S. Department of Labor (DOL) implementing regulations as described in 20 CFR Part 645.

3. DOL administrative regulations (20 CFR Parts 31, 32 and 34).

4. Age Discrimination Act of 1975 (P.L. 90-202) and DOL implementing regulations.

5. Civil Rights Act of 1964 (P.L. 88-352) and DOL implementing regulations (29 CFR Part 31).

6. Americans with Disabilities Act of 1990 (P.L. 101-336) and Department of Justice implementing regulations (8 CFR 274a).

7. Section 504 of the Rehabilitation Act of 1975 (P.L. 93-651).

8. DOL nonprocurement, debarment, and suspension regulations (49 CFR Part 29).

9. Iowa civil rights Act of 1965, as amended.

10. OMB Circulars on Uniform Administrative Requirements (29 CFR Parts 95 and 97).

11. Fair Labor Standards Act of 1938 as amended (P.L. 95-151) and DOL implementing regulations (29 CFR 570-580).

12. Other relevant regulations as noted in the Iowa welfare-to-work handbook.

877—14.6(84A,PL105-33) Regional allocation formula. Eighty-five percent of welfare-to-work funds received by the state shall be allocated to the service delivery areas based upon a formula. The remaining 15 percent shall be retained by the department for competitive projects to help long-term recipients of family investment program (FIP) funds and noncustodial parents enter unsubsidized jobs approved by the state workforce development board; purchases of hardware and software to track program participation; expenditures to integrate the welfare-to-work program into the department's integrated customer service system; and administrative program oversight, including staff training and technical assistance.

The service delivery area formula shall be calculated using the following factors: the percentage of persons in poverty above 7.5 percent in an area; the number of adult recipients of public assistance for 30 months or more in an area; and the number of unemployed persons in an area. The formula must base at least 50 percent of the allocation on the number of persons in poverty.

If an area receives less than \$100,000 under the formula, the state workforce development board has the option to allocate 15 percent of the funds to increase an area's allocation to the \$100,000 threshold or deny funds to the area and use the funds allocated to the area for activities authorized for the 15 percent pool.

877—14.7(84A,PL105-33) Eligible program operators. To be designated as a program operator, an organization must be a member of the region's coordinating service provider or be willing to join the region's coordinating service provider.

877—14.8(84A,PL105-33) Proposal requirements. Each regional welfare-to-work proposal shall contain the following elements:

1. Designation of a program operator(s) to receive and expend the welfare-to-work funds.

2. Identification of how funds may be targeted to serve specific groups within the eligible population.

3. Description of the types of services to be provided.

4. Description of how program services will be coordinated with the PROMISE JOBS program, the Iowa department of human services, and other regional employment and training activities and support services available in the service delivery area.

5. Description of how the welfare-to-work program will be integrated into the regional workforce development center services.

After appropriate approval by the private industry council and regional advisory board, the proposal shall be incorporated into the region's workforce development customer service plan.

The approved proposal must be submitted to the department for review and approval of the state workforce development board. The regional proposals will be the basis of the department's submittal of a state plan for welfare-to-work required by the Department of Labor.

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877—14.9(84A,PL105-33) Matching requirements. As a condition of receiving welfare-to-work state funds, each program operator must provide an appropriate match in the form of either cash or in-kind services. In-kind services must be necessary expenses related to the program's operation and allowable under state and federal regulations. Specific matching requirements will be issued with the annual planning instructions.

877—14.10(84A,PL105-33) Service requirements. At least 70 percent of the grant funds must be spent on individuals who face two of three specific labor market deficiencies and who are long-term welfare recipients; or who face termination from Temporary Assistance for Needy Families (TANF) within 12 months; or who are noncustodial parents of minors whose custodial parents meet these criteria. Labor market deficiencies include a lack of a high school diploma or graduate equivalency degree and low reading or math skills; substance abuse treatment prior to employment; and a poor work history.

Up to 30 percent of grant funds may be spent on individuals who are "recent" TANF recipients or noncustodial parents who have characteristics associated with long-term welfare dependence (for example, being a high school dropout, having experienced a teenage pregnancy, or having a poor work history).

877—14.11(84A,PL105-33) Eligible activities. Activities conducted with grant funds must be designed with the idea of moving welfare recipients into work first, then providing employment-based activities to allow them to secure and retain unsubsidized employment. The following activities are allowable services using welfare-to-work grant funds.

14.11(1) Job readiness activities may be provided by the program operator or financed through job vouchers or through contracts with public or private providers, including training for individuals starting their own businesses.

14.11(2) Employment activities include community service programs, work experience programs, job creation through public or private sector employment wage subsidies, on-the-job training, and job placement services. Contracts or vouchers for job placement must include a provision that at least one-half of the payment occurs after the individual has been placed in the workforce for six months.

14.11(3) Postemployment services may be provided by the program operator or financed through job vouchers or contracts with subrecipients. Postemployment services include, but are not limited to, basic educational skills training, occupational skills training, English as a second language, and mentoring. These services are only designed for persons who are placed in employment activities, working in subsidized or unsubsidized jobs, self-employed, or participating in a registered apprenticeship program.

14.11(4) Job retention services and support services can be provided to all participants engaged in job readiness and employment activities or in any subsidized or unsubsidized job. Allowable services include, but are not limited to, transportation, substance abuse treatment (not medical treatment), child care assistance, and emergency or short-term housing. These services may be provided by welfare-to-work funds only if the services are not otherwise available through other funding sources, such as PROMISE JOBS, state child care assistance, substance abuse prevention and treatment block grants, or other state or local funds.

14.11(5) Each participant will receive an orientation, assessment, and service agreement after enrollment in the program.

877—14.12(84A,PL105-33) Grant agreements. Each program operator will receive a financial agreement for the administration of welfare-to-work grant funds. The service delivery area's welfare-to-work proposal will be incorporated into the agreement.

877—14.13(84A,PL105-33) Performance standards. Performance standards for program operators will be issued annually, and progress will be reviewed monthly. At a minimum, the performance standards will include the following:

1. Increase the percentage of family investment program (FIP) participants with earned income.
2. Increase the statewide average wage level of those leaving FIP.
3. Increase the percentage of persons not returning to FIP.
4. Increase the amount of child support paid to children of FIP participants through the participation of noncustodial parents in the welfare-to-work program.

877—14.14(84A,PL105-33) Grant reporting and compliance review. Program operators are required to submit a monthly financial report, quarterly progress reports and a final financial and performance report to the department.

Compliance review will be conducted through three types of review: quarterly performance reviews, program compliance reviews, and financial management compliance reviews.

14.14(1) Quarterly performance review. The review includes a review of enrollment activity and demographics of participants, actual expenditures compared to planned expenditures, required match, allowable cost categories, and performance achievement.

14.14(2) Annual compliance review. The review is conducted on site in each service delivery area by a state welfare-to-work coordinator. The comprehensive review includes a review of participant files to confirm participant eligibility, compliance with policies on program activities and services, a review of the management information system, local monitoring activities, compliance with local plans, and a review of local administrative procedures.

14.14(3) Financial management compliance review. The review is conducted on site twice a year by a budget analyst of the department. The review includes all aspects of local financial management, fiscal controls and accountability, adherence to cost limitations and requirements, and appropriateness of local match.

877—14.15(84A,PL105-33) Program operator sanctions. Failure to meet performance or financial management standards may result in sanctions. Sanctions are progressive in severity depending on the willfulness, severity or flagrancy of the violation. If all efforts to correct deficiencies fail, the department may seek an alternative program operator(s) for the service delivery area. Sanctions that may be imposed are listed below.

1. Disallowance of costs associated with the particular violation or deficiency and repayment of the disallowed costs.
2. Discontinuation of fund drawdowns until the violation or deficiency has been corrected.
3. Prohibition of the use of certain subrecipients.
4. Revocation of all or any part of the grant agreement affected.

877—14.16(84A,PL105-33) Financial management. Program operators must comply with the financial management

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

standards outlined in rule 877—12.13(7B,PL97-300, PL102-367), Iowa Administrative Code.

877—14.17(84A,PL105-33) Auditing. Program operators must comply with the auditing standards outlined in rule 877—12.14(7B,PL97-300,PL102-367), Iowa Administrative Code.

877—14.18(84A,PL105-33) Debt collection procedures. Program operators must comply with the debt collection procedures outlined in rule 877—12.15(7B,PL97-300, PL102-367), Iowa Administrative Code.

877—14.19(84A,PL105-33) Complaint procedures. Program operators must comply with the complaint procedures outlined in 877—12.19(7B,PL97-300,PL102-367) to 12.21 (7B,PL97-300,PL102-367), Iowa Administrative Code.

These rules are intended to implement Iowa Code chapter 84A and P.L. 105-33.

[Filed Emergency 6/26/98, effective 7/1/98]
[Published 7/15/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/98.

ARC §158A

WORKFORCE DEVELOPMENT
BOARD/SERVICES DIVISION[877]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development hereby adopts Chapter 15, "Strategic Workforce Development Fund," Iowa Administrative Code.

The Workforce Development Board adopted the new chapter on June 24, 1998. The new chapter provides guidance to the regional advisory boards and other interested parties on the purpose, allowable activities and administrative procedures for the Strategic Workforce Development Fund established by the 1998 Iowa Acts, Senate File 2296, section 9(5).

In accordance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary, impracticable, and contrary to the public interest. The new chapter is necessary to provide guidance to the regional advisory boards to select and award contracts beginning July 1, 1998.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment, 35 days after publication, should be waived and the amendment be made effective on July 1, 1998. The Department finds that the rules confer a benefit of accessing funding early in the fiscal year and providing uninterrupted services to participants.

These rules are also published herein under Notice of Intended Action as ARC §157A to allow for public comment.

These rules became effective on July 1, 1998.

These rules are intended to implement 1998 Iowa Acts, Senate File 2296, section 9(5).

The following new chapter is adopted.

CHAPTER 15

STRATEGIC WORKFORCE DEVELOPMENT FUND

877—15.1(77GA,SF2296) Purpose. The purpose of the strategic workforce development fund is to provide workforce development regions with funding for the development and maintenance of a workforce sufficient in size and skill to meet occupational demands and for workforce development programs, including the Iowa conservation corps, work force investment program, and statewide mentoring program.

877—15.2(77GA,SF2296) Definitions.

"Coordinating service provider" means an organization formed through a 28E agreement to deliver workforce development products and services within a workforce development region.

"Department" means the department of workforce development.

"Regional advisory board" means an advisory board as defined in 877—Chapter 6, Iowa Administrative Code.

"Workforce development region" means a region of the state designated by the state workforce development board as required by Iowa Code section 84B.2.

877—15.3(77GA,SF2296) Regional advisory board. The regional advisory board approves all projects and grants to be funded from the region's allocation of strategic workforce development funds. Approved projects and grants must relate to the purposes of the strategic workforce development fund and meet a regional workforce development need identified in the regional needs assessment or similar needs assessment conducted by the regional advisory board.

877—15.4(77GA,SF2296) Regional allocation formula. Allocation of funds to each region will be based on the population of each region as compared to the state's total population. Funds contracted for eligible activities, but not yet expended at the end of a fiscal year, may be carried forward into the next fiscal year, if nonreversion authority has been granted by the Iowa general assembly.

877—15.5(77GA,SF2296) Youth requirements. A portion of the region's funding allocation must be spent on youth programs. The actual percentage and amount will be provided to each region in writing annually and will be based upon the amount designated for this purpose in the department's annual appropriations from the Iowa general assembly.

877—15.6(77GA,SF2296) Matching requirements. As a condition of receiving strategic workforce development funds, each region must provide a matching contribution equal to the amount of strategic workforce development funds received.

877—15.7(77GA,SF2296) Eligible activities. Activities conducted with grant funds must be related to the purpose of the fund and meet a need identified through the regional needs assessment or similar needs assessment conducted by the regional advisory board. The following activities are allowable services using strategic workforce development funds:

15.7(1) Youth activities. All youth activities must be conducted according to the administrative rules contained in 877—Chapter 10, Iowa Administrative Code.

15.7(2) Work force investment program. Projects may be conducted which conform to the administrative rules in 877—Chapter 11, Iowa Administrative Code.

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15.7(3) State mentoring program. Mentoring activities are allowable that provide participants with assistance in transitioning into the workforce.

15.7(4) Other activities. Additional activities which relate to the purpose of the fund and meet an identified regional need are allowable.

877—15.8(77GA,SF2296) Services plan. All proposed services must be described in the region's annual customer service plan or submitted as an amendment to the customer service plan. The description of each project to be funded shall include the purpose of the project; activities to be accomplished; participants to be served, if any; the service providers and how they were selected; time period of the project; and a detailed budget.

877—15.9(77GA,SF2296) Grant agreements. All grant funds will be contracted to each region through the fiscal agent identified by the coordinating service provider. For fiscal year 1999 only, youth grant recipients, approved by the regional advisory boards, will receive a contract for services directly from the department. This will allow for the timely operation of summer programs during the summer of 1998.

877—15.10(77GA,SF2296) Grant reporting and compliance review. Fiscal agents are required to submit a monthly financial report detailing fund expenditures. Coordinating service providers shall submit a quarterly progress report to the department detailing progress in accomplishing the goals and objectives of each activity funded with strategic workforce development funds. At the termination of each activity, a final financial and performance report must be submitted to the department within 45 days of termination.

Compliance reviews of strategic workforce development funds will be conducted by the department in conjunction with compliance and financial reviews of the overall operations of the coordinating service provider.

These rules are intended to implement 1998 Iowa Acts, Senate File 2296, section 9(5).

[Filed Emergency 6/26/98, effective 7/1/98]

[Published 7/15/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/98.

ARC §183A

ATTORNEY GENERAL [61]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 13C.2(6) and 809A.25, the Attorney General hereby adopts Chapter 33, "Forfeited Property," Iowa Administrative Code.

Chapter 33 describes the guidelines for forfeiting property and distribution of forfeited property. Notice of Intended Action was published in the Iowa Administrative Bulletin as ARC 7825A on February 11, 1998.

A public hearing was held on March 3, 1998. One public comment was received. The commenter expressed concern with the meaning of the words "very large forfeiture" in subrule 33.5(3) which read as follows: "In the event of a very large forfeiture, or series of forfeitures, the department may give a lesser percentage of property to the seizing agency." In response to this concern, the department revised subrule 33.5(3) to read as follows: "In the event of a cash forfeiture in excess of \$400,000, amounts over \$400,000 shall be apportioned as follows: 45 percent to the seizing agency or agencies; 45 percent to other law enforcement agencies within the region; and 10 percent to be retained by the department."

Except for this change, the rules are identical to those published under Notice of Intended Action.

These rules will become effective August 19, 1998.

These rules are intended to implement Iowa Code chapter 809A.

The following new chapter is adopted.

CHAPTER 33
FORFEITED PROPERTY

61—33.1(809A) Scope of rules. These rules apply to property forfeited under the authority of Iowa Code section 809A.25. They do not apply to property seized for forfeiture by the department of natural resources under Iowa Code section 483A.33.

61—33.2(809A) Maintenance and storage of property during pendency of proceedings. The seizing agency that initiates a seizure for forfeiture must arrange for and pay costs associated with the proper care of property seized for forfeiture within the following guidelines:

33.2(1) Motor vehicles.

a. Motor vehicles must be stored in a manner which will minimize deterioration due to lack of operation and maintenance.

b. The use of commercial towing and storage facilities is at the expense of the seizing agency. The department will not assume responsibility for such fees, whether before or after forfeiture, unless the department decides to retain ownership of the vehicle for its use instead of transferring title to the seizing agency.

33.2(2) Cash. Where possible, a seizing agency should, in cooperation with the prosecuting attorney, secure a court order authorizing cash to be deposited in an interest-bearing account. The department will not claim any interest in income derived from such account, but the interest must be accounted for as provided by these rules.

33.2(3) Real property.

a. Unoccupied structures of value must be equipped with alarm systems or otherwise safeguarded to protect them from unlawful entry and damage by fire. The seizing agency should consider the value of the property, the condition of

existing gates and locks, and the potential threat to public safety when determining whether alarm systems or other safeguards are appropriate.

b. Real property that complies with local and state building and housing code standards at the time of seizure must be maintained to local and state building and housing code standards as well as to the standard of neighboring properties, including mowing and removal of snow as necessary. Seized property that does not comply with code standards at the time of seizure must not be allowed to degrade and should be maintained in a condition that does not present a threat to public safety.

33.2(4) Other property. Property other than listed above shall be cared for as appropriate, giving due consideration to the nature of the property.

61—33.3(809A) Notice to department of forfeited property.

33.3(1) An agency which seizes real property for forfeiture must notify the department within ten days of the seizure.

33.3(2) A prosecuting attorney who obtains a declaration of forfeiture or an order forfeiting property must provide the department with a copy of the declaration or the order forfeiting the property within ten working days of receiving the order.

61—33.4 (809A) Disposition of forfeited property.

33.4(1) Controlled substances. An agency in possession of a controlled substance which has been forfeited shall dispose of it as required by Iowa Code section 124.506.

33.4(2) Obscene materials. Materials which violate the provisions of Iowa Code chapter 728 shall be destroyed. An inventory and a record of the destruction of obscene materials shall be maintained by the agency.

33.4(3) Firearms and ammunition. Forfeited firearms and ammunition must be disposed of pursuant to the rules of the department of public safety.

33.4(4) Real property. An agency seizing real property for forfeiture must do the following:

a. Accept transfer of title from the department.

b. Pay all costs associated with transfer of title, including abstracting costs, property taxes and assessments.

c. Indemnify the state for any expenses it might become liable for by being the owner of the property during the forfeiture and transfer process, including but not limited to environmental cleanup costs, abstracting costs, and any expenses the department incurs to comply with reasonable community standards of maintenance.

d. Indemnify the state for any expenditures incurred as a result of liability to a third party for any injury associated with the property which occurs during the period from seizure through transfer of ownership to the agency.

33.4(5) Alcoholic beverages and beer. Alcoholic beverages and beer shall be destroyed. An inventory and a record of the destruction of forfeited alcoholic beverages and beer shall be maintained by the agency.

33.4(6) Motor vehicles.

a. Orders forfeiting motor vehicles must include a physical description of the vehicle, as well as the vehicle identification number.

b. Motor vehicles must be titled to the department prior to being transferred to the seizing agency or its designee.

c. The department requires payment of a fee of \$100 for processing the transfer of title to a vehicle.

61—33.5(809A) Use by the department.

ATTORNEY GENERAL[61](cont'd)

33.5(1) The department will review each item of forfeited property to determine if it is of a nature that would be useful to the department in enforcement of the law. If such a use exists, the department may take possession of the property and retain ownership instead of transferring it to the seizing agency.

33.5(2) The department will retain 10 percent of forfeited cash. The balance of forfeited cash, 90 percent, will be given to the seizing agency for its use or for division among law enforcement agencies and prosecutors pursuant to agreement.

33.5(3) In the event of a cash forfeiture in excess of \$400,000, amounts over \$400,000 shall be apportioned as follows: 45 percent to the seizing agency or agencies; 45 percent to other law enforcement agencies within the region; and 10 percent to be retained by the department.

61—33.6(809A) Gifts to other law enforcement agencies.

33.6(1) If the department determines that it does not have use for an item of forfeited property, the seizing agency must accept ownership of the property and use or dispose of it under these guidelines.

33.6(2) If the department determines that property is available for gift to agencies involved in the investigation or prosecution of a case but is presented with conflicting requests for its gift, the department may refuse to give the property to any of the agencies.

33.6(3) Forfeited property, including cash, must be used to enhance the enforcement of the criminal law and cannot be used to supplant or otherwise replace normally budgeted items. Questions regarding the propriety of the disposition of forfeited assets should be directed to the department.

61—33.7(809A) Record keeping. An agency which seizes property for forfeiture shall maintain records showing the disposition, including destruction, of forfeited property for a period of three years from the date of forfeiture. The records shall comply with any recommendations of the state auditor but must, at a minimum, include the following:

1. The date of forfeiture, a description of the property and the name(s), if available, of the person(s) who owned the property and person(s) in possession of the property at the time of seizure.

2. The manner in which all forfeited property has been used by the agency.

3. The disposition of all forfeited property which has been sold or otherwise disposed of, and of the proceeds derived therefrom.

4. The manner of use of all forfeited funds and proceeds from the sale of forfeited property.

61—33.8(809A) Failure to comply. If the department determines that an agency is not in compliance with these rules, the department may suspend, temporarily or permanently, the agency's privilege of receiving gifts of forfeited property.

61—33.9(809A) Appeal. An agency may appeal a decision to suspend its privilege to receive gifts of forfeited property under rule 61—33.8(809A) or other departmental action upon the basis that it has not been done according to these rules as follows:

33.9(1) Appeal to deputy attorney general for criminal justice. An applicant may file a notice of appeal to the deputy attorney general within 30 days of the departmental action that forms the basis of appeal. The deputy attorney general shall review the matter, taking testimony if necessary, and issue a written decision.

33.9(2) Appeal to attorney general. An agency may further appeal from a denial of appeal by the supervising deputy to the attorney general within 30 days of the date the supervising deputy's written decision was mailed.

33.9(3) Appeal to district court. An agency which disagrees with the decision of the attorney general has the right to appeal to the district court within 30 days of receipt of the attorney general's final decision.

61—33.10(809A) Interest holders.

33.10(1) The term "interest holder" shall include an entity which owns or holds a properly perfected mortgage, security interest, or other interest in real or personal property.

33.10(2) An interest holder with an exempt interest in forfeited property may be appointed as an agent to act in disposing of forfeited property. An interest holder acting as an agent in disposing of forfeited property shall be relieved of any and all duties that would be imposed on the lienholder if it were acting in its capacity as a lienholder.

These rules are intended to implement Iowa Code chapter 809A.

[Filed 6/29/98, effective 8/19/98]

[Published 7/15/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/98.

ARC 8139A**ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 59, "Enterprise Zones," Iowa Administrative Code.

The IDED Board adopted these amendments on June 18, 1998.

The amendments (1) update references from the Iowa Acts to the Iowa Code Supplement; (2) add a new definition for "Project jobs"; (3) revise the definition of "Full-time" to include holidays, vacations, and other paid leave; (4) provide clarification of the requirement that a business is required to create at least ten project jobs and maintain them for ten years; (5) require the business to complete the capital investment within three years of the agreement effective date; (6) clarify that benefits are only available if the average wage of all project jobs meets the minimum wage standards for this program; (7) describe how "project completion date" is determined for purposes of claiming the refund for sales, service and use taxes paid to contractors and subcontractors; (8) indicate that the term of the agreement between the Department, business, and city/county is ten years from the agreement effective date rather than the application approval date; (9) remove a requirement that the wage levels are met as the jobs are created; and (10) permit the local enterprise commissions to determine whether a vacant building is suitable for industrial use for purposes of allowing a business that will occupy a vacant building a credit towards meeting the investment requirement.

Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on May 6, 1998, as **ARC 7983A**. A public hearing to receive com-

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ments about the proposed amendments was held on May 27, 1998. No comments were received at the hearing. A comment was received from the IDED Board concerning the definition of "Full-time" or "Full-time equivalent position." There was a concern that using the word "equivalent" could be interpreted to permit the practice of combining the hours of several part-time positions to reach a total of 40 hours for purposes of obtaining credit for creation of a job. This is not the intent, nor has it been the practice, to count a position as "full-time" by combining multiple part-time positions. As a result of this concern, one change was made to the proposed amendments. To add clarity to the definition of "Full-time," references to "equivalent" were deleted in the final amendments.

These amendments are intended to implement Iowa Code Supplement sections 15E.191 through 15E.196.

These amendments will become effective on August 19, 1998.

The following amendments are adopted.

ITEM 1. Amend rule 261—59.2(15E) as follows:

Amend the following definitions:

"Act" means ~~1997 Iowa Acts, House File 724. Code Supplement sections 15E.191 through 15E.196.~~

~~"Created jobs" means the full-time jobs pledged by the business which pay an average wage that is at or greater than 90 percent of the lesser of the average county wage or average regional wage, as determined by the department. However, in any circumstance, the wage paid by the business shall not be less than \$7.50 per hour.~~

~~"Full-time" or "full-time equivalent position" means the equivalent of employment of one person for 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave.~~

Adopt the following new definition in alphabetical order:

"Project jobs" means all of the new jobs to be created by the location or expansion of the business in the enterprise zone. For the project jobs, the business shall pay an average wage that is at or greater than 90 percent of the lesser of the average county wage or average regional wage, as determined by the department. However, in any circumstance, the wage paid by the business for the project jobs shall not be less than \$7.50 per hour.

ITEM 2. Amend subparagraph 59.3(3)"a"(1) as follows:

(1) Documentation that meets the distress criteria of Iowa Code Supplement section ~~15E.184, 15E.194.~~

ITEM 3. Amend subrule 59.5(1) as follows:

59.5(1) Requirements. A business which is or will be located in an enterprise zone is eligible to receive incentives and assistance under the Act if the business meets all of the following:

a. The business has not closed or reduced its operation in one area of the state and relocated substantially the same operation into the enterprise zone. This requirement does not prohibit a business from expanding its operation in an enterprise zone if existing operations of a similar nature in the state are not closed or substantially reduced.

b. The business is not a retail business.

c. The business pays at least 80 percent of the cost of a standard medical and dental insurance plan for all full-time employees working at the facility in which the new investment will occur.

d. The business pays an average wage that is at or greater than 90 percent of the lesser of the average county wage or average regional wage, as determined by the department. However, in any circumstance, the wage paid by the business

for the project jobs shall not be less than \$7.50 per hour. The department will periodically calculate, revise and issue the "average county wage" and the "average regional wage" figures that will be used for determining business eligibility in the program. However, in any circumstance, a company will be deemed eligible for participation in the enterprise zone if it pays an hourly wage of \$9.50 or greater. The local enterprise zone commission may establish higher company eligibility wage thresholds if it so desires. ~~These wage levels shall be met as each job is created at the business location.~~

e. ~~The business creates at least ten full-time positions and maintains them for at least ten years. expansion or location must result in at least ten full-time project jobs and those project jobs must be maintained for at least ten years.~~ The business shall create these jobs within three years of the effective date of the business's agreement with the department and the city or county, as appropriate. For an existing business in counties with a population of 10,000 or less, the commission may adopt a provision that allows the business to create at least five initial jobs with the additional five jobs to be added within five years. The business shall include in its strategic plan the time line for job creation. If the existing business fails to meet the ten-job creation requirement within the five-year period, all incentives and assistance will cease immediately.

f. The business makes a capital investment of at least \$500,000. If the business will be occupying a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed \$250,000, as determined by the local enterprise zone commission, shall be counted toward the capital investment requirement. An existing business that has been operating in the enterprise zone for at least five years is exempt from the capital investment requirement of this paragraph of up to \$250,000 of the fair market value, as established by an appraisal, of the building and land. *The capital investment amount stated in the business's application must be completed within three years of the effective date of the agreement described in rule 59.9(15E).*

ITEM 4. Amend subrule 59.7(1) as follows:

59.7(1) Compliance with the requirements of the Act and administrative rules. Each application will be reviewed to determine if it meets the requirements of Iowa Code Supplement section ~~15E.183 15E.193~~ and these rules. Specific criteria to be reviewed include, but are not limited to: medical and dental insurance coverage; wage levels; number of jobs to be created; and capital investment level.

ITEM 5. Amend subrule 59.7(4) as follows:

59.7(4) Violations of law. The department will review each application to determine if the business has a record of violations of law. If the department finds that an eligible business has a record of violations of the law including, but not limited to, environmental and worker safety statutes, rules, and regulations over a period of time that tends to show a consistent pattern, the eligible business shall not qualify for incentives or assistance under Iowa Code Supplement section ~~15E.186 15E.196~~, unless the department finds that the violations did not seriously affect public health or safety or the environment, or if they did that there were mitigating circumstances. If requested by the department, the business shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the department in assessing the nature of any violation.

ITEM 6. Amend subrule 59.8(1) as follows:

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Amend the introductory paragraph as follows:

59.8(1) Benefits. The following benefits are available to an eligible business within a certified enterprise zone *only when the average wage of all the new project jobs meets the minimum wage requirements of 59.5(1) "d"*:

Amend subparagraph 59.8(1)"b"(1) as follows:

(1) The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which is used in the operation of the eligible business. This exemption shall be authorized by the city or county that would have been entitled to receive the property taxes, but is electing to forego the tax revenue for an eligible business under this program. The amount of value added for purposes of Iowa Code ~~Supplement section 15E.186~~ 15E.196 shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone.

Amend subparagraph 59.8(1)"e"(2) as follows:

(2) Taxes attributable to intangible property and furniture and furnishings shall not be refunded. To receive a refund of the sales, service and use taxes paid to contractors or subcontractors, the eligible business must, within six months after project completion, make an application to DRF. *For new manufacturing facilities, "project completion" means the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility operated by the eligible business within the enterprise zone is at least 50 percent of the initial design capacity of the facility. For existing facilities, "project completion" means the date of completion of all improvements included in the enterprise zone project.*

ITEM 7. Amend rule 261—59.9(15E) as follows:

261—59.9(15E) Agreement. The department and the city or county, as applicable, shall enter into agreement with the business. The term of the agreement shall be ten years from the ~~date the business's application was approved by the department agreement effective date~~ plus any additional time necessary for the business to satisfy the job maintenance requirement. This three-party agreement shall include, but is not limited to, provisions governing the number of jobs to be created, representations by the business that it will pay the wage and benefit levels pledged and meet the other requirements of the Act as described in the approved application, reporting requirements such as an annual certification by the business that it is in compliance with the Act, and the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of the Act and these rules. In addition, the agreement will specify that a business that fails to maintain the requirements of the Act and these rules shall not receive incentives or assistance for each year during which the business is not in compliance.

ITEM 8. Amend subrules 59.10(3) and 59.10(4) as follows:

59.10(3) Calculation of repayment due. If a business fails in any year to meet any one of the requirements of Iowa Code ~~Supplement section 15E.183(1)~~ 15E.193(1) and 261—59.5(15E) to be an eligible business, it is subject to repayment of all or a portion of the amount of incentives received.

a. Failure to meet/maintain requirements. If a business fails in any year to meet or maintain any one of the requirements of Iowa Code ~~Supplement section 15E.183(1)~~

15E.193(1), except its job creation requirement which shall be calculated as outlined in paragraph "b" below, the business shall repay the value of the incentives received for each year during which it was not in compliance.

b. No change.

59.10(4) DRF; county/city recovery. Once it has been established, through the business's annual certification, monitoring, audit or otherwise, that the business is required to repay all or a portion of the incentives received, the department of revenue and finance and the city or county, as appropriate, shall collect the amount owed. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue and finance shall have the authority to recover the value of state taxes or incentives provided under Iowa Code ~~Supplement section 15E.186~~ 15E.196. The value of state incentives provided under Iowa Code ~~Supplement section 15E.186~~ 15E.196 includes applicable interest and penalties.

These rules are intended to implement ~~1997 Iowa Acts, House File 724~~ Iowa Code Supplement sections 15E.191 through 15E.196.

[Filed 6/22/98, effective 8/19/98]

[Published 7/15/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/98.

ARC §180A

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board hereby adopts Chapter 7, "Waivers or Variances from Rules," Iowa Administrative Code.

This chapter establishes a process for requesting and granting waivers or variances from the Board's rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 25, 1998, as ARC 7899A. This amendment is identical to the Notice.

These rules are intended to implement Iowa Code section 542B.6.

This amendment will become effective August 19, 1998. The following amendment is adopted.

Adopt the following new Chapter 7:

CHAPTER 7

WAIVERS OR VARIANCES FROM RULES

193C—7.1(542B) **Applicability.** This chapter governs waivers or variances from board rules in the following circumstances: (1) The board has the exclusive authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which waiver or variance is requested; and (2) no statute or rule otherwise controls the granting of a waiver or variance from the rule for which the waiver or variance is requested.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

7.1(1) Board's authority. The board may grant a waiver of, or variance from, all or part of a rule, upon the criteria described in rule 7.2(542B).

7.1(2) 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.

193C—7.2(542B) Criteria. A waiver or variance under this chapter may be granted only upon a showing that:

1. Substantially equal protection of health and safety will be afforded by a means other than that prescribed in the particular rule for which the variance or waiver is requested; and

2. The waiver or variance will not harm other persons and will not adversely affect the public interest; and

3. Because of special circumstances, either the requester is unable to comply with the particular rule without undue hardship, or compliance with the particular rule would be unnecessarily and unreasonably costly and serve no public benefit; and

4. Provision of a waiver or variance under the circumstances would not adversely impact an overall goal of uniform treatment of all licensees.

193C—7.3(542B) Request. A request for a waiver or variance must be submitted in writing to the board as follows:

7.3(1) License application. If the request relates to an application for a license, the request shall be made in accordance with the filing requirements for the license in question.

7.3(2) Contested cases. If the request relates to a pending contested case, the request shall be filed in the contested case proceeding.

7.3(3) Other. If the request does not relate to a particular license and is not related to a pending contested case, the request may be submitted to the board's executive secretary.

193C—7.4(542B) Elements. A request for a waiver or variance shall include the following information where applicable:

1. The name, address, and telephone number of the person requesting the waiver or variance and the person's representative, if any.

2. The specific rule from which a waiver or variance is requested.

3. The nature of the waiver or variance requested, including any alternative means or other proposed condition or modification proposed to achieve the purpose of the rule.

4. An explanation of the reason for requesting the waiver or variance, including all material facts relevant to granting of the waiver or variance in question.

5. A description of any prior contacts between the board and the requester 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. 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.

7. Any information known to the requester regarding the board's treatment of similar cases.

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

9. Any necessary releases of information authorizing persons with knowledge to disclose relevant information to the board.

193C—7.5(542B) Ruling. The board shall respond in writing to all requests. The ruling shall include the reason for granting or denying the request and, if approved, the time period during which the waiver or variance is effective. The board may condition the granting of the waiver or variance on such reasonable conditions as are appropriate to achieve the objectives of the particular rule in question through alternative means.

193C—7.6(542B) Public availability. 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.

193C—7.7(542B) 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 has failed to achieve the objectives of the statute, or the requester has failed to comply with conditions set forth in the waiver or variance approval.

193C—7.8(542B) 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.

193C—7.9(542B) 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 rules of the engineering and land surveying examining board. 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 section 542B.6.

[Filed 6/26/98, effective 8/19/98]

[Published 7/15/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/98.

ARC 8173A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 22, "Controlling Pollution," Iowa Administrative Code.

The purpose of this rule making is to require applicants for air quality construction permits to sign a statement that they have legal entitlement to use the property on which the applicant proposes to locate equipment covered by the permit. This requirement will not affect the application review time.

These amendments will allow the Department to avoid utilizing resources evaluating air quality construction permit

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

applications for equipment that may never be constructed because permit applicants do not have legal entitlement to use the property where they intend to locate sources covered under the permit application.

Item 1 adds a requirement that applicants for air quality construction permits sign a statement of legal entitlement to install and operate equipment, covered by the permit application, on the property identified in the permit application. As a result of public comments, language is changed that would have required applicants to provide proof of property entitlement in their permit applications.

Item 2 adds the provision that an application for an air quality construction permit may be denied for failure to provide a signed statement of legal entitlement to install and operate equipment, covered by the permit application, on the property identified in the permit application. As a result of public comments, language is changed that would have provided that an application for an air quality construction permit may be denied for failure of applicants to provide proof of property entitlement in their permit applications.

Item 3 adds the provision that the Department may revoke an air quality construction permit if the permit holder loses legal entitlement to use the property identified in the permit to install and operate equipment covered by the permit. Additionally, this item provides for revocation of a permit if the property owner no longer wishes to continue the operation of the permitted equipment, or if the owner of the permitted equipment no longer wishes to retain the permit for future operation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 11, 1998, as ARC 7881A. The public hearing was held on April 10, 1998. Three written comments were received. As a result of public comments, changes to the proposed amendments have been made. These changes are discussed in the item descriptions above.

Two wording changes to the proposed amendments were made as a result of the Environmental Protection Commission meeting of February 16, 1998. These changes to Item 1 provided that proof of property entitlement would not be required for portable rock crushers and changed the wording from portable "cement" plants to "concrete" plants as a more accurate description of these plants. These changes, requested by the Commission, were inadvertently omitted from the Notice of Intended Action published in the Iowa Administrative Bulletin on March 11, 1998. Since the requested changes are to the advantage of the regulated industries, and the Department has no objections to the language, the Commission adopted these amendments, which incorporate the previously approved language, without reopening the public comment period.

These amendments are not expected to impact small business.

These amendments are intended to implement Iowa Code section 455B.133.

These amendments will become effective August 19, 1998.

The following amendments are adopted.

ITEM 1. Amend subrule 22.1(3), paragraph "b," by amending subparagraphs (6) and (7) and adding a new subparagraph (9) as follows:

(6) Information pertaining to sampling port locations, scaffolding, power sources for operation of appropriate sampling instruments, and pertinent allied facilities for making tests to ascertain compliance; and

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 22.4(455B) and 22.5(455B); and

(9) A signed statement that ensures the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application. A signed statement shall not be required for rock crushers, portable concrete or asphalt equipment used in conjunction with specific identified construction projects which are intended to be located at a site only for the duration of the specific, identified construction project.

ITEM 2. Amend subrule 22.3(4) as follows:

22.3(4) Denial of a permit.

a. When an application for a construction or conditional permit is denied, the applicant shall be notified in writing of the reasons therefor. A denial shall be without prejudice to the right of the applicant to file a further application after revisions are made to meet the objections specified as reasons for the denial.

b. The department may deny an application based upon the applicant's failure to provide a signed statement of the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application.

ITEM 3. Amend rule 567—22.3(455B) by adding the following new subrule:

22.3(7) Revocation of a permit. The department may revoke a permit upon obtaining knowledge that a permit holder has lost legal entitlement to use the property identified in the permit to install and operate equipment covered by the permit, upon notice that the property owner does not wish to have continued the operation of the permitted equipment, or upon notice that the owner of the permitted equipment no longer wishes to retain the permit for future operation.

[Filed 6/26/98, effective 8/19/98]

[Published 7/15/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/98.

ARC 8146A

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3, 147.76 and 272C.3, the Iowa Board of Nursing hereby adopts amendments to Chapter 2, "Nursing Education Programs," Iowa Administrative Code.

These amendments replace the term "Postbasic program" with "Formal advanced practice education program in nursing" in four instances and define master's degree programs for registered nurses and make provision for graduates to meet faculty qualifications. The nomenclature change better reflects existing definitions in 655—Chapters 2 and 7. A new type of board-approved program, incorporating baccalaureate and master's level competencies, will allow RN graduates of associate degree and diploma programs to earn Master of Science in Nursing degrees.

These amendments were published in the Iowa Administrative Bulletin on April 8, 1998, as ARC 7916A.

These amendments are identical to those published under Notice of Intended Action.

NURSING BOARD[655](cont'd)

These amendments will become effective August 19, 1998.

These amendments are intended to implement Iowa Code section 152.5.

The following amendments are adopted.

ITEM 1. Amend rule 655—2.1(152) by adding the following new definition:

Master's degree for registered nurses. A course of study designed for registered nurses which leads to a master's degree with a major in nursing.

ITEM 2. Amend rule 655—2.1(152), definition of "Post-basic," as follows:

~~Postbasic~~ *Formal advanced practice education program in nursing*. A course of study in nursing which provides advanced knowledge and experiences which facilitate development of competencies in a specialized clinical area. This leads to eligibility for certification in the specialty and registration as an advanced registered nurse practitioner.

ITEM 3. Amend subrule 2.3(1), paragraph "g," subparagraph (5), as follows:

(5) ~~Postbasic—programs~~ *Formal advanced practice education programs*: Iowa Department of Public Health, Joint Commission on Accreditation of Healthcare Organizations, American Osteopathic Association, or North Central Association of Colleges and Schools.

ITEM 4. Amend subrule 2.3(2), paragraph "f," subparagraph (2), as follows:

(2) ~~Postbasic—program~~ *Programs offering formal advanced practice education in nursing*.

1. Education equal to this program offering.
2. Two years of clinical experience in the specialty area.

ITEM 5. Adopt the following new subrule 2.5(5) and renumber subrules 2.5(5) and 2.5(6) as 2.5(6) and 2.5(7):

2.5(5) Curricula for programs granting a master's degree to registered nurses shall include didactic content and practice in nursing which will enable the student to achieve competencies comparable to outcomes of baccalaureate education and master's education.

ITEM 6. Amend renumbered subrule 2.5(6), introductory paragraph, as follows:

2.5(6) Curricula of ~~postbasic—programs~~ *formal advanced practice education programs in nursing* shall:

ITEM 7. Amend subrule 2.6(2), paragraph "c," subparagraph (2), as follows:

(2) A faculty member who is hired to teach after July 1, 1992, in a practical nursing program or the first level of an associate degree nursing program with a ladder concept shall have a baccalaureate *or higher* degree in nursing or an applicable field at the time of hire. The date of hire is the first day employed with compensation at a particular nursing education program.

[Filed 6/24/98, effective 8/19/98]

[Published 7/15/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/98.

ARC 8136A

RACING AND GAMING
COMMISSION[491]

Adopted and Filed

Pursuant to the authority of Iowa Code section 99D.7 and Iowa Code Supplement section 99D.25A as amended by 1998 Iowa Acts, Senate File 2121, the Iowa Racing and Gaming Commission hereby adopts amendments to Chapter 10, "Thoroughbred Racing," Iowa Administrative Code.

Item 1 allows for the administration of Lasix in the horse's stall.

Item 2 outlines the information the practicing veterinarian must supply to the Commission after administration of Lasix to a racing animal.

These amendments are identical to those published under Notice of Intended Action in the May 6, 1998, Iowa Administrative Bulletin as ARC 7984A. These amendments were simultaneously Adopted and Filed Emergency as ARC 7985A.

A public hearing was held on May 26, 1998. No comments were received.

These amendments will become effective August 19, 1998, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code Supplement section 99D.25A as amended by 1998 Iowa Acts, Senate File 2121.

The following amendments are adopted.

ITEM 1. Rescind subrule 10.6(2), paragraph "i," and insert in lieu thereof the following new paragraph:

i. The administration of Lasix shall occur in the horse's stall, unless the commission provides that a horse must be brought to the detention barn for treatment.


ITEM 2. Amend subrule 10.6(4) by adding the following new paragraph "d" and relettering existing paragraphs "d" through "f" as "e" through "g."

d. Twenty minutes following the administration of Lasix, the veterinarian must deliver a signed affidavit certifying information regarding the treatment of the horse. The statement must at least include the name of the practicing veterinarian, the tattoo number of the horse, the location of the barn and stall where the treatment occurred, the race number of the horse, the name of the trainer, and the time that the Lasix was administered.

[Filed 6/19/98, effective 8/19/98]

[Published 7/15/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/98.



State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF DISASTER EMERGENCY

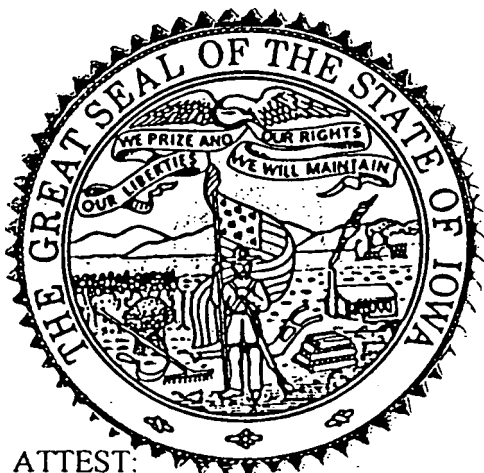
WHEREAS, Beginning June 13, 1998 and continuing, a stationary front moved slowly across Iowa producing strong thunder storms and tornadic activity with heavy rainfall and strong winds causing flooding and extensive damage; and

WHEREAS, the effect of these storms is severe flooding and strong winds causing damages to residences, businesses, roads, bridges, streets, flood control facilities, rural water systems, and other infrastructure, as well as damages to agriculture including crops and terraces;

WHEREAS, assistance may be needed from State and Federal agencies for services and resources beyond local capability in damage assessment, emergency protective measures, permanent restoration and clean-up activities.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim Marion County for the aforementioned reasons, in a State of Disaster Emergency. This proclamation of Disaster Emergency authorizes local and State government to render good and sufficient aid to assist this area in its time of need.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 23rd day of June in the year of our Lord one thousand nine hundred and ninety-eight.




ATTEST:

Paul P. Pate

 SECRETARY OF STATE

Terry E. Branstad

 GOVERNOR



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF DISASTER EMERGENCY

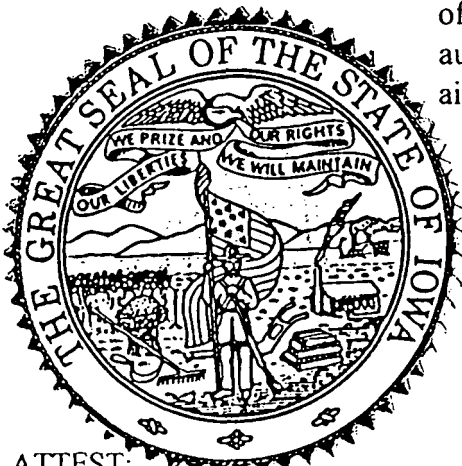
WHEREAS, Beginning June 13, 1998 and continuing, a stationary front moved slowly across Iowa producing strong thunder storms and tornadic activity with heavy rainfall and strong winds causing flooding and extensive damage; and

WHEREAS, the effect of these storms is severe flooding and strong winds causing damages to residences, businesses, roads, bridges, streets, flood control facilities, rural water systems, and other infrastructure, as well as damages to agriculture including crops and terraces;

WHEREAS, assistance may be needed from State and Federal agencies for services and resources beyond local capability in damage assessment, emergency protective measures, permanent restoration and clean-up activities.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim Hardin County for the aforementioned reasons, in a State of Disaster Emergency. This proclamation of Disaster Emergency authorizes local and State government to render good and sufficient aid to assist this area in its time of need.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 24th day of June in the year of our Lord one thousand nine hundred and ninety-eight.



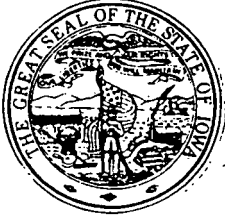
ATTEST:

Paul P. Pate

 SECRETARY OF STATE

Terry E. Branstad

 GOVERNOR



State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF DISASTER EMERGENCY

- WHEREAS, Beginning June 14, 1998 and continuing, a stationary front moved slowly across Iowa producing heavy rainfall and flooding causing extensive damage; and
- WHEREAS, the effect of this storm front is severe flooding causing damages to homes, roads, bridges, streets, flood control facilities and other infrastructure; and
- WHEREAS, assistance may be needed from State and Federal agencies for services and resources beyond local capability in damage assessment, emergency protective measures, permanent restoration and clean-up activities.
- NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim Cass County for the aforementioned reasons, in a State of Disaster Emergency. This proclamation of Disaster Emergency authorizes local and State government to render good and sufficient aid to assist this area in its time of need.


IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 14th day of June in the year of our Lord one thousand nine hundred and ninety-eight.


GOVERNOR



ATTEST:


SECRETARY OF STATE



State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF DISASTER EMERGENCY

WHEREAS, Beginning June 14, 1998 and continuing, a stationary front moved slowly across Iowa producing heavy rainfall and flooding causing extensive damage; and

WHEREAS, the effect of this storm front is severe flooding causing damages to residences, businesses, roads, bridges, streets, flood control facilities, rural water systems, and other infrastructure, as well as damages to agriculture including crops and terraces;

WHEREAS, assistance may be needed from State and Federal agencies for services and resources beyond local capability in damage assessment, emergency protective measures, permanent restoration and clean-up activities.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim Montgomery, Taylor, Page and Fremont Counties for the aforementioned reasons, in a State of Disaster Emergency. This proclamation of Disaster Emergency authorizes local and State government to render good and sufficient aid to assist this area in its time of need.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 16th day of June in the year of our Lord one thousand nine hundred and ninety-eight.




ATTEST:

Paul P. Pate

 SECRETARY OF STATE

Terry E. Branstad

 GOVERNOR



State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF DISASTER EMERGENCY

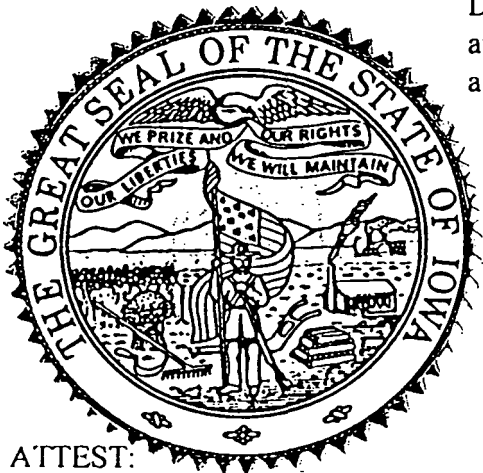
WHEREAS, Beginning June 14, 1998 and continuing, a stationary front moved slowly across Iowa producing strong thunder storms and tornadic activity with heavy rainfall and strong winds causing flooding and extensive damage; and

WHEREAS, the effect of these storms is severe flooding and strong winds causing damages to residences, businesses, roads, bridges, streets, flood control facilities, rural water systems, and other infrastructure, as well as damages to agriculture including crops and terraces;

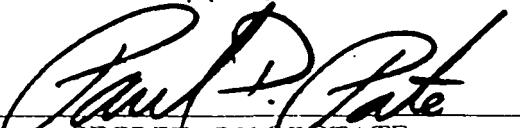
WHEREAS, assistance may be needed from State and Federal agencies for services and resources beyond local capability in damage assessment, emergency protective measures, permanent restoration and clean-up activities.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim Audubon, Chickasaw, Dallas, Guthrie, Polk, and Pottawattamie Counties for the aforementioned reasons, in a State of Disaster Emergency. This proclamation of Disaster Emergency authorizes local and State government to render good and sufficient aid to assist this area in its time of need.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 18th day of June in the year of our Lord one thousand nine hundred and ninety-eight.



ATTEST:


 SECRETARY OF STATE


 GOVERNOR


State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF DISASTER EMERGENCY

WHEREAS, On Monday, June 29, 1998, a severe storm system moved across Iowa generating strong winds, heavy rains, and hail; and

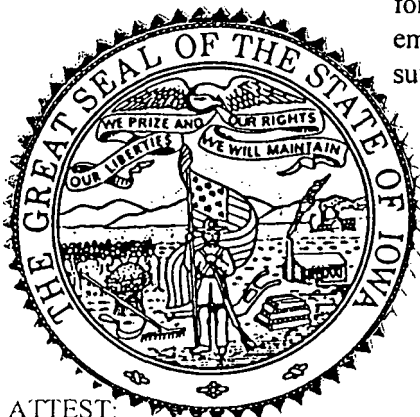
WHEREAS, this storm system spawned intense tornadoes, strong straight line winds, hail, and flooding which caused destruction and damage to residences, crops, infrastructure, businesses and private property in Benton, Dallas, Iowa, Keokuk, Johnson, Louisa, Marshall, Polk, and Washington Counties; and

WHEREAS, based upon initial reports forwarded by local and state officials; and

WHEREAS, the results of this information and survey indicate that local governments have requested and are in need of State assistance to include damage assessment, debris removal and burning activities in accordance with Iowa Administrative Code 567-23.2 (a) and Iowa Code Chapter 29C.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim a state of disaster emergency for Benton, Dallas, Iowa, Keokuk, Johnson, Louisa, Marshall, Polk, and Washington Counties, for the aforementioned reasons. This proclamation of disaster emergency authorizes local and State government to render good and sufficient aid to assist this area in its time of need.

I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 29th day of June in the year of our Lord one thousand nine hundred and ninety-eight.



ATTEST:

Paul P. Tate
SECRETARY OF STATE

Terry E. Branstad
GOVERNOR



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF DISASTER EMERGENCY

WHEREAS, On Monday, June 29, 1998, a severe storm system moved across Iowa generating strong winds, heavy rains, and hail; and

WHEREAS, this storm system spawned intense tornadoes, strong straight line winds, hail, and flooding which caused destruction and damage to residences, crops, infrastructure, businesses and private property in Muscatine, Tama, Poweshiek, and Jefferson Counties; and

WHEREAS, based upon initial reports forwarded by local and state officials; and

WHEREAS, the results of this information and survey indicate that local governments have requested and are in need of State assistance to include damage assessment, debris removal and burning activities in accordance with Iowa Administrative Code 567-23.2 (a) and Iowa Code Chapter 29C.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim a state of disaster emergency for Muscatine, Tama, Poweshiek, and Jefferson Counties, for the aforementioned reasons. This proclamation of disaster emergency authorizes local and State government to render good and sufficient aid to assist this area in its time of need.

I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 30th day of June in the year of our Lord one thousand nine hundred and ninety-eight.



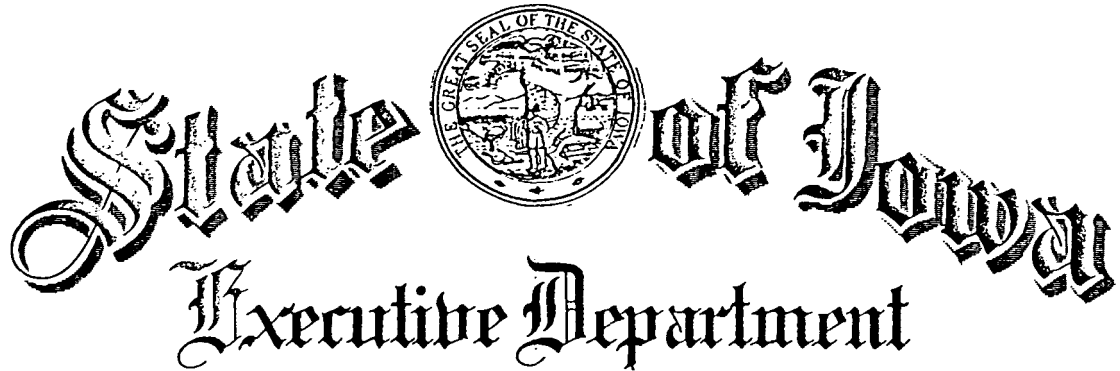
ATTEST:

Paul P. Pate

SECRETARY OF STATE

Terry E. Branstad

GOVERNOR



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 63

WHEREAS, the Iowa Department of Public Safety maintains and operates an Automated Fingerprint Identification System (AFIS) as part of its responsibilities to collect and disseminate criminal history information; and

WHEREAS, AFIS technology is recognized within the law enforcement community as valuable equipment in carrying out the law enforcement mission; and

WHEREAS, it is imperative for law enforcement agencies in Iowa to be compatible with AFIS equipment operated by the Department of Public Safety; and

WHEREAS, some law enforcement agencies currently possess their own AFIS equipment which is connected with the Department of Public Safety; and

WHEREAS, an Advisory Board made up of representatives of local agencies is necessary to maintain equipment capability and an efficient operation.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the virtue of the authority vested in me by the Laws and Constitution of the State of Iowa, do hereby order that:

- I. A nine member AFIS Committee be established consisting of four Iowa sheriffs chosen by the Iowa State Sheriffs' and Deputies' Association (ISSDA) and four chiefs of police chosen by the Iowa Police Executive Forum (IPEF) and chaired by the Commissioner of Public Safety or the Commissioner's designee.
- II. Each sheriff or chief shall serve two-year overlapping terms. Each year, two sheriffs' positions and two chiefs' positions whose term has expired shall be appointed/reappointed by ISSDA and IPEF. Members may serve more than one term.

- III. The committee will advise the Commissioner of Public Safety on policies and procedures regarding the identification and procurement of AFIS-related equipment, and make recommendations on the placement of AFIS equipment owned by the state. The committee will also make recommendations to the Commissioner of Public Safety as to requests from local law enforcement agencies procuring their own AFIS equipment as to interfacing with the Department of Public Safety. Policy and procedures established by the committee will be used as a guide to make such recommendations.

- IV. The Commissioner of Public Safety or the Commissioner's designee will have final authority in all respects to the procurement and placement of state AFIS equipment, as well as requests by other agencies to interface their equipment with the Department of Public Safety.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 10th day of February in the year of our Lord one thousand nine hundred and ninety-eight.

Tommy Brandon


 GOVERNOR



ATTEST:

Paul P. Tate

 SECRETARY OF STATE

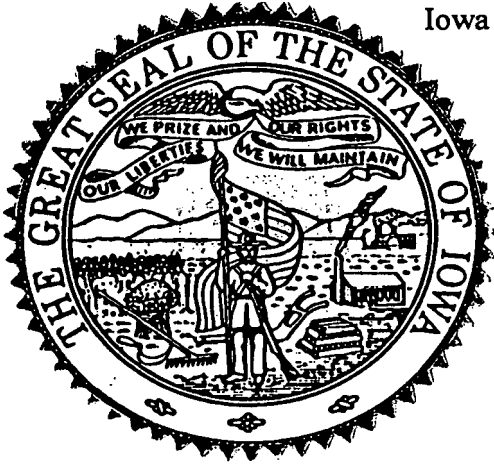


State of Iowa
Executive Department
IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 64

- WHEREAS,** Executive Order Number 48 established the Iowa Commission for National and Community Service; and
- WHEREAS,** the Commission has provided a valuable service to the people of Iowa by providing awareness, recognition, training, and technical assistance to volunteer and community service efforts and activities, and there remains a compelling need for civic participation by all Iowans; and
- WHEREAS,** the name Iowa Commission for National and Community Service does not clearly portray to the general public the mission and vision of the Commission.
- NOW, THEREFORE,** I, Terry E. Branstad, Governor of the State of Iowa, by the virtue of the authority vested in me by the Laws and Constitution of the State of Iowa, do hereby order that:
- I. As of May 18, 1998, the name of the Iowa Commission for National and Community Service be changed to the Iowa Commission on Volunteer Service, and in the future shall be known as the Iowa Commission on Volunteer Service.
 - II. All other provisions of Executive Order Number 48, dated February 14, 1994, shall remain in effect and that the Iowa Commission on Volunteer Service conforms with the federal guidelines detailed in the National and Community Service Trust Act of 1993.

III. This Executive Order amends Executive Order Number 48 that establishes the Iowa Commission for National and Community Service.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this eighteenth day of May in the year of our Lord one thousand nine hundred and ninety-eight.

Ken E. Brundage
GOVERNOR

ATTEST:

Paul D. [Signature]
SECRETARY OF STATE



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 65

- WHEREAS,** the State of Iowa is a large geographic region including both finite and renewable resources, diverse economic activities; valuable public and private infrastructure, numerous business firms and government organizations, and a diverse population; and
- WHEREAS,** the management of geographic information about the character and location of the state's natural, physical, economic, and cultural resources and human activity is becoming more important to both the public and private sectors; and
- WHEREAS,** there are various spatial information technologies available to assist Iowa businesses and organizations meet their various and unique information needs; and
- WHEREAS,** there are various governmental, business, and educational users of spatial data technologies who would benefit from data sharing, coordination of technology development activities, the development of common standards and conventions, and educational activities; and
- WHEREAS,** there is a need to coordinate the various activities in geographic information systems (GIS) and related technologies in order to better exchange and share information and to enhance the stewardship of geographic information in the management of public resources; and
- WHEREAS,** the current Iowa Geographic Information Council, a volunteer organization, has been involved in a variety of educational, communications, and information sharing activities but lacks the explicit authority to recommend policies, guidelines, and standards; and
- WHEREAS,** there is a need to recommend policies, guidelines, and standards to the Office of Information Technology Services and other units of government for developing and sharing geographic information; and

- WHEREAS,** there is a need to avoid duplication of effort so as to reduce the costs that would otherwise be involved if each organization developed its own GIS and related capabilities independently; and
- WHEREAS,** there is a need to establish a formal forum in order to discuss, debate, and decide general issues related to geographic information; and
- WHEREAS,** there is a need to establish a formal forum in order to discuss, debate, and issue guidelines on confidentiality and privacy issues related to geographic information; and
- WHEREAS,** there is a need to prioritize and schedule the development of public-funded data programs, define the roles and responsibilities of data stewardship, and formulate policies for the access, distribution, and pricing of data; and
- WHEREAS,** there is a need to support the ongoing development of a geographic information clearinghouse in order to foster the sharing of geographic data; and
- WHEREAS,** there is a need to provide education, training, and support for users of geographic information to support the better management of public resources.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the virtue of the authority vested in me by the Laws and Constitution of the State of Iowa, do hereby order that:

1. The Iowa Geographic Information Council (hereinafter referred to as IGIC) shall be formally established.
2. The members of the IGIC shall be appointed by the Director of the Office of Information Technology Services from nominations received from the existing IGIC. The IGIC shall be composed of members with knowledge and interest in the GIS field representing state government, federal government, city government, county government, regional and metropolitan planning, universities and private colleges, community colleges, and GIS user(s) in the private sector.
3. The IGIC shall formulate and adopt a charter and bylaws delineating its operation, elections and formation of topical subcommittees.
4. The IGIC shall receive administrative staff support from the Office of Information Technology Services.
5. The IGIC shall prepare an annual report to the Governor by June 30th of each year to be submitted to the Director of the Office of Information Technology Services describing accomplishments from the previous year and recommendations for the future.

- 6. The annual report due on June 30, 1998, shall include recommendations with respect to the future organizational structure of the IGIC and detailed recommendations in the form of a plan for addressing the needs described in this Executive Order.
- 7. Policies, guidelines, standards and conventions developed by the IGIC shall be widely distributed throughout Iowa for discussion and shall be recommended for implementation through the Office of Technology Services and other organizations as appropriate.




IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this twentieth day of May in the year of our Lord one thousand nine hundred and ninety-eight.


GOVERNOR

ATTEST:


SECRETARY OF STATE



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 66

- WHEREAS,** open access to public information and government services is the expectation of Iowa's citizens and the obligation of state government; and
- WHEREAS,** the implementation of effective progressive public policies places an increasing reliance upon information technology by state agencies and other governmental entities; and
- WHEREAS,** the use of public networks, such as the Internet, has gained wide acceptance for locating, processing, and transferring information and delivering services between and among citizens, organizations, businesses, state agencies and other governmental entities; and
- WHEREAS,** the delivery of government information and services using public networks and information technology must be managed with great care to meet the objectives of the citizens and their government; and
- WHEREAS,** the seventy-seventh General Assembly passed legislation to authorize a program called IowaAccess that will bring government information and services electronically to the public, business and industry using the Internet.
- NOW, THEREFORE, I,** Terry E. Branstad, Governor of the State of Iowa, by the virtue of the authority vested in me by the Laws and Constitution of the State of Iowa, to establish an IowaAccess Advisory Council to foster, facilitate and encourage the development and operation use of IowaAccess, do hereby order that:

1. An IowAccess Advisory Council is created to provide advice and counsel to the Director of Information Technology Services in the development, implementation, operation and growth of IowAccess. I direct the Director of Information Technology Services to appoint Advisory Council members who represent the following businesses, industries, governmental entities and professions:
 - A. A person representing financial institutions who shall be actively engaged in finance and banking.
 - B. A person representing insurers who shall be actively engaged in the insurance industry.
 - C. A person representing attorneys who shall be actively engaged in the profession of law.
 - D. A person representing media interests.
 - E. A person representing cities who shall be actively engaged in the administration of a city.
 - F. A person representing counties who shall be actively engaged in the administration of a county.
2. I instruct the Director of Information Technology Services to select the members appointed by the Director from a list of candidates nominated by interested organizations from the businesses, industries, governmental entities and professions identified above.
3. The Director may appoint or invite additional members to participate on the Advisory Council including other heads of agencies or elected officials or their designees as well as other representatives of the public, business, and industry as determined by the Director of Information Technology Services.
4. The members of the Advisory Council appointed by the Director may serve terms of up to three years. Advisory Council members may be appointed for more than one term.
5. In addition, I hereby appoint the Director of the Department of Management or designee to the Advisory Council.

6. I also invite and encourage the General Assembly to appoint two representatives to the Advisory Council from its membership or designees.
7. I also invite and encourage the Chief Justice of the Iowa Supreme Court or designee to participate on the Advisory Council.
8. I also invite and encourage the State Auditor or designee to participate on the Advisory Council.
9. I hereby instruct the Director of Information Technology Services to seek the advice and counsel of the Advisory Council regarding the following matters with respect to the development, implementation, operation and growth of IowAccess:
 - A. Developing a process for reviewing and establishing priorities for implementation of electronic access to government records.
 - B. Establishing priorities for implementing electronic access to government records.
 - C. Establishing priorities for implementing electronic transactions involving government agencies and members of the public.
 - D. Budgeting, funding, and operating expenses related to developing, implementing, and maintaining electronic access to government records.
 - E. Reviewing, inspecting, and evaluating the technology and financial audits required by law for the purpose of recommending to the Director of Information Technology Services such program improvements, efficiencies, and priorities as the Advisory Council shall deem prudent.
 - F. Reviewing the basis of all charges and fees to the public for accessing government records electronically to ensure that the charges are reasonable and comply with applicable law, and recommending statutory or other changes relative to the basis for fees and charges associated with electronic access to governmental records.

G. Monitoring privacy and confidentiality of public records which are accessed electronically.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 21st day of May in the year of our Lord one thousand nine hundred and ninety-eight.



ATTEST:

Tom E. Branstad

GOVERNOR

Paul J. Bate

SECRETARY OF STATE

* SUMMARY OF DECISIONS
THE SUPREME COURT OF IOWA
FILED JULY 1, 1998

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. 96-1755. PETERSEN v. HARRISON COUNTY BOARD OF SUPERVISORS.

Appeal from the Iowa District Court for Harrison County, Leo F. Connolly, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Snell, and Andreasen, JJ. Opinion by McGiverin, C.J. (13 pages \$5.20)

The Harrison County Board of Supervisors (Board) rejected plaintiffs' proposal to designate a portion of their property as an agricultural area pursuant to Iowa Code chapter 352 (1995), finding that preservation of private property rights outweighed granting plaintiffs' proposal. The proposed agricultural area covers land that surrounds the unincorporated village of Beebeetown, Iowa, on three sides. The land included in the proposed agricultural area meets the necessary qualifications for an agricultural area as set forth in chapter 352. Plaintiffs challenged the Board's decision in a certiorari proceeding in district court. The district court sustained the Board's decision and dismissed plaintiffs' petition. Plaintiffs appeal. **OPINION HOLDS:** I. We believe the statutory language found in section 352.1 clearly demonstrates the legislature's concern for preserving private property rights as well as preserving agricultural land in Iowa. We also believe the Board's duty under section 352.7(2) to reject a proposal for an agricultural area if it is inconsistent with the purposes of chapter 352 is a legislative grant of discretion to a local board of supervisors to weigh the competing interests in deciding whether to grant a proposal for an agricultural area. Additionally, section 352.7(1) appears to contemplate an informal-type public hearing as was held by the Board in this case. II. We believe the Board properly weighed the interests relating to preservation of private property rights and the policies associated with plaintiffs' proposal for an agricultural area. We conclude the Board's finding that preserving private property rights outweighs the policies favoring plaintiffs' proposal for an agricultural area is supported by substantial evidence.

No. 97-633. CLINTON NATIONAL BANK v. SAUCIER.

Appeal from the Iowa District Court for Clinton County, David H. Sivright, Jr., Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Snell, and Andreasen, JJ. Opinion by McGiverin, C.J. (11 pages \$4.40)

Plaintiff bank sued defendants to recover on several defaulted promissory notes. Defendants counterclaimed, asserting the bank had breached an oral agreement to honor overdrafts. The bank moved for summary judgment on the counterclaim. The district court sustained the motion, finding the alleged agreement was unenforceable under Iowa Code section 535.17(1)(1995) because it was not in writing. Defendants appeal. **OPINION HOLDS:** We conclude section 535.17 requires that any alleged agreement with a bank to honor overdrafts must be in writing to be enforceable. Defendants did not have such a written agreement with the bank. The district court therefore properly granted summary judgment.

*Reproduced as submitted by the Court

No. 96-1571. RATHMANN v. BOARD OF DIRECTORS.

Appeal from the Iowa District Court for Scott County, Max R. Werling and James E. Kelley, Judges. **AFFIRMED IN PART AND REVERSED IN PART.** Considered by McGiverin, C.J., and Larson, Lavorato, Andreasen and Ternus, JJ. Opinion by McGiverin, C.J. (21 pages \$8.40)

This case is another in an ongoing dispute involving the right of Davenport Community School Board members to view records of the Davenport Community School District. We must now decide whether a school district can charge a fee for retrieving public records requested under Iowa's open records law, Iowa Code chapter 22 (1995). We must also consider the method a school superintendent must follow in consulting private legal counsel for school district matters and whether private counsel hired by a school district is limited to representing the district in litigation matters, or whether private counsel may also advise a school district concerning general district matters. The district court concluded: (1) that a school district may charge members of the public, as well as school board members, a fee to cover costs of retrieving public records requested under Iowa's open records law; (2) a superintendent under an adopted board policy may consult private legal counsel on particular issues without approval from the entire board; and (3) a school board may consult private counsel for advice on general school district matters and is not limited to using private counsel only for litigation. The district court therefore dismissed plaintiff's petition challenging the validity of certain school board policies. **OPINION HOLDS:** We conclude that entities covered under chapter 22 may charge members of the public a retrieval fee to cover the costs of retrieving public records. While the legislature did not intend for chapter 22 to be a revenue measure, at the same time it did not intend for a lawful custodian to bear the burden of paying for all expenses associated with a public records request. We further determine, however, that a school district may not charge a school board member the same type of fee to inspect school district records which the board member has a right to see in his or her capacity as a school board member, so long as the request for records is reasonable. We also conclude that a superintendent has the authority to decide when to seek legal advice concerning school district matters, once the school board has approved legal counsel for the school year, and that the school district may consult private counsel for any legal matters involving the school district. Board policy 902.5 thus complies with Iowa law. We therefore affirm in part and reverse in part.

No. 97-997. ALLEN v. IOWA DIST. CT.

Certiorari to the Iowa District Court for Polk County, Richard G. Blane, II, Judge. **WRIT SUSTAINED; CASE REMANDED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Ternus, JJ. Per curiam. (8 pages \$3.20)

The plaintiff, Jermaine Allen, pleaded guilty to second-degree murder. The district court overruled Allen's challenges to his plea and sentenced him to an indeterminate fifty-year term of imprisonment. Thereafter, the State proceeded with first-degree murder charges against Allen's codefendant, David Flores. The State sought to elicit testimony from Allen, and filed a request for use immunity pursuant to Iowa Rule of Criminal Procedure 19(3). Allen objected and filed a

No. 97-997. ALLEN v. IOWA DIST. CT. (continued)

resistance arguing rule 19(3) provided transactional immunity. The district court granted Allen use immunity and ordered him to testify. Allen's application for discretionary review was denied. Prosecutors attempted to depose Allen. He refused to testify, asserting his fifth amendment right against self-incrimination. The court found Allen in contempt and sentenced him to six months in the custody of the department of corrections. We granted Allen's petition for writ of certiorari. Allen argues the trial court exceeded its jurisdiction or acted illegally in ordering him to testify and in refusing to grant him transactional immunity. **OPINION HOLDS:** I. Allen sought immediate appellate review of the immunity order and the order compelling him to testify by filing an application for discretionary review, which was denied. We decline to apply the collateral bar rule when there was not an adequate and effective remedy to review the challenged ruling, or where compliance could cause irreparable injury which may not be repaired by appellate vindication. Allen is therefore not prevented from challenging the order compelling him to testify or the immunity order. II. We conclude rule 19(3) provides both use and transactional immunity. We reject the State's contention that the trial court in this matter was somehow limited to granting only the use immunity requested by the State. III. Because Allen was entitled to use and transactional immunity, the district court's order granting only use immunity is contrary to the dictates of rule 19(3) and is vacated. The resulting contempt finding and punishment were therefore based upon an illegal order. The case is remanded with directions to the district court to set aside the judgment and sentence entered against Allen for contempt.

No. 97-630. STATE v. WHITING.

Appeal from the Iowa District Court for Johnson County, Patrick R. Grady, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Snell, and Andreasen, JJ. Per curiam. (4 pages \$1.60)

Velma Whiting was charged with first-degree murder for the death of a six-month-old infant whom she was adopting. Whiting admitted at trial that she had twice hit Shauna with her fist on the day of Shauna's death out of frustration because Shauna would not stop crying. The court denied Whiting's request for a jury instruction on voluntary manslaughter finding, as a matter of law, that evidence of provocation was lacking. The jury returned a guilty verdict for second-degree murder. On appeal Whiting contends the district court erred by failing to submit an instruction on voluntary manslaughter. **OPINION HOLDS:** The trial court properly inquired into the sufficiency of the evidence of provocation—an element of voluntary manslaughter not found in the greater offense of murder. We have previously found an infant to be incapable of generating the kind of "provocation" contemplated by the voluntary manslaughter statute. We agree with the trial court that evidence of provocation was lacking in the present case as a matter of law. We affirm.

No. 97-861. VALLEY BROOK DEV., INC. v. CITY OF BETTENDORF.

Appeal from the Iowa District Court for Scott County, John A. Nahra, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Snell, and Andreasen, JJ. Opinion by Harris, J. (4 pages \$1.60)

In 1988, the defendant City of Bettendorf passed an ordinance empowering the city to assess real estate developers for the cost of paving public streets immediately adjacent to their subdivisions. The city later refused to approve the plaintiffs' proposed developments until the required funds for paving Crow Creek Road were paid into escrow. The payments were accompanied by written escrow agreements which provided the money would "be held in a trust and agency escrow account for the purpose of providing the paving of Crow Creek Road at such time as Crow Creek Road is paved." A subsequent influx of federal funds prompted the city council to approve a resolution which made the city, not adjacent landowners, responsible for upgrades of existing public streets. The city then undertook to pave Crow Creek Road using the federal funds, money from the city's general funds, and \$65,000 from the amounts prepaid by the plaintiffs and one other developer. It did not assess any other adjacent landowner or developer. The plaintiffs then brought this equity action seeking return of the escrowed funds. The district court entered judgment for the city and the plaintiffs appealed. **OPINION HOLDS:** I. The district court properly rejected the plaintiffs' claims that the resolution abated the city's authority under the ordinance to exact paving contributions from developers. In the first place a city council resolution cannot undermine a city ordinance. Moreover, there was nothing in the ordinance or the escrow agreements to contemplate a return of funds to developers in the event other funds were acquired. The escrowed moneys were used for their stated purpose. II. We cannot consider plaintiffs' alternative theories for relief because they were not raised in district court.

No. 97-147. STATE v. ALLEN.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Ternus, JJ. Per curiam. (7 pages \$2.80)

The defendant, Jarmaine Allen, pled guilty to second-degree murder. Thereafter, Allen filed a motion in arrest of judgment. He argued his guilty plea was not voluntarily entered because he did not understand the proceedings, it was coerced by his attorney, and he was not fully informed of the consequences of his guilty plea. Additionally, he contended there were newly-discovered witnesses who would have provided exculpatory evidence at trial. The district court denied the motion. Allen has appealed. **OPINION HOLDS:** I. The transcript of the plea proceeding clearly indicates the district court conducted a lengthy and careful colloquy with Allen regarding his Iowa Rule of Criminal Procedure 8(2)(b) rights and Allen's guilty plea was voluntarily and knowingly entered. The district court did not abuse its discretion in finding Allen's claims to the contrary lacked credibility. II. We reject Allen's argument that the "yes" and "no" answer format for the rule 8 colloquy is not a reliable test of voluntariness. III. We have recently rejected Allen's remaining claim of newly-discovered evidence in the appeal of his codefendant. *See State v. Speed*, 573 N.W.2d 594, 595 (Iowa 1998). The newly-discovered evidence involves Allen's assessment of the strength of the State's case and his self-defense theory but it is not intrinsic to the guilty plea.

No. 97-147. STATE v. ALLEN. (continued)

The district court properly rejected Allen's attempt to withdraw his guilty plea. IV. We have previously held a defendant who has pleaded guilty cannot move for a new trial under rule 23(2)(a) on the grounds of new evidence. Allen cannot prove a breach of duty by trial counsel on this ground. The record is insufficient to consider the remaining claims of ineffective assistance and those claims are preserved for a possible postconviction relief action.

No. 96-1991. WYCOFF v. IOWA DISTRICT COURT.

Certiorari to and appeal from the Iowa District Court for Lee County, D.B. Hendrickson and William C. Dowell, Judges. **AFFIRMED AND WRIT ANNULLED.** Considered by McGiverin, C.J., and Harris, Lavorato, Snell, and Andreasen, JJ. Per curiam. (5 pages \$2.00)

Wycoff is an inmate at the Iowa State Penitentiary serving a life sentence. Wycoff was reported for violating several prison rules. Following a hearing, an administrative law judge found Wycoff committed a major violation by having certain unauthorized personal property in his cell. However, the judge assessed no punishment other than a reprimand. The judge denied Wycoff's request that the violation be reclassified as a minor offense. After unsuccessful administrative appeals Wycoff filed a petition in district court, seeking postconviction relief or alternatively seeking judicial review under Iowa Code chapter 17A (1995), the Iowa Administrative Procedure Act (IAPA). The State moved for summary judgment on Wycoff's postconviction relief application, arguing the disciplinary action did not involve a substantial deprivation of liberty or property interests. The district court agreed and dismissed the postconviction relief claim. The court later dismissed the judicial review claim determining the IAPA did not apply. Wycoff both appealed and sought certiorari review. **OPINION HOLDS:** I. The reprimand imposed on Wycoff does not involve a substantial deprivation of a liberty or property interest implicating a right to postconviction relief. II. We decline to modify our prior conclusion that the IAPA has no application to prison disciplinary proceedings. The district court properly dismissed Wycoff's petition for judicial review.

No. 96-2022. IN RE ESTATE OF NAGEL.

Appeal from the Iowa District Court for Carroll County, Gary L. McMinimee, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Snell, and Andreasen, JJ. Opinion by Harris, J. (5 pages \$2.00)

A husband and wife, Malcom and Lenore Roe, placed their property in living revocable trusts in 1993 as part of their estate planning. Each trust provided that upon the death of the trustor the trust would become irrevocable and any indebtedness owed by the trustor would be paid from the trust. The Roes were killed simultaneously in a car accident in 1995. The driver of the other vehicle involved in the accident, Barbara Nagel, was also killed. Nagel's executor brought an action for declaratory judgment, asserting the trusts' assets should be subject to the wrongful-death claim of Nagel's estate. The district court held the assets of the trusts were available to satisfy any wrongful-death judgment entered

No. 96-2022. IN RE ESTATE OF NAGEL. (continued)

in favor of the estate. The trustee challenges the ruling in this appeal. **OPINION HOLDS:** I. A revocable living trust is a trust established during the settlor's lifetime in which the settlor reserves the right to alter, amend, or revoke the trust and may retain the right during his or her lifetime to direct the disposition of principal and income. II. When a trust is created for the settlor's own benefit, the settlor's creditors can reach any trust assets available to the settlor. III. We reject the trustee's assertion that, in order to reach the trust assets, it is necessary to find that Malcom and Lenore created the trusts with the intent to avoid their creditors. Such a finding is unnecessary because it is irrelevant if a settlor intends to defraud his or her creditors or is solvent at the time of the creation of the trust. IV. Even though Malcom and Lenore's powers to amend or revoke the trusts, or to direct payment from the trusts, obviously died with them, and the remainder beneficiary's interests in the trusts became vested, the property is still subject to their debts. V. We reject the trustee's argument that the assets should not be reached because the contingent wrongful death claim is not a "debt" required to be paid out of the trusts. Even though the tort claim was not reduced to judgment before Malcom and Lenore's deaths, the facts precipitating it occurred during their lifetimes. The trial court was correct in holding the trusts' assets may be reached to satisfy the wrongful-death claim.

No. 96-1981. SHEETS v. RITT, RITT & RITT, INC.

Appeal from the Iowa District Court for Wapello County, Annette J. Scieszinski, Judge. **AFFIRMED ON BOTH APPEALS.** Considered en banc. Opinion by Harris, J. Special concurrence by Ternus, J. (10 pages \$4.00)

The plaintiff, Donna Sheets, was injured when she slipped and fell in a shower at a motel in Ottumwa, Iowa, operated by the defendant, Ritt, Ritt & Ritt, Inc. (Ritt). She thereafter brought this action alleging Ritt was negligent in failing to maintain a safe shower area and failing to warn of the dangers. Ritt answered and raised a comparative fault defense. At trial Donna objected to the court's jury instructions, asserting they were premised on obsolete common-law distinctions based on the status of the entrant to the property (invitee, licensee, or trespasser). Her requested instruction would instead have placed upon Ritt a duty of reasonable care under all the attendant circumstances at the time and place of the injury. The court rejected the proposed instructions and instead, in its instruction 15, adopted Iowa civil jury instruction 900.1 (essentials for recovery—condition of premises—duty to invitees). The jury returned a verdict for Ritt. Donna appeals and Ritt cross-appeals. **OPINION HOLDS:** I. For many years we have questioned the soundness of the common-law distinctions. We now think Donna is correct in arguing that the common-law system of pegging liability to the entrant's status is out of focus under present tort law. Focusing on an entrant's status is inappropriate because it misdirects the jury away from a comparison of the parties' fault, and regresses back to a system which is based on one party's fault. For this reason we abrogate the distinction in premises liability cases between invitees and licensees. We do not decide whether a distinction should persist with regard to trespassers. We also do not suggest that the owners or occupiers of land are insurers of the premises. Instead, we impose upon them only the duty to exercise reasonable care in the maintenance of their premises for the protection of lawful visitors. II. Donna is correct in contending that jury

No. 96-1981. SHEETS v. RITT, RITT & RITT, INC. (continued)

instructions in premises liability cases should not turn on whether the entrant is an invitee or licensee. She is however unable to establish that the jury might have reacted differently under her proposed instructions. The error was harmless. III. We need not explore Donna's alternative challenge to jury instruction 15 because she invited the part of the instruction she now criticizes. IV. The issue urged on cross-appeal is moot. We affirm on both appeals. **SPECIAL CONCURRENCE ASSERTS:** I agree the instructions submitted in this case did not work an injustice, but I am not convinced the common-law distinctions should be abandoned at this time.

No. 96-1824. DICO, INC. v. EMPLOYERS INS. OF WAUSAU.

Appeal from the Iowa District Court for Polk County, William H. Joy, Judge. **REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.** Considered by Harris, P.J., and Carter, Neuman, Snell, and Andreasen, JJ. Opinion by Neuman, J. (13 pages \$5.20)

Dico, Inc., an industrial manufacturer in Des Moines, is saddled with cleanup costs imposed by the Environmental Protection Agency (EPA) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). To compel indemnity coverage and the duty to defend under policies with its various insurers, Dico brought suit for breach of contract and declaratory relief. This appeal concerns claims against Employers Insurance of Wausau (Wausau). Dico alleged that under comprehensive general liability policies issued by Wausau, coverage is owed on property damage for which Dico is responsible due to the CERCLA action. The district court granted summary judgment for Wausau, finding Dico's late notice of the indemnity claim precluded, as a matter of law, Wausau's obligation under the policies. It delayed entry of judgment for three weeks, allowing the parties to comment. Dico filed an Iowa Rule of Civil Procedure 179(b) motion within that time period. The district court denied the motion, finding it untimely. Dico appealed. Wausau filed a motion to dismiss the appeal as untimely. **OPINION HOLDS:** I. We overrule Wausau's motion to dismiss. The district court order was not final as the court left the door open for further comment. Additionally, we cannot reconcile the district court's view that Dico's rule 179(b) motion was untimely with its open-ended invitation to submit revisions. II. Dico's contamination of its production well and soil, which resulted from manufacturing procedures and dust control occurring over a long period of time, were not "occurrences" triggering notice—or, potentially, coverage—under Wausau's policy. III. We do not agree that Dico provided untimely notice. No petition had been filed before Wausau received notice of Dico's claim. More importantly, the early correspondence between the EPA and Dico—which Wausau contends triggered notice—implied no duty to mount a defense. Additionally, mere correspondence between the EPA and an insured concerning hazardous waste disposal would not necessarily develop into a claim. Here the question of substantial compliance with notice requirements comes down to a matter of weeks. We cannot say as a matter of law that Dico failed to substantially comply with Wausau's notice requirements, and the district court erred when it ruled otherwise. We reverse and remand for further proceedings.

No. 96-1485. METZ v. AMOCO OIL CO.

Appeal from the Iowa District Court for Pottawattamie County, Keith E. Burgett, Judge. **AFFIRMED.** Considered en banc. Opinion by Harris, J. Dissent by Lavorato, J. (11 pages \$4.40)

In 1991 John Metz was diagnosed with neutropenia. The disease was believed to be the result of his exposure to toxic contaminants while he maintained and repaired storage tanks and petroleum distributor facilities for various companies. The Metz family then brought this action, alleging the defendants were negligent in numerous ways for causing the injuries. In February 1996 plaintiffs' three attorneys moved to withdraw because they believed medical causation could not be shown. The court granted the motion and ordered plaintiffs to find new counsel within sixty days or their action would be dismissed. On July 19, 1996, the court sua sponte dismissed the case because of plaintiffs' failure to obtain counsel. In January 1997 plaintiffs moved pursuant to Iowa rule of appellate procedure 10(c) to expand the appellate record to allow affidavits of John and Joanne Metz and their former attorneys. The district court denied the motion as untimely. A challenge to this determination was ordered to be submitted with this appeal. On appeal John Metz maintains the court's order, directing plaintiffs to secure new counsel within a certain period or their case would be dismissed, effectively violated his constitutional right to represent himself. **OPINION HOLDS:** I. Because plaintiffs' rule 10(c) motion was untimely filed we reject the proffered affidavits as a part of the appellate record. II. Metz's constitutional claim was never asserted in district court and was therefore waived. Although the court lacked authority to order plaintiffs to obtain counsel and to dismiss their action if they failed to do so, the court's authority was never questioned. The dismissal was authorized under Iowa rules of civil procedure 216 and 230 (authorizing dismissal of action as sanction for disobeying any court order). III. Plaintiffs waived error on their claims that the district court abused its discretion in entering the default judgment sua sponte and entering judgment against them without a finding that their failure to comply with the order was not due to willfulness, fault, or bad faith. IV. We also reject, for want of preservation, plaintiffs' separate claim that the district court abused its discretion in failing to set aside or vacate the default judgment. We affirm. **DISSENT ASSERTS:** I. I submit error preservation should not apply here because the right to proceed pro se is so ingrained in our law that all judges are aware of it without the need of litigants to remind them of it. There was no need to remind the district court it was without authority to order plaintiffs to obtain counsel as a condition for proceeding with their case. Rules 216 and 230 are necessarily premised on the existence of proper authority to dismiss the action. Because there was no such authority here, the district court erred in dismissing the action. II. Fundamental fairness also dictates that we should not apply the court-imposed rule of error preservation. The district court misled plaintiffs into believing they did not have the right to proceed pro se. To penalize plaintiffs for not asserting this right perverts our error preservation rule and commits a travesty of justice. We have inherent power to correct an obvious injustice. We should do so here. III. I also think the district court should have set aside the default on the grounds of "excusable neglect" pursuant to Iowa Rule of Civil Procedure 236. When considering all of the evidence on the factors of determining excusable neglect, I conclude there is no substantial evidence to support denial of the plaintiffs' motion to set aside the default. I therefore conclude the district court abused its discretion in denying the motion. I would reverse and remand for further proceedings.

No. 97-600. STATE v. LARA.

Appeal from the Iowa District Court for Black Hawk County, K.D. Briner, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Snell, and Andreasen, JJ. Opinion by Andreasen, J. (5 pages \$2.00)

In 1996 the Iowa legislature adopted a mandatory minimum sentence for certain forcible felonies, *i.e.*, murder in the second degree, sexual abuse in the second degree, kidnaping in the second degree, and robbery in the first or second degree. 1996 Iowa Acts ch. 1151, § 3 (codified at Iowa Code § 902.12 (1997)). The legislature provided that an inmate sentenced under section 902.12 is eligible for a reduction of the sentence of one day for each day of good time but the total days which may be accumulated shall not exceed fifteen percent of the inmate's total sentence of confinement. 1996 Iowa Acts ch. 1151, § 4 (codified at Iowa Code § 903A.2 (1997)). In this appeal we must determine if the provisions of section 902.12 violate the Eighth Amendment to the United States Constitution that prohibits cruel and unusual punishment. **OPINION HOLDS:** We find no merit in Lara's claim that a sentence imposed under section 902.12 constitutes cruel and unusual punishment. Neither the length of the mandatory sentence nor the requirement that he serve eighty-five percent of it before he is eligible for parole or work release violates his constitutional rights. We affirm.

No. 96-1475. STANLEY v. FITZGERALD.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge. **AFFIRMED.** Considered by en banc. Opinion by Andreasen, J. (12 pages \$4.80)

David M. Stanley and other members of a group known as Iowans For Tax Relief (collectively "Stanley") filed a petition for declaratory judgment and injunctive relief against the State Treasurer seeking to prevent the State from engaging in certain financial practices. The essence of Stanley's complaint involves the use of TRANs (short-termed financial instruments designed to level out the State's cash flow) issued by the Treasurer under Iowa Code sections 12.25 and 12.26 (1991). Stanley claims the State manipulated the budget and used TRANs to avoid incurring debt. The net result of these practices, Stanley argues, was the creation of a "core" of constitutionally prohibited debt. **OPINION HOLDS:** I. Because this action for declaratory judgment was tried at law, our review is at law except on constitutional issues when we make our own evaluation of the totality of the circumstances. II. The use of budget based accounting rather than generally accepted accounting principles may not give the best projection of the State's financial health, but so long as the budget prepared under that method is reasonable no illegality has occurred. We agree with the district court's determination Stanley had failed to prove the anticipated revenue estimates were unreasonable when made. III. We reject Stanley's claim that the delay of payment of some school aid appropriations due in one fiscal year until the beginning of the following fiscal year and the issuance of the TRANs created a "core" of floating debt violating article VII, section 2 of the Iowa Constitution. The delayed payments were accounted for in the budget for the fiscal year in which they were due. Because the TRANs were not used to increase the total amount of funds available to pay expenses no debt in the constitutional sense was created. IV. In light of the legislative findings of section 12.25, using the cash raised from the sale of TRANs to make payments held over from the prior fiscal year is in keeping with the legislative intent and is proper under section 12.26(1).

No. 96-1475. STANLEY v. FITZGERALD. (continued)

V. In connection with the TRANs certain banks issued letters of credit promising to pay the note holders if the State defaulted on the TRANs. To obtain the letters of credit the State entered reimbursement agreements with the issuing banks. We agree with the district court's determination repayment under the agreements was limited to revenues received for the fiscal year in which the TRANs were issued. The reimbursement agreements between the State and the banks did not constitute unconstitutional debt.

No. 97-1753. IN RE J.J.A.

Appeal from the Iowa District Court for Woodbury County, Patrick Tott, Associate Juvenile Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Snell, and Andreasen, JJ. Opinion by Snell, J.

(20 pages \$8.00)

The State filed a delinquency petition alleging that J.J.A., a juvenile, committed the delinquent act of operating while intoxicated. The State also filed a motion requesting the juvenile court to waive jurisdiction over the case. The court scheduled both the hearing on the motion to waive jurisdiction and the adjudicatory hearing for August 15, 1997. J.J.A.'s eighteenth birthday was August 23, 1997. The juvenile court denied the motion to waive jurisdiction and entered a consent decree pursuant to Iowa Code section 232.46(1) (1997). The court ordered that the decree be entered for a period of six months with "standard terms" and a special condition that J.J.A. obtain an alcohol assessment. The court denied the State's motion for reconsideration. On appeal the State contends the juvenile court erred in denying its motion to waive jurisdiction because it proved all the required factors outlined in section 232.45(6). It also argues the court erred in entering a consent decree because: (1) the juvenile court does not have jurisdiction to enforce a consent decree beyond a juvenile's eighteenth birthday; (2) the court abused its discretion because it failed to consider all procedural options in entering the consent decree; (3) the court did not follow the statutory requirements in entering a consent decree because it failed to ascertain whether J.J.A. intelligently and voluntarily agreed to the conditions and terms of the decree; and (4) J.J.A. failed to meet his burden of showing a consent decree was appropriate under the circumstances. J.J.A. contends that the order from which the State appealed is not final but interlocutory and should be dismissed. **OPINION HOLDS:** I. We conclude that a juvenile court's entry of a consent decree is not a final judgment or decision pursuant to Iowa Rule of Appellate Procedure 1(a); therefore, the State's appeal was improperly taken. We conclude, however, that interlocutory appeal should be granted. II. The clear language of Iowa Code section 232.46(4) does not contemplate an automatic termination date of the consent decree in conjunction with a juvenile attaining the age of majority. We conclude the juvenile court had the authority to enter the consent decree for a period extending beyond J.J.A.'s eighteenth birthday. III. The transcript clearly indicates that the juvenile court was aware of the procedural options that were available and did not fail to exercise its discretion in entering the consent decree. IV. The State has waived the issue of whether the juvenile court failed to ascertain whether J.J.A. "voluntarily and intelligently" agreed to the decree's terms because it has failed to cite authority for the proposition that it can assert the rights of the juvenile on appeal. V. The juvenile court officer's

No. 97-1753. IN RE J.J.A. (continued)

testimony, with no conflicting evidence presented to rebut it, amply supports the juvenile court's determination that J.J.A. carried his burden of showing good cause for the entry of a consent decree. No abuse of discretion occurred. VI. After reviewing the record and considering the factors set forth in section 232.45(7), we conclude that the juvenile court did not abuse its discretion in denying the State's motion to waive jurisdiction. We affirm.

No. 96-1515. IN RE R.S.

Appeal from the Iowa District Court for Polk County, Constance Cohen, Juvenile Judge. **APPEAL DISMISSED; REMANDED FOR FURTHER PROCEEDINGS.** Considered by McGiverin, C.J., and Harris, Lavorato, Snell, and Andreasen, JJ. Per curiam. (5 pages \$2.00)

An adjudicatory hearing was held on the charge that a juvenile had committed second-degree theft. The juvenile court found there was evidence beyond a reasonable doubt to support the theft charge, but it withheld adjudication of delinquency pending the preparation of a predispositional report. At the dispositional hearing the court entered a standard six-month consent decree and withheld an adjudication of delinquency pursuant to the parties' recommendations. The juvenile appealed, and the State filed a motion to affirm. We treated the notice of appeal as an application to appeal from an interlocutory order and granted the application. The State then filed a motion for remand contending the case was moot because the juvenile had turned eighteen, complied with the conditions of the consent decree, and six months had passed since entry of the decree. We denied the motion and ordered that the issue of mootness be submitted and considered with the appeal. **OPINION HOLDS:** I. We do not reach the merits of this appeal because the parties agree the juvenile has successfully completed the terms of the consent decree. This fact renders moot the propriety of the juvenile court's finding regarding the juvenile's commission of a delinquent act. On remand the juvenile court must dismiss the State's petition if it finds the juvenile has fulfilled the terms of the consent decree. II. Unlike a formal adjudication of delinquency, the juvenile court's finding as to the juvenile's guilt was not entered in an order. The juvenile will have no criminal or juvenile record as a result of the court's finding that he committed a delinquent act. We can foresee no adverse ramifications from the bare finding of guilt. III. Because any decision by our court would have no practical legal effect upon the existing controversy, the appeal is moot. The appeal is dismissed and the case is remanded for further proceedings.

No. 96-1593. BERNAU v. IOWA DEP'T OF TRANSP.

Appeal from the Iowa District Court for Floyd County, Stephen P. Carroll, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Opinion by Lavorato, J. (23 pages \$9.20)

After a series of public hearings, the Iowa Transportation Commission chose an alternative for a Charles City highway bypass which adversely affected the petitioners, owners and renters of farmland. The petitioners sought judicial review alleging that the commission's decision violated the mandatory preference

No. 96-1593. BERNAU v. IOWA DEP'T OF TRANSP. (continued)

of Iowa Code section 306.9 (1993) for protecting farmland affected by road relocations. The petitioners also requested the Iowa Department of Transportation to (1) promulgate a rule to implement section 306.9, (2) grant them a contested case hearing, and (3) grant them a "proper corridor" hearing. The agency denied the petitions. The district court ruled the department correctly denied the petitions. The court also ruled that the commission did not violate section 306.9. The petitioners appealed. **OPINION HOLDS:** I. The plain language of section 306.9 requires no blind preference for farmland but rather the statute's plain language allows a diagonal road if no other "feasible and prudent alternatives consistent with efficient movement of traffic exist." Although other alternatives for the road had a lesser impact on farmland, the record shows the commission properly used the feasible and prudent standard under the statute to select the location of the road. Because the commission properly considered the facts and the law in reaching its decision the commission did not act arbitrarily and capriciously. II. The department's refusal of the petitioners request under section 17A.9 for promulgation of a rule implementing section 306.9 was a denial on the merits and constituted a fair consideration of the petitioners' request. The department complied with the statutory requirements and was under no duty to promulgate a rule. III. Because the commission was acting legislatively when it chose the alternative for the bypass, the petitioners were not constitutionally entitled to a contested case hearing. Also, section 306.9 does not provide a statutory right to a contested case hearing. The district court correctly ruled no contested case hearing was required. IV. The district court correctly ruled the petitioners were not denied due process regarding the petitioners' corridor hearing claim.

No. 97-98. MEL FRANK TOOL & SUPPLY, INC. v. DI-CHEM CO.

Appeal from the Iowa District Court for Pottawattamie County, Keith E. Burgett, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Snell, and Andreasen, JJ. Opinion by Lavorato, J. (14 pages \$5.60)

Council Bluffs authorities informed Di-Chem Company that it could no longer use its leased premises to store its hazardous chemicals because of a recently enacted ordinance. Di-Chem vacated the premises, and the lessor, Mel Frank Tool & Supply, sued for breach of the lease and for damages to the premises. Di-Chem claimed the new regulations (1) made it impossible for it to use the premises as originally intended under the lease terms; and (2) the regulations resulted in a total destruction of business pursuant to a clause in the lease. The district court awarded Mel Frank judgment for unpaid rent and for damages to the premises. Di-Chem has appealed. **OPINION HOLDS:** I. A subsequent governmental regulation like a statute or ordinance may prohibit a tenant from legally using the premises for its originally intended purpose. In these circumstances, the tenant's purpose is substantially frustrated, thereby relieving the tenant from any further obligation to pay rent. The tenant is not relieved from the obligation to pay rent if there is a serviceable use still available consistent with the use provision in the lease, even if the use is less valuable or less profitable or even unprofitable. We conclude there is no record evidence that Di-Chem's principal purpose of storing and distributing chemicals was substantially frustrated because of the city's actions. The city's action did not deprive Di-Chem of the beneficial enjoyment of the property for other uses. II. We reject Di-Chem's

No. 97-98. MEL FRANK TOOL & SUPPLY, INC. v. DI-CHEM CO.
(continued)

claim that the city regulations caused a total destruction of business use under the lease, because it does not cover the situation where a subsequent governmental regulation prohibits the use of the premises for one of several purposes specified in the lease. III. We agree with Di-Chem that the district court erroneously found that the real estate agent represented Di-Chem and prepared the lease on its behalf. We find the error harmless, however, because Di-Chem has not established any ambiguity in the terms of the lease that affect the outcome of this case. We affirm the district court judgment.

No. 96-1806. WESTEGARD v. DAVIS COUNTY COMMUNITY SCH.
DIST.

Appeal from the Iowa District Court for Davis County, Phillip R. Collett, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Neuman, and Ternus, JJ. Opinion by Ternus, J.

(8 pages \$3.20)

Classified employees of the Davis County Community School District were historically paid on a monthly basis. Pursuant to the 1994-95 school year collective bargaining agreement, the twentieth day of each month was set aside as the payroll date, but no cutoff date was established. The school district later changed accounting practices, resulting in the paychecks being issued more than twelve days following the cutoff date. The employees alleged this practice violated Iowa Code section 91A.3(1) (1995). The school district argued the contract provision constituted a written agreement to vary the provisions of section 91A.3(1). The following year, the union proposed specific bimonthly dates for cutoff and payroll during contract negotiations, but the school district offered the previous payment schedule. An arbitrator was appointed and ultimately selected the school board's offer. The parties reached a settlement affirming the arbitrator's award. Several employees filed the present action, claiming the school district intentionally failed to pay classified employees within the twelve days dictated by section 91A.3(1). The school district raised collective bargaining as a defense. Upon the parties' cross-motions for summary judgment, the district court ruled the union contract contained a provision varying the terms of section 91A.3(1), and consequently the school district did not violate chapter 91A. The employees have appealed. **OPINION HOLDS:** I. We conclude the arbitrator's award does not preclude the employees by res judicata from challenging the legality of the school district's payroll procedures. II. We hold that no agreement existed to vary the twelve-day provision of section 91A.3(1). Because the undisputed facts establish that the school district issued paychecks more than twelve days following the end of the pay period, the employees were entitled to summary judgment. We do not decide whether the employees were entitled to liquidated damages, because there is no district court ruling on that issue to review. We remand to the district court (1) for entry of partial summary judgment in the employees' favor on the liability issue, and (2) for a determination of the monetary relief under section 91A.8.

No. 96-1176. STATE v. McPHILLIPS.

Appeal from the Iowa District Court for Madison County, Darrell Goodhue and James W. Brown, Judges. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Ternus, JJ. Opinion by Ternus, J.

(16 pages \$6.40)

McPhillips appeals his convictions of burglary, theft, and robbery. He challenges the trial court's failure to suppress evidence seized pursuant to a search warrant, arguing the warrant was invalid because use of information provided by McPhillips' wife to obtain the warrant violated the marital privilege, the officer omitted material facts from the application that bore on the informant's credibility, and the magistrate failed to comply with Iowa Code section 808.3 (1995) to make an independent finding of the informant's credibility. McPhillips also contends the evidence was insufficient to sustain his conviction and he received ineffective assistance of counsel. **OPINION HOLDS:** I. The trial court did not err in overruling McPhillips' motion to suppress. We find McPhillips waived his direct challenge to the warrant based on the marital privilege; there were no material misrepresentations in the application for the search warrant; the magistrate fully complied with the requirements of section 808.3; and the magistrate did not abuse her discretion by not compelling the informant to appear personally. II. The evidence was sufficient to support McPhillips' convictions. III. McPhillips has failed to show his trial counsel rendered ineffective assistance. The marital privilege did not preclude the authorities' reliance on information obtained from McPhillips' spouse to obtain the search warrant because the police station interviews did not occur in a "case." Defense counsel also had legitimate reasons for his strategic decision to waive McPhillips' speedy trial right.

No. 97-58. FISHER v. McCRARY-ROST CLINIC.

Appeal from the Iowa District Court for Calhoun County, Allan L. Goode, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Ternus, JJ. Opinion by Carter, J.

(6 pages \$2.40)

Plaintiff, Vickie Fisher, appeals from an adverse summary judgment in her medical malpractice action against defendants, McCrary-Rost Clinic, P.C., and Dr. Yotin Keonin. On July 29, 1987, Dr. Keonin performed a laparoscopic tubal ligation on Fisher at the McCrary-Rost Clinic. In 1990 and again in 1995, Fisher had surgeries as a result of tubal pregnancies. On June 3, 1996, Fisher filed the present medical malpractice action against Dr. Keonin and the clinic. The action was filed within two years of her discovery of the alleged malpractice, but more than six years after the alleged act occurred. Defendants filed a motion for summary judgment, claiming the action was barred by Iowa Code section 614.1(9) (1995)'s six-year statute of repose. The district court granted summary judgment, and after dismissing a remaining claim, Fisher appealed. **OPINION HOLDS:** I. Fisher maintains Dr. Keonin either failed to attach or misplaced a clip or clips that should have been placed on her fallopian tube. She argues that the foreign-object exception to section 614.1(9) should be interpreted as also including situations in which a patient's care requires that some object be placed within the patient's body, and either (1) this is not done, or (2) the object is misplaced in the patient's body. The language of the foreign-object exception to section 614.1(9) is narrowly limited to situations in which some object is unintentionally left in the body. Because that did not occur in the tubal ligation procedure of which Fisher complains, the exception to the six-year statute of

No. 97-58. FISHER v. McCRARY-ROST CLINIC. (continued)

repose does not apply. II. We also reject Fisher's claim that summary judgment was inappropriate because material facts remain unresolved as to whether Dr. Keonin omitted one or both clips or simply misplaced a clip within her body. Because the foreign-object exception of section 614.1(9) would not apply in either situation, this factual uncertainty provides no basis for defeating summary judgment. III. We also reject Fisher's equal protection challenge to section 614.1(9). We affirm.

No. 97-653. GRAEVE v. CHERNY.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Ternus, JJ. Opinion by Larson, J. (5 pages \$2.00)

Defendants in this medical malpractice case have been granted discretionary review and claim the district court erred in holding the general rules for establishing a prima facie case of malpractice did not apply in small claims trials. **OPINION HOLDS:** Despite the relaxed procedural requirements for small claims cases, the requirement for use of the "applicable law" under Iowa Code section 631.11(4) (1997) remains intact. We conclude that the rules for establishing a prima facie case of medical malpractice are applicable in a small claims case, just as in any other, and plaintiff offered no medical evidence to support her claims. Because this plaintiff failed to establish a prima facie case of negligence, we reverse and remand for dismissal of the petition.

No. 96-865. GANSKE v. SPAHN AND ROSE LUMBER CO.

Appeal from the Iowa District Court for Black Hawk County, James L. Beeghly, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Opinion by Larson, J. (8 pages \$3.20)

For many years prior to 1985, Larry Ganske worked for employers whose sites, he alleges, exposed him to asbestos. In 1994 Ganske was diagnosed with mesothelioma, an asbestos-related cancer. Ganske and his wife sued various former employers and manufacturers of asbestos products. The employers concede that Ganske's disease arose out of and in the course of his employment. It is undisputed that Ganske's mesothelioma did not develop within either the one-year or three-year period provided by Iowa Code section 85A.12 (1995) for a workers' compensation claim. The employers filed motions to dismiss and motions for summary judgment, arguing Ganske's common-law claims are preempted by the workers' compensation and occupational disease statutes. The court dismissed the suit, finding the workers' compensation and occupational disease statutes are the exclusive means of obtaining benefits for the disease. The Ganskes appealed. **OPINION HOLDS:** I. Pursuant to section 85.20, workers' compensation provided the exclusive remedy for Ganske's mesothelioma. This common-law suit is therefore barred even though the asbestos-related injury did not become known within the allowable time limits. II. Ganske argues that, if our workers' compensation statutes provide the exclusive remedy despite the long period of nondetection of his condition, the statutes violate his constitutional due process and equal protection rights. Although raised by Ganske, the district court did not rule on this issue, and Ganske did not file a motion to expand the order and findings. He has therefore waived the issue on appeal.

No. 96-1015. HISKEY v. MALONEY.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge. **REVERSED.** Considered by Harris, P.J., and Carter, Neuman, Snell, and Andreasen, JJ. Opinion by Carter, J. (6 pages \$2.40)

Verda M. Hiskey and Eugene Hiskey are alleged to be or to have been owners of certain real estate in Polk County. The subject properties have been involved in numerous transfers since 1980, and the Hiskeys' ownership had been interrupted by contract sales and reacquired by subsequent forfeitures. The Hiskeys conveyed the real estate by warranty deeds in 1993. The court, in an action brought by the Polk County Treasurer, adjudicated the Hiskeys to be personally liable for delinquent real estate taxes covered by two tax sale certificates issued in 1990. On appeal the Hiskeys claim, among other things, that Iowa Code sections 445.3 and 446.20 (1995), which were enacted in April 1992, and allow the treasurer to seek a personal judgment for the payment of delinquent real estate taxes, may not be applied retroactively to taxes levied prior to the effective date of the legislation. **OPINION HOLDS:** We need not decide whether the statutes are inapplicable to all delinquent real estate taxes levied before their effective date of April 1, 1992. We hold in the present case that they do not apply to delinquent taxes included in tax sale certificates acquired by a county prior to April 1, 1992. Because both of the tax sales certificates involved in the present action were acquired by Polk County in 1990, the statutes do not render the Hiskeys personally liable for payment of the delinquent taxes included in those certificates. Because our conclusions are sufficient to dispose of the claims made against the Hiskeys, we need not consider the other interesting issues presented.

No. 97-219. FARM BUREAU MUT. INS. CO. v. ALLIED MUT. INS. CO.

Appeal from the Iowa District Court for Polk County, Robert D. Wilson, Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Neuman, Snell, and Andreasen, JJ. Opinion by Carter, J. (5 pages \$2.00)

Carl Parker's automobile, collided with an automobile driven by Michael Motsinger. Parker's insurer, Farm Bureau Mutual Insurance Company (Farm Bureau), paid medical expenses of \$7863.36. Motsinger's liability insurer was Allied Mutual Insurance Company (Allied). Under the terms of Parker's policy, Farm Bureau had a subrogation interest in any tort recovery he might obtain from Motsinger irrespective of whether Parker had been made whole. Farm Bureau provided Allied with written notice of its subrogation interest. Later, Allied settled Parker's tort claim against Motsinger by means of an \$11,000 cash payment directly to Parker in exchange for his release of all claims against Motsinger. Farm Bureau commenced this action against Allied, asserting theories of tortious interference with a contract, breach of an equitable subrogation right, and fraud for the loss of the subrogation interest. The district court granted summary judgment for Allied after concluding that Iowa law does not recognize a duty on the part of a tortfeasor's insurer to protect a subrogation interest of the victim's insurer in settlement negotiations. Farm Bureau appeals. **OPINION HOLDS:** Allied had no legal duty to protect Farm Bureau's partial subrogation interest in settling with Parker. Parker, as the subrogor, was the trustee of the settlement proceeds and not the tortfeasor or the tortfeasor's insurer (Allied). Satisfying Farm Bureau's subrogation interest was Parker's problem, not Allied's.

No. 97-219. FARM BUREAU MUT. INS. CO. v. ALLIED MUT. INS. CO. (continued).

Although cooperation within the insurance industry in protecting the interest of subrogated insurers may be expected, these expectations do not constitute legally enforceable duties. The district court's judgment is affirmed.

No. 97-752. STATE v. SINCLAIR.

Appeal from the Iowa District Court for Polk County, Thomas A. Renda, Judge. **AFFIRMED IN PART, VACATED IN PART, AND REMANDED FOR RESENTENCING.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Ternus, JJ. Opinion by Carter, J. (7 pages \$2.80)

James Sinclair challenges his conviction and sentence for operating while intoxicated. He alleges that the trial court erred in admitting evidence of phone calls he made to his attorney after his arrest, and the court made numerous sentencing errors. **OPINION HOLDS:** I. We find the evidence regarding Sinclair's phone calls and visitor while at the police station was relevant to show the circumstances surrounding his refusal to submit to a breath test. Furthermore, there was little danger of unfair prejudice in the admission of this evidence. The identities of the recipients of the phone calls and Sinclair's visitor were not revealed until closing arguments at which time it was *Sinclair's* attorney who informed the jury that the visitor was his attorney. II. Because the record conclusively shows the sentencing judge considered unproven offenses in sentencing Sinclair, we vacate the sentence and remand the case for resentencing. III. The judge did not act beyond his authority in requiring Sinclair to attend a residential treatment facility as a term of his probation. Sinclair is correct, however, in urging that the judge was without authority to suspend his driver's license, absent a statutory provision for court-ordered revocation. The court could, however, prohibit Sinclair from driving for a specified number of days as a condition of probation. This matter may be clarified at the time of resentencing. IV. Sinclair contends the judge should have recused himself after receiving phone calls from concerned citizens regarding this case. The judge acknowledged the public outcry over this case to make it clear that he was not influenced by popular opinion. Sinclair has not proven the requisite actual prejudice to prevail on this claim. We affirm the conviction but vacate the sentence and remand for resentencing.

No. 96-2104. STATE v. TOVAR.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Black Hawk County, Jon Fister, Judge. **DECISION OF COURT OF APPEALS VACATED; JUDGMENT OF DISTRICT COURT REVERSED; CASE REMANDED.** Considered by McGiverin, C.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Opinion by Larson, J. (9 pages \$3.60)

Tovar appeals from his convictions for two counts of theft by deception, arising out of two transactions in his carpeting and wall covering business in which he took down payments for the purchase and installation of products but failed to perform on the agreements. **OPINION HOLDS:** The evidence in this

No. 96-2104. STATE v. TOVAR. (continued)

case, when considered in its totality, and in the light most favorable to the State, does not support a finding of guilt under the definitions of deceit in either Iowa Code section 702.9(1) or section 702.9(5) (1995). The evidence does not reflect that Tovar told his customers he would apply their down payments in a particular way, and failing to disclose his financial condition did not amount to deception. Also, Tovar's failure to perform was not evidence of intent not to do so. We therefore vacate the court of appeals decision, reverse the district court judgment, and remand for entry of an order dismissing the charges.

No. 96-2073. SCHULTZ v. SECURITY NAT'L BANK.

Appeal from the Iowa District Court for Woodbury County, James D. Scott, Judge. **AFFIRMED ON BOTH APPEALS.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Ternus, JJ. Opinion by Larson, J.
(6 pages \$2.40)

Plaintiff Mary Schultz's husband was given an Isuzu Trooper by his employer, defendant Kenneth Opstein, as part of his compensation. Defendant Security National Bank loaned money for the vehicle's purchase on a security agreement signed by Opstein, who made all payments on it. The Trooper was titled in Schultz's name. Schultz's husband died while a passenger in a car driven by another Opstein employee. After Schultz filed a wrongful death suit against the car's owner, Opstein threatened to stop making payments and take the Trooper. Schultz received a notice of right to cure default from the bank, and she filed a declaratory judgment and injunction action to determine what rights the bank had in the vehicle. Prior to a hearing, the bank repossessed the Trooper, which Opstein later purchased at a private sale. Schultz sued the bank and Opstein, alleging they conspired to convert the Trooper. She demanded both compensatory and punitive damages. The district court dismissed her claims against Opstein, her conspiracy claim against the bank, and her claim for punitive damages. The jury awarded Schultz damages against the bank for the Trooper's value. Schultz appeals the dismissal of her conspiracy claim and claim for punitive damages. Opstein cross-appeals the trial court's refusal to direct a verdict in favor of the bank. **OPINION HOLDS:** I. The issue of whether the court should have submitted the conspiracy theory is moot since Schultz prevailed under her conversion theory and obtained a judgment for all of the compensatory damages to which the jury found her entitled. She could not recover any more under both theories. II. In view of the facts available to the bank suggesting it had a valid security interest in the Trooper, we do not believe a rational fact finder could find by clear, convincing, and satisfactory proof a willful and wanton disregard by the bank for Schultz's rights. Accordingly, the court properly dismissed the claim for punitive damages. III. We reject Opstein's cross-appeal argument that the bank had a valid security interest in the Trooper and was entitled to repossess it. The security interest was enforceable only if Opstein had rights in the Trooper. However, Opstein's claimed interest in the Trooper was rejected by the jury as a finding of fact, shown as a matter of law. Because we reject Opstein's argument on the merits, we decline to decide whether Opstein had standing to assert this claim.

No. 96-1472. HURD v. IOWA DEP'T OF HUMAN SERVS.
AMENDED AND SUBSTITUTED OPINION FILED ON JUNE 15,
1998. Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,
Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson,
Neuman, and Ternus, JJ. Opinion by McGiverin, C.J. (12 pages \$4.80)

Pursuant to a 1990 dissolution decree, the petitioner was ordered to pay child support. The petitioner fell behind in his payments and his former spouse requested the assistance of the Child Support Recovery Unit of the Iowa Department of Human Services (CSRU) in 1993 to enforce the support provisions of the dissolution decree. In May 1995 the CSRU sent petitioner a notice informing him that he owed a child support arrearage of at least \$1000 and that his name would be released to consumer reporting agencies thirty days after the date of the notice pursuant to federal and Iowa regulations. The petitioner exercised his right to have a review with the CSRU regarding the child support debt owed. At a conference with the CSRU the petitioner argued he was entitled to credit against the child support debt. A CSRU officer filed a decision rejecting the petitioner's contentions. The decision found the past due child support totaled more than the \$1,000 arrearage necessary to authorize the CSRU to release information concerning petitioner's support obligation to consumer reporting agencies. The petitioner filed a petition for judicial review under Iowa Code chapter 17A (1995) asserting, inter alia, that the CSRU had violated his constitutional rights by failing to give him proper notice, hearing and an opportunity to be heard concerning his child support debt. After a hearing, the district court dismissed the petition. The petitioner has appealed. **OPINION HOLDS:** I. A child support obligor will only receive credit for child support payments made to the appropriate clerk of court or to the collection services center. Hurd thus receives no credit for payments that he allegedly made directly to his children or for items bought on their behalf. II. We need not address Hurd's claims that he no longer has a duty to pay child support and/or that his monthly support obligation was reduced because such claims amount to nothing more than an attempt to alter the terms of the dissolution decree, and such actions must be initiated in district court in the original dissolution case. III. Since Hurd presented no evidence that he made all child support payments that are due to the Ida County clerk of court, he clearly owed \$1,000 in child support. This was a sufficient basis for the CSRU to release information concerning Hurd's child support debt to credit reporting agencies. IV. We believe that the phrase "contested cases" when considered in context in Iowa Administrative Code (IAC) rule 441-95.12 simply refers to a situation where there is a *dispute* regarding the amount of child support owed and does not mean that a child support obligor has a right to a contested case hearing as defined in Iowa Code section 17A.2(5) before the CSRU can release information concerning an obligor's child support arrearage. We further conclude that the "conference" provided for in IAC rule 441-95.12 affords a child support obligor sufficient due process in connection with actions taken by the CSRU to release information concerning the obligor's child support debt to consumer reporting agencies.

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