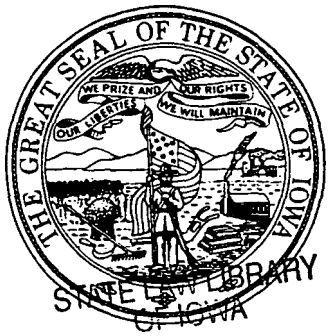

IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME XXIV NUMBER 8
October 17, 2001 Pages 525 to 604

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PREFACE

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

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

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

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

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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
2001

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. 22 '00	Jan. 10 '01	Jan. 30 '01	Feb. 14 '01	Feb. 16 '01	Mar. 7 '01	Apr. 11 '01	July 9 '01
Jan. 5	Jan. 24	Feb. 13	Feb. 28	Mar. 2	Mar. 21	Apr. 25	July 23
Jan. 19	Feb. 7	Feb. 27	Mar. 14	Mar. 16	Apr. 4	May 9	Aug. 6
Feb. 2	Feb. 21	Mar. 13	Mar. 28	Mar. 30	Apr. 18	May 23	Aug. 20
Feb. 16	Mar. 7	Mar. 27	Apr. 11	Apr. 13	May 2	June 6	Sept. 3
Mar. 2	Mar. 21	Apr. 10	Apr. 25	Apr. 27	May 16	June 20	Sept. 17
Mar. 16	Apr. 4	Apr. 24	May 9	May 11	May 30	July 4	Oct. 1
Mar. 30	Apr. 18	May 8	May 23	May 25	June 13	July 18	Oct. 15
Apr. 13	May 2	May 22	June 6	June 8	June 27	Aug. 1	Oct. 29
Apr. 27	May 16	June 5	June 20	June 22	July 11	Aug. 15	Nov. 12
May 11	May 30	June 19	July 4	July 6	July 25	Aug. 29	Nov. 26
May 25	June 13	July 3	July 18	July 20	Aug. 8	Sept. 12	Dec. 10
June 8	June 27	July 17	Aug. 1	Aug. 3	Aug. 22	Sept. 26	Dec. 24
June 22	July 11	July 31	Aug. 15	Aug. 17	Sept. 5	Oct. 10	Jan. 7 '02
July 6	July 25	Aug. 14	Aug. 29	Aug. 31	Sept. 19	Oct. 24	Jan. 21 '02
July 20	Aug. 8	Aug. 28	Sept. 12	Sept. 14	Oct. 3	Nov. 7	Feb. 4 '02
Aug. 3	Aug. 22	Sept. 11	Sept. 26	Sept. 28	Oct. 17	Nov. 21	Feb. 18 '02
Aug. 17	Sept. 5	Sept. 25	Oct. 10	Oct. 12	Oct. 31	Dec. 5	Mar. 4 '02
Aug. 31	Sept. 19	Oct. 9	Oct. 24	Oct. 26	Nov. 14	Dec. 19	Mar. 18 '02
Sept. 14	Oct. 3	Oct. 23	Nov. 7	Nov. 9	Nov. 28	Jan. 2 '02	Apr. 1 '02
Sept. 28	Oct. 17	Nov. 6	Nov. 21	Nov. 23	Dec. 12	Jan. 16 '02	Apr. 15 '02
Oct. 12	Oct. 31	Nov. 20	Dec. 5	Dec. 7	Dec. 26	Jan. 30 '02	Apr. 29 '02
Oct. 26	Nov. 14	Dec. 4	Dec. 19	***Dec. 19***	Jan. 9 '02	Feb. 13 '02	May 13 '02
Nov. 9	Nov. 28	Dec. 18	Jan. 2 '02	Jan. 4 '02	Jan. 23 '02	Feb. 27 '02	May 27 '02
Nov. 23	Dec. 12	Jan. 1 '02	Jan. 16 '02	Jan. 18 '02	Feb. 6 '02	Mar. 13 '02	June 10 '02
Dec. 7	Dec. 26	Jan. 15 '02	Jan. 30 '02	Feb. 1 '02	Feb. 20 '02	Mar. 27 '02	June 24 '02
Dec. 19	Jan. 9 '02	Jan. 29 '02	Feb. 13 '02	Feb. 15 '02	Mar. 6 '02	Apr. 10 '02	July 8 '02
Jan. 4 '02	Jan. 23 '02	Feb. 12 '02	Feb. 27 '02	Mar. 1 '02	Mar. 20 '02	Apr. 24 '02	July 22 '02

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
10	**Friday, October 26, 2001**	**November 14, 2001**
11	**Friday, November 9, 2001**	**November 28, 2001**
12	**Friday, November 23, 2001**	**December 12, 2001**

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.

***Note change of filing deadline**

PUBLICATION PROCEDURES

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

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

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.bates@legis.state.ia.us

2. Alternatively, you may send a 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, First Floor South, Grimes State Office Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

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

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

Guide to Rule Making, June 1995 Edition, available upon request to the Iowa Administrative Code Division, Grimes State Office Building, First Floor South, 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
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Housing fund, 25.2, 25.4 to 25.6, 25.8, 25.9(2) IAB 10/17/01 **ARC 1005B**	Northwest Conference Room Second Floor 200 East Grand Ave. Des Moines, Iowa	November 6, 2001 1:30 p.m.
Community development fund—eligible applicants and projects, 41.1 to 41.9 IAB 10/17/01 **ARC 1006B**	Northwest Conference Room Second Floor 200 East Grand Ave. Des Moines, Iowa	November 6, 2001 2:30 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Delegation of construction permitting authority; eligibility for tax certification of pollution control or recycling property, 1.3, 9.2, 9.4, 11.2, 11.6 IAB 10/17/01 **ARC 1020B**	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 8, 2001 11 a.m.
Permits for stationary sources—exceptions, 22.1(2) IAB 10/17/01 **ARC 1024B**	Conference Rooms 3 and 4 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	November 26, 2001 1 p.m.
Title V permits, 22.105(1), 22.113(4) IAB 10/17/01 **ARC 1021B**	Conference Rooms 2 to 4 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	November 15, 2001 11 a.m.
Manure management plans, 65.16(2) to 65.16(5) IAB 9/19/01 **ARC 0938B**	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 17, 2001 1 p.m.
Household hazardous materials—disposal, collection, public awareness, 119.2, 119.4(2), 119.7, 144.1, 144.2, 144.4; rescind ch 210; 211.11, 211.12; rescind ch 212; 214.1, 214.7 to 214.9, 214.11 IAB 10/17/01 **ARC 1022B**	Conference Room 5 West Wallace State Office Bldg. Des Moines, Iowa	November 27, 2001 9 a.m.
Certified groundwater professionals—continuing education, exemption from examination, 134.2(3), 134.3 IAB 10/17/01 **ARC 1023B**	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 6, 2001 1 p.m.
Underground storage tanks—notification requirements, 135.3 IAB 10/17/01 **ARC 1019B**	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 6, 2001 1 p.m.

HUMAN SERVICES DEPARTMENT[441]

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	Administrative Conference Room 417 E. Kanesville Blvd. Council Bluffs, Iowa	November 7, 2001 9 a.m.
	Fifth Floor Conference Room Bicentennial Bldg. 428 Western Davenport, Iowa	November 8, 2001 10 a.m.
	Conference Room 102 City View Plaza 1200 University Des Moines, Iowa	November 7, 2001 10 a.m.
	Liberty Room, Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	November 7, 2001 10 a.m.
	Conference Room 3 120 E. Main Ottumwa, Iowa	November 7, 2001 10 a.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	November 7, 2001 1:30 p.m.
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Viatical and life settlements, ch 48 IAB 10/17/01 **ARC 1044B**	330 Maple St. Des Moines, Iowa	November 15, 2001 2 p.m.
Long-term care asset preservation program, 72.3, 72.5 IAB 10/17/01 **ARC 1042B**	330 Maple St. Des Moines, Iowa	November 7, 2001 11:30 a.m.
External review, 76.1 to 76.9 IAB 10/17/01 **ARC 1043B**	330 Maple St. Des Moines, Iowa	November 7, 2001 10 a.m.

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	Carpentry Room Western Iowa Tech. Comm. College 801 E. Second Ida Grove, Iowa	October 31, 2001 11 a.m. to 12 noon
	Room 130A, Schindler University of Northern Iowa 23rd and Hudson Rd. Cedar Falls, Iowa	October 31, 2001 11 a.m. to 12 noon
	Room 60, Larson Hall Muscatine Community College 152 Colorado St. Muscatine, Iowa	October 31, 2001 11 a.m. to 12 noon

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	Room 130A, Schindler University of Northern Iowa 23rd and Hudson Rd. Cedar Falls, Iowa	October 31, 2001 11 a.m. to 12 noon
	Room 60, Larson Hall Muscatine Community College 152 Colorado St. Muscatine, Iowa	October 31, 2001 11 a.m. to 12 noon
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UTILITIES DIVISION[199]

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

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

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

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

The following list will be updated as changes occur:

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ARC 1045B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 190C.12 and 190C.13, the Department of Agriculture and Land Stewardship hereby rescinds Chapter 47, "Organic Certification and Organic Standards," and adopts a new Chapter 47, "Iowa Organic Program," Iowa Administrative Code.

The proposed new chapter establishes rules for producers, processors and handlers of organic agricultural products in accordance with new federal regulations.

Any interested person may make written suggestions or comments on the proposed chapter by November 6, 2001. Such written material should be directed to the Agricultural Diversification and Market Development Bureau, Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319; telephone (515) 281-7656; fax (515)242-5015; E-mail maury.wills@idals.state.ia.us.

The proposed chapter does not contain a waiver provision; however, the Department's waiver rules in 21—Chapter 8 apply to this new chapter.

These rules are intended to implement Iowa Code chapter 190C.

The following amendment is proposed.

Rescind 21—Chapter 47 and adopt in lieu thereof the following **new** chapter:

CHAPTER 47
IOWA ORGANIC PROGRAM

21—47.1(190C) Iowa organic program. The department adopts by reference 7 CFR 205 Subchapter M—Organic Foods Production Act Provisions (April 21, 2001) and the following additional provisions which shall hereby be referred to as the department's organic provisions.

21—47.2(190C) Exempt operations. Production or handling operations exempt from organic certification according to 7 CFR Section 205.101 shall:

1. Submit to the department a signed Exempt Party Declaration form, as provided by the department, attesting to knowledge of and compliance with Iowa Code chapter 190C and this chapter;
2. Submit a processing fee; and
3. Maintain records to verify compliance and trace an organic product from production site to sale for consumption. Records shall be kept for five years.

21—47.3(190C) Crops.

47.3(1) Split operations. Split operations shall be allowed. Segregation plans shall be developed and followed, and applicable logs shall be maintained for organic and nonorganic crops. The operation shall maintain, but not be limited to, the documents and logs addressing the following procedures: equipment cleaning, spraying, purging, separate storage and separate transportation.

Appropriate physical facilities, machinery and management practices shall be established to prevent commingling of nonorganic and organic products or contamination by prohibited substances.

47.3(2) Buffer zone.

a. Requirements.

(1) A minimum of 30 feet shall be maintained as a buffer zone between certified organic crops and areas treated with prohibited substances. A vegetative solid-stand windbreak a minimum of 15 feet tall may be substituted for a 30-foot buffer zone.

(2) If crops are grown in this buffer zone, such crops shall not be labeled, sold or in any way represented as organic.

(3) Crops harvested from buffer zones shall be kept separate from organic crops, and appropriately designated storage areas shall be clearly identified and records maintained to sufficiently identify the disposition of nonorganic product.

b. Recommendations.

(1) Planting windbreaks and hedgerows is encouraged to help reduce spray drift from neighboring farms and wind damage to crops.

(2) It is recommended that the producer notify neighbors, county roadside management officials, railroads, utility companies and other potential sources of contaminants. It is recommended that the producer provide such individuals with maps of organic production areas, request individuals not to spray adjacent areas, and request to be informed if prohibited materials are applied to land adjacent to organic production areas.

(3) Place "no-spray" or "organic farm" signs where appropriate, e.g., roadways and access areas.

47.3(3) Drift.

a. The party in control of the site shall notify the department's organic program of suspected pesticide drift incidences onto certified organic land or land which is under consideration for organic certification. The department may require residue testing to make a determination regarding certification.

b. In the case of drift, the affected party may file a complaint under Iowa Code section 206.14 with the department's pesticide bureau.

47.3(4) Runoff and flooding.

a. Records shall be kept regarding land that is subject to runoff or flooding.

b. The department may require testing to make a determination regarding certification.

47.3(5) Rotations. For the production of annual crops, rotations are required for soil improvement and disruption of weed, insect, disease and nematode cycles. A crop rotation including, but not limited to, sod, legumes or other nitrogen-fixing plants, and green manure crops shall be established.

a. Annual agronomic crops (row crops and small grain crops).

(1) The same crop shall not be planted in the same field in consecutive years.

(2) Soil-building period. Each field shall be planted in a solid-seeded (non-row), soil-building legume crop or crop mixture which includes at least one legume species, achieves a viable stand, and is maintained for a minimum of one year out of a five-year period. During this soil-building period, the producer may maintain a soil-building crop through the crop's growing period to maturity or crop's optimal soil-building characteristics. Soil-building crop may be used as

winter cover or plow-down in fall. Some examples of soil-building practices include the following:

1. Plant and harvest a small grain crop with the solid-seeded crop mixture identified above; e.g., plant oats and alfalfa in the spring and harvest oats in the summer;

2. Maintain the solid-seeded crop mixture identified above for more than one season; e.g., alfalfa established in one season may be maintained and harvested for successive years if desired; or

3. Harvest the solid-seeded crop mixture identified above prior to its incorporation into the soil; e.g., harvest oats and alfalfa mixture in the summer prior to incorporation into the soil at a later time.

b. Annual horticultural crops (fruit, vegetable and herb crops).

(1) The same crop shall not be planted in the same field or plot in consecutive years.

(2) The producer shall demonstrate an effort to establish a rotation sequence where crops of the same plant family, e.g., Solanaceae family: tomatoes, peppers, potatoes and eggplant, are not planted in the same field or plot in consecutive years.

(3) Each field or plot must be planted in a solid-seeded (non-row) soil-building legume crop or crop mixture which includes at least one legume species, achieve a viable stand, and be maintained for a minimum of one year out of a five-year period.

c. Perennials. Perennial systems shall include a plan for biodiversity in the system and a soil-building program, including the use of cover crops, mulches, grass cover and a soil-building legume crop mixture.

(1) It is strongly recommended that, at the end of a perennial crop life cycle that exceeds four years, the field or plot be planted in a solid-seeded (non-row) soil-building legume crop or crop mixture which includes at least one legume species, achieves a viable stand, and is maintained for a minimum of one year prior to planting another perennial crop.

(2) Replacement of individual plants within a perennial crop stand is permissible.

(3) Permanent pastures are exempt from rotation standards.

d. Crop rotation variance. Rotation of crops may be affected by weather and other unforeseen circumstances. In the case where such circumstances cause a rotation to be out of compliance with this subrule, the new rotation plan shall be approved by the certification agency prior to the implementation of proposed changes.

21—47.4(190C) Livestock.

47.4(1) Split operations. Split operations shall be allowed, but segregation plans and applicable records must be followed and documented.

a. All animals in both the nonorganic and organic herds shall be uniquely identified, and detailed records on the origin and production history of each animal shall be kept.

b. In poultry production, nonorganic and organic flocks shall be kept in separate, clearly marked facilities.

c. Each storage facility for feed, grain, or any other controlled input shall be clearly marked "nonorganic" or "organic."

d. Appropriate physical facilities, machinery and management practices shall be established to prevent commingling of nonorganic livestock and livestock products with organic livestock products or contamination by prohibited substances.

47.4(2) Pasture.

a. Requirement. Pastures shall be managed to minimize risk of contamination by prohibited substances.

b. Recommendation. The establishment of livestock fence located an appropriate distance inward from the pasture border to prevent border grazing or a solid-stand windbreak along the pasture border is recommended.

c. Permissible.

(1) Livestock may graze cropland buffer zones only if an entire field is opened to grazing, as when livestock are allowed to glean a field after harvest.

(2) Livestock may graze up to a pasture border only if no more than 10 percent of the total pasture accessible for grazing is contiguous to areas treated with prohibited substances. The contiguous area is calculated as 30 feet multiplied by the length of the pasture perimeter that borders an area treated with prohibited substances.

d. Disqualification. Evidence that the pasture has been contaminated with a prohibited substance shall result in disqualification of that pasture. The livestock or offspring may be disqualified if allowed to continue to graze pasture that has been disqualified.

21—47.5(190C) Use of state seal. For the promotion or sale of organic products, only those producers, handlers and processors certified as organic by the department are entitled to utilize the state seal attesting to state of Iowa organic certification.

21—47.6(190C) General requirements. In order to receive and maintain organic certification from the department, producers, processors and handlers of organic agricultural products shall apply for organic certification with the department and submit all required materials; comply with Iowa Code chapter 190C and this chapter; permit the department to access the operation and all applicable records as deemed necessary; comply with all local, state and federal regulations applicable to the conduct of such business; submit all applicable fees to the department pursuant to Iowa Code section 190C.5(1) and this chapter; and receive approval for certification by the organic standards board.

47.6(1) Application for state organic certification.

a. Application for state certification shall be completed and submitted with required application materials and fees to the department on forms furnished by the department. Applications submitted to the department after the published deadline date may be charged late fees for application and inspection, and the processing of such applications may be subject to delays or the applications may not be processed at all.

b. The applicant shall inform the department of changes to the organic plan which may affect the conformity of the operation to the certification standards at any time during the certification process and after such certification is granted.

c. The state-certified party shall inform the department of any changes in the organic plan, such as production changes or intended modification to the product(s) or manufacturing process which may affect the conformity of the operation to the certification standards. If such is the case, the certified party may not be allowed to release such products as certified organic products bearing the state seal until the department has given approval to do so.

d. The certified party shall keep a record of all complaints made known to that party relating to a product's compliance with requirements to the relevant standard and shall make these records available to the department upon request. The certified party shall take appropriate action with respect to such complaints and any deficiencies found in products or

services that affect compliance with the requirements for certification, and all such actions shall be documented and available upon request by the department.

e. Records of inputs applied to nonorganic fields or livestock split or parallel operations shall be maintained and made available during inspections. This applies to all fields in the operation whether leased or owned.

21—47.7(190C) Document review. Parties who have attained organic certification from a private certification agency may at a later date during that same year request the department to provide a document review.

47.7(1) The document review shall be limited to a specific quantity of product for the purpose of attaining the state organic seal for that sale only.

47.7(2) All application records and the inspector's report shall be submitted to the department from the private certification agency at the request of the certified party.

47.7(3) The department and organic standards board shall review this request only after a copy of the party's organic certificate has been received by the department from the private certification agency under which organic certification has been attained.

47.7(4) The department may inspect the organic products in question and any facet of the operation in addition to collecting various samples for analysis if deemed necessary.

47.7(5) Document review approval shall result in the issuance of a state certification seal from the department only for the specific quantity for which the review was sought.

47.7(6) A fee shall be charged to the party requesting the review, and the fee shall be paid to the department prior to the issuance of the state certification seal.

21—47.8(190C) Certification agent.

47.8(1) The department shall serve as certification agent on behalf of and as authorized by the secretary of agriculture pursuant to Iowa Code section 190C.4(2).

47.8(2) Scope of certification. Contingent upon USDA accreditation, the department may inspect and certify organic production and handling operations located outside of the state. The intent of the department is to facilitate continuity of certification services to Iowa-based farms or businesses, or when the county in which the applicant resides is contiguous to the state. Consideration may be given to other out-of-state applicants. The department may seek accreditation from USDA to provide certification services in Iowa and other states where necessary.

ADMINISTRATIVE

21—47.9(190C) Fees. Fees are established for application, inspection, and certification to support costs associated with activities necessary to administer this program pursuant to Iowa Code sections 190C.5(1) to 190C.5(3). The applicant shall submit all fees to the department for the specific amount and at the appropriate time as specified in this rule. A schedule of application, inspection and certification fees shall be published by the department and disseminated with the application packet.

47.9(1) Application fee. The application fee shall accompany the application for certification. An additional late fee shall accompany applications submitted after the published deadline date.

47.9(2) Inspection fee. An inspection fee shall be paid by all on-farm production operations; on-farm processing operations; off-farm and nonfarm processing operations; and handling operations. This fee covers the cost of providing the inspection. A base inspection fee will be listed on the fee schedule provided to each applicant; however, if the actual cost of the inspection exceeds the amount listed, the applicant shall be required to pay the balance.

a. An inspection fee shall be assessed to the producer, processor or handler if additional inspections are conducted due to the necessity of a follow-up inspection in the same year or due to the inspection of distinct multiple production or processing sites.

b. The inspection fee shall be submitted after the application has been reviewed to determine that all necessary documents have been provided.

47.9(3) Certification fees.

a. Certification fees may be adjusted annually pursuant to Iowa Code section 190C.5(2). The certification fee provides the operation with one year of state organic certification. Crops certified but not sold during the year of certification may be sold as certified as long as storage and handling of such crops are maintained according to Iowa Code chapter 190C and this chapter.

b. The certification year shall begin the date that certification is granted to the applicant. Certification fees may be paid quarterly, biennially or annually.

c. No transaction certificate will be issued if payments are delinquent.

21—47.10(190C) Compliance.

47.10(1) Enforcement and investigations. The department and the attorney general shall enforce Iowa Code chapter 190C and this chapter pursuant to Iowa Code section 190C.21.

47.10(2) Complaints. Any person may submit a written complaint to the department regarding a suspected violation of Iowa Code chapter 190C and this chapter pursuant to Iowa Code section 190C.22(2). Such signed complaints shall be submitted on the required form provided by the department upon request.

47.10(3) Inspection and testing, reporting and exclusion from sale—unscheduled inspection. All parties making an organic claim may be subject to an unscheduled on-site inspection, review of records and sampling if deemed necessary by the department pursuant to Iowa Code sections 190C.4(2), 190C.22(2) and 190C.22(3) to verify compliance.

47.10(4) Adverse action appeal process.

a. Appeals. Appeal procedures are established pursuant to Iowa Code section 190C.3(6) under 21—Chapter 2. The organic standards board shall have final agency action, subject to the parameters of Iowa Code chapter 17A. The appeals committee shall be comprised of board members who did not serve on the certification review committee for the particular case in question and who have no conflict of interest in the matter. Procedures and restrictions concerning the hearing of appeals shall apply.

b. Written appeal. Except as specifically provided in the Iowa Code or elsewhere in the Iowa Administrative Code, a person who wishes to appeal an action or proposed action of the department which adversely affects the person shall file a written appeal with the department within 30 calendar days of the action or notice of the intended action. A written notice of appeal shall be considered filed on the date of the postmark if the notice is mailed. The failure to file timely shall be deemed a waiver of the right to appeal. Appeal shall first go to the certification review committee. The certification review committee will determine if the party's claim has sufficient merit to overturn the earlier denial in a timely manner. If this is not the case, however, the appeal will be for-

warded from the certification review committee to the appeals committee.

c. Records. Records of all appeals, complaints and disputes, and remedial actions relative to certification shall be maintained by the department for a minimum of ten years. Records shall include documentation of appropriate subsequent action taken and its effectiveness.

21—47.11(190C) Regional organic associations (ROAs). With approval by the board, the department may register and authorize a regional organic association to assist the organic standards board by providing application assistance to its members requesting application assistance.

47.11(1) Registration and authorization. Regional organic associations shall be registered and authorized by the department in order to assist the organic standards board pursuant to Iowa Code section 190C.6.

a. Registration. Regional organic associations shall register annually. To register with the department, the regional organic association shall submit the following:

(1) Names and addresses of a minimum of 25 members;

(2) A signed regional organic association declaration as provided by the department;

(3) The bylaws and ongoing changes to the bylaws; and

(4) Verification of regional organic association liability insurance.

b. Authorization. For authorization to be granted, the following requirements shall be met:

(1) The regional association shall sign a memorandum of understanding with the department specifying functions to be performed by the association related to application assistance; and

(2) The regional association shall receive from the department a letter of authorization to provide application assistance upon approval by the organic standards board.

47.11(2) Functions.

a. Authorized ROAs, reviewing member application materials for submission to the department, shall:

(1) Provide to the department and the board a summary of the member's application;

(2) Identify any unresolved shortcomings in the application; and

(3) Indicate if the application appears to meet the Iowa organic standards promulgated in Iowa Code chapter 190C and this chapter.

b. Requirements.

(1) Application assistance provided by ROAs shall be conducted by association staff or association board members; and

(2) Application materials received by the ROA for submission to the department shall be forwarded along with the summary to the department. The application fee for state organic certification shall be paid with a check made payable to the department by the individual member applying for state certification. The check shall be submitted with the application.

47.11(3) Prohibited.

a. ROA staff or ROA board members providing application assistance for their members shall have no personal or commercial interest in the outcome of a member's application for state certification.

b. ROAs shall not amend member documents prior to submitting them to the department.

21—47.12(190C) Private certification organizations (PCOs) and other state certification agencies.

1. The department recognizes PCOs, and state certification agencies accredited by the USDA, as providers of organic certification services in the state.

2. PCOs and state certification agencies providing organic certification services in Iowa shall register with the department. The department shall provide the PCOs and state certification agencies with a registration form.

ARC 1005B

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 amend Chapter 25, "Housing Fund," Iowa Administrative Code.

The proposed amendments increase the level of assistance available for the construction of new rental units, increase the maximum per project to $800,000 (from $700,000) and make technical clarifications in a variety of program areas.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on November 6, 2001. Interested persons may submit written or oral comments by contacting Roselyn McKie Wazny, Division of Community and Rural Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed amendments will be held on November 6, 2001, at 1:30 p.m. at the above address in the Northwest Conference Room, second floor. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on November 5, 2001, to be placed on the agenda.

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

The following amendments are proposed.

ITEM 1. Amend rule **261—25.2(15)**, definition of "AHTC," as follows:

"~~AHTC~~ *LIHTC*" means ~~affordable~~ *low-income* housing tax credits and federal tax incentives created through the Tax Reform Act of 1986 and allocated through the Iowa finance authority for affordable rental housing development.

ITEM 2. Amend subparagraph **25.4(1)"a"(3)** as follows:

(3) For home ownership assistance, the initial purchase price for newly constructed units and the after rehabilitation ~~appraised~~ value for rehabilitated units shall not exceed 95 percent of the median purchase price *as established by HUD* for the same type of single-family housing in the area. Assisted units shall remain affordable through resale or recapture provisions for a specified period: 5 years for projects receiving up to $15,000 in assistance per unit, and 10 years for projects receiving $15,000 to $24,999 in assistance.

ITEM 3. Amend paragraph **25.4(1)"c"** as follows:

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

c. All *single-family* rehabilitation must be done in compliance with Iowa's Minimum Housing Rehabilitation Standards (November 1999), and all applicable state and local codes, rehabilitation standards and ordinances, and shall, at a minimum, meet HUD Section 8 Housing Quality Standards, 24 CFR 882 (April 1, 1997). New units must be constructed pursuant to standards specified at 24 CFR 92.251(a)(1) (April 1, 1997).

ITEM 4. Amend rule 261—25.5(15), introductory paragraph, as follows:

261—25.5(15) Application procedure. All potential housing fund applicants are encouraged, but not required, to complete and submit a HART form describing the proposed housing activity *prior to the submittal of a formal application.* If the proposal is determined to be appropriate for housing fund assistance, IDED shall inform the applicant of the appropriate application procedure by mail. The HART process, if undertaken, should be completed as early as possible in the application process.

ITEM 5. Amend paragraph **25.5(5)"b"** as follows:

b. The joint review team shall meet ~~at least twice~~ to compare and discuss each common project. ~~The first~~ *A* meeting will be convened after IDED and IFA have completed the threshold review. ~~The second~~ *A* meeting shall be convened after IDED and IFA have completed the next phase of each agency's review process. ~~No additional points will be awarded to an applicant seeking both types of funding.~~ Staff from each agency will make recommendations for funding to their respective decision makers ~~after the second meeting~~. A decision by one agency does not bind the other agency to fund a project.

ITEM 6. Amend subrule 25.6(5) as follows:

25.6(5) The application shall show that a need for housing fund assistance exists after all other financial resources have been identified *and secured* for the proposed activity.

ITEM 7. Amend rule 261—25.6(15) by amending subrule 25.6(7) and adopting **new** subrule 25.6(8):

25.6(7) An application for a project located in a locally designated participating jurisdiction (PJ) must show evidence of a financial commitment *of local HOME or CDBG funds* from the local PJ equal to *a minimum of* 25 percent of the total *state and local* HOME funds ~~requested~~ *needed.*

25.6(8) An application for rental rehabilitation on behalf of a private owner must show a 50 percent owner contribution to the project. IDED will fund no more than 50 percent of the total project costs.

ITEM 8. Amend rule 261—25.8(15) as follows:

261—25.8(15) Allocation of funds.

25.8(1) to **25.8(3)** No change.

~~**25.8(4)** IDED reserves the right to allocate up to 5 percent of CDBG funds allocated to the housing fund for the emergency repair of homeless shelters. Recipients funded for this purpose shall not be required to follow the application procedure set forth in rule 261—25.5(15).~~

~~**25.8(5)** IDED reserves the right to allocate up to 5 percent of the HOME funds allocated to the housing fund for a contingency fund dedicated to addressing threats to public health and safety and exceptional opportunities that would otherwise be foregone without immediate assistance.~~

~~**25.8(6)**~~ *25.8(4)* IDED will determine the appropriate source of funding, either CDBG or HOME, for each housing fund award based on the availability of funds, the nature of the housing activity and the recipient type.

~~**25.8(7)**~~ *25.8(5)* IDED reserves the right to limit the amount of funds that shall be awarded for any single activity type.

~~**25.8(8)**~~ *25.8(6)* Awards shall be limited to no more than $700,000, *except for new construction of rental units which is $800,000.*

~~**25.8(9)**~~ *25.8(7)* The maximum per unit housing fund subsidy for all project types *except new construction rental units* is $24,999. *The maximum per unit housing fund subsidy for new construction rental units is $50,000 per unit.* Additional funds may be used to pay the direct administration, carrying costs and the cost of lead hazard reduction.

~~**25.8(10)**~~ *25.8(8)* Recipients shall justify administrative costs in the housing fund application. IDED reserves the right to negotiate the amount of funds provided for general and direct administration, but in no case shall the amount for general administration exceed 10 percent of a total housing fund award.

~~**25.8(11)**~~ *25.8(9)* IDED reserves the right to negotiate the amount and terms of a housing fund award.

~~**25.8(12)**~~ *25.8(10)* IDED reserves the right to make award decisions such that the state maintains the required level of local match to HOME funds.

~~**25.8(13)** IDED reserves the right to allocate a portion of funds to comprehensive areawide housing programs. Potential recipients shall be identified through a request for qualifications of entities interested in and capable of operating an areawide program. Areawide program proposals shall be evaluated on and awards negotiated on the targeted number of beneficiaries to be assisted across income levels, household types and unmet housing needs, rather than on specific activities.~~

~~**25.8(14)**~~ *25.8(11)* A preaudit survey will be required of all for-profit and nonprofit direct recipients *for grants that exceed $150,000.*

ITEM 9. Amend subrule 25.9(2) as follows:

25.9(2) A contract shall be executed between the recipient and IDED. These rules, the housing fund application, the housing management guide and all applicable federal and state laws and regulations shall be part of the contract.

a. The recipient shall execute and return the contract to IDED within 45 days of transmittal of the final contract from IDED. Failure to do so may be cause for IDED to terminate the award.

b. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. ~~Awards~~ *Contracts* may be conditioned upon the timely completion of these requirements.

c. Awards shall be conditioned upon commitment of other sources of funds necessary to complete the housing activity.

d. ~~Awards~~ *Release of funds* shall be conditioned upon IDED receipt and approval of an administrative plan for the funded activity.

ARC 1006B

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 amend Chapter 41, "Community Development Fund," Iowa Administrative Code.

The proposed amendments clarify eligible applicants and allowable eligible activities under Chapter 41. The Community Development Fund targets state resources to high priority issues in community and economic development including telecommunications, diversity, growth management, housing, business development and multicommunity service delivery. The fund will provide grant funds for replicable projects and technical assistance.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on November 6, 2001. Interested persons may submit written or oral comments by contacting Roselyn McKie Wazny, Division of Community and Rural Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone number (515)242-4822.

A public hearing to receive comments about the amendments will be held on November 6, 2001, at 2:30 p.m. at the above address in the Northwest Conference Room, Second Floor, Iowa Department of Economic Development. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on November 5, 2001, to be placed on the hearing agenda.

These amendments are intended to implement 2001 Iowa Acts, House File 718.

The following amendments are proposed.

ITEM 1. Amend **261—Chapter 41** by amending the parenthetical implementation as follows:

(~~78GA,ch 1230~~ *79GA,HF718*)

ITEM 2. Amend rule 261—41.1(79GA,HF718) as follows:

261—41.1(79GA,HF718) Purpose. The purpose of this program is to assist communities in addressing community and economic development challenges and opportunities. Technical and financial assistance will be provided to communities to access ~~planning, training, education,~~ consultation and technical assistance to further local collaborative initiatives or to select and prioritize strategies for the improvement of operations and structures to meet business and residential demands.

ITEM 3. Amend 41.2(1) as follows:

41.2(1) Eligible applicants include ~~cities, counties, and councils of government~~ *any Iowa county, city, council of government, or resource conservation and development organization* which may apply on behalf of ~~the following entities:~~ *an* economic development ~~groups; multicommunity or county projects; or coalitions of public/private entities including but not limited to local governments, educational institutions, not-for-profit corporations, hospitals, state agencies, or development organizations.~~ *group or government entity.* Applicants must be able to demonstrate a minimum match ~~which~~ *that* equals at least 25 percent of the grant amount requested in the form of cash, and an additional in-kind services match of 25 percent.

ITEM 4. Amend subrule 41.2(2) as follows:

41.2(2) Eligible projects. Projects eligible for funding include the following:

a. Telecommunications: ~~needs assessments,~~ education and training ~~to build market demand~~ *on enhanced telecommunication services*, strategy development for access and use of advanced telecommunications;

b. Growth management: strategies to promote orderly development~~; strategies to reduce conflict arising from growth and changing land use patterns~~ *and rational land use*;

c. Housing: area, regional or multicommunity ~~needs assessments; a~~ strategy to address specific housing needs, particularly upper-story commercial areas and in-fill lot development;

d. Business development: strategies to enhance target industry clusters *(information solutions, advanced manufacturing, and life sciences)*; entrepreneurship; international trade; e-commerce, education and training through local development groups and chambers of commerce; and capital development;

e. Community services: development of multicommunity or regional delivery of government services and community development services that directly enhance business development; *innovative approaches to workforce shortages, skill development and employee retention; diversity of population capitalizing on immigration to sustain and revitalize communities;*

~~f. Pilot projects: projects that can be replicated in the areas of diversity of population that include immigration to sustain and revitalize local communities and economies; leadership and volunteerism for community and economic development; regional delivery of community services; technology transfer to local business; and improved local business development, strategies and techniques; and~~

~~g. Commercial development consultative services.~~

f. Education and training: development of leadership strategies and regional workshops related to the targeted 2010 issues;

g. Commercial development: one-to-one business assistance, market analysis training, upper-story reuse assistance, fundraising strategies, and building design assistance.

ITEM 5. Amend rule 261—41.4(79GA,HF718) as follows:

261—41.4(79GA,HF718) Application procedures. Preapplications shall be submitted to the ~~Community Development Fund Project Manager,~~ Community Development Fund, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. The ~~community development project manager~~ *IDED consultant team* will review preapplications, and written or oral comments will be returned to the applicant with appropriate application forms and instructions available at this address.

ITEM 6. Amend rule 261—41.6(79GA,HF718) as follows:

261—41.6(79GA,HF718) Review process. A committee within the department will review each eligible application.

~~Applications that score fewer than 450 points under subrule 41.6(1) will not be recommended for funding.~~ Applicants may be interviewed further to explore the potential for providing technical assistance, gain additional information concerning the proposal, and negotiate the project's work plan and budget.

41.6(1) ~~Ranking and scoring.~~ The committee will ~~rank~~ *review* the applications based on the following ~~criteria:~~ *deliverables:*

a. Goals: are they obtainable in one year?

b. Economic impact: is it measurable?

c. Regional partners: is there a larger impact for the region?

d. Industry clusters: does the project advance industry retention or an expansion of the targeted groups?

e. Models for success: can the project be replicated in other parts of the state to address 2010 issues?

41.6(2) *Each project description must include:*

a. Demonstrated need for the project. (Economic or community enhancement impact to the area; how the project will improve the development potential of the project area, improve access to services, or create an environment for community improvement.) ~~150 points possible.~~

b. Capacity of the applicant to sustain, implement, or reach stated objectives once grant period is concluded. ~~75 points possible.~~

c. Demonstrated networking, cooperation and partnerships with other entities, organizations, and local governments necessary to meet stated goals and objectives, including past successful cooperative efforts that have been sustained over time. Multicommunity groups are strongly encouraged. ~~100 points possible.~~

d. Local financial and volunteer contribution to the project that exceeds minimum match requirements. (Cash, office materials, supplies, volunteer support, office space, equipment, administrative assistance.) ~~100 points possible.~~

e. Creativity and innovation of the proposed project to address issues presented. (Project demonstrates a new and creative approach to address a common issue/concern.) ~~150 points possible.~~

f. Evidence of participation in local planning that supports the request for funds. (Community builder plan, housing needs assessment, comprehensive land use planning, or a similar planning activity that has led the applicant to the proposed activity which the application addresses.) ~~75 points possible.~~

g. Demonstrated need for the funds requested. ~~100 points possible.~~

h. Evidence of local planning. ~~75 points possible.~~

~~41.6(2)~~ ***41.6(3)*** Ineligible expenses. Expenses ineligible for reimbursement include, but are not limited to:

a. Purchase of land, buildings or improvements thereon.

b. Expenses for development of sites and facilities.

c. Cost of nonexpendable equipment (i.e., computers and fax and copy machines).

d. Cost of studies or plans that are routinely developed as part of a city or county function or operation, such as development of a comprehensive plan, community builder plans, master plans or engineering studies for water, sewer, roads, or parks.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Regulatory Analysis

Pursuant to the authority of Iowa Code section 455B.304, the Environmental Protection Commission published Notice of Intended Action in the May 16, 2001, Iowa Administrative Bulletin as **ARC 0668B** to rescind Chapter 118, "Removal and Disposal of Polychlorinated Biphenyls (PCBs) from White Goods Prior to Processing," and adopt new Chapter 118, "Discarded Appliance Demanufacturing," Iowa Administrative Code.

A public hearing was held on June 5, 2001. On June 8, 2001, the Administrative Rules Review Committee requested a regulatory analysis pursuant to Iowa Code section 17A.4A. Pursuant to Iowa Code section 17A.4A(2)"a," the request for regulatory analysis expressly listed those items to be addressed. The full text of the regulatory analysis is published herein.

Any interested party may make written comments about the proposed rules or request an oral proceeding on or before November 6, 2001. Such written comments or request should be directed to Lavoy Haage, Land Quality and Waste Management Assistance Division, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8895.

This Regulatory Analysis is published pursuant to Iowa Code section 17A.4A(4).

REGULATORY ANALYSIS
PROPOSED 567—CHAPTER 118,
IOWA ADMINISTRATIVE CODE

The following regulatory analysis is provided in response to the request made by the Administrative Rules Review Committee at its June 5, 2001, meeting. The Committee's request was formalized and clarified by memo dated June 8, 2001.

I. The committee specifically requested that the analysis address the items set forth at Iowa Code section 17A.4A(2)"a." The department's response is set forth below:

"(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule."

The proposed rules will affect any person, company or solid waste agency that is in the appliance demanufacturing business. To a lesser degree, the rules may impact scrap dealers, appliance retailers, landfill operators, haulers, the public, or anyone else that may be handling or temporarily storing discarded appliances. However, because these rules are intended only to ensure compliance with current state rules and federal regulations, any impact will be minimal.

The rules are intended to benefit all Iowans by preventing the release of hazardous substances into the air and groundwater of the state. Since all requirements for these types of facilities will be located in a single chapter of rules and will be administered through a straightforward permit program, it will be easier for those in the appliance demanufacturing business to comply with existing regulations and for the department to provide the oversight needed to ensure these environmental benefits are realized.

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"(2) Description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule."

For the purpose of developing the proposed rules, the department assembled an advisory committee that included representatives from appliance demanufacturers, recyclable metal processors, sanitary landfills, environmental consultants and representatives of the department. The committee met on three occasions to discuss drafts proposed by the department and to make recommendations for revisions. These proposed rules are designed to protect human health and the environment by ensuring that potentially hazardous substances are handled in a manner that minimizes exposure. The proposed rules are further intended to notify the regulated community of the applicable rules.

The proposed rules could impact persons and businesses handling discarded appliances, such as discarded appliance demanufacturers, scrap metal yards/dealers, appliance retail stores, appliance service/repair shops and solid waste haulers.

The proposed rules would have minimal impact on discarded appliance demanufacturing facilities and other facilities already in compliance with existing state rules and federal regulations. For facilities required to have a permit, there will be minimal additional effort required for completing an initial permit application and a permit renewal application every three years. Record-keeping requirements are increased slightly from current state and federal requirements and a new requirement of an annual report to the department is added. The annual report is largely a summary of records currently required such as the amount, in pounds, of capacitors removed, required by current rule 567—118.3(1)"c," and federal transportation manifest requirements that are used to verify compliance with current rule 567—118.3(3)"e," and other current federal regulations.

There are currently scrap metal yards/dealers that accept discarded appliances at no charge. The costs of proper management and disposal of the capacitors, refrigerants, and mercury-containing components would appear to make this untenable in relation to the current resale value of the metal. It is anticipated that, to the extent the proposed rules lead to proper management and disposal by certain scrap dealers who are currently not in compliance, the acceptance of discarded appliances at no charge will become less common in Iowa. Scrap yards/dealers not in compliance with existing state and federal regulations would need to expend some funds to obtain equipment to comply with the proposed rules and obtain a discarded appliance demanufacturing permit. There is no permit fee and the expense would be mainly to obtain equipment. There would also be some time expended to attend a short training course. Most existing commercial discarded appliance demanufacturing facilities operating in compliance with existing state rules and federal regulations do charge a fee, which is usually passed on to the person discarding the appliance.

Scrap metal processors are concerned that persons who are currently accepting discarded appliances and who are located next to bordering states that do not have similar rules will take the discarded appliances out of state rather than pay the costs to demanufacture them. This may be a legitimate concern, but experience in eastern Iowa, where there are several discarded appliance demanufacturers in operation who are basically in compliance with the proposed rules, shows that this is not the case. In one situation, appliances are coming into Iowa to be demanufactured. Once scrap dealers understand the proposed rules it is anticipated that more will become permitted discarded appliance demanufacturers.

The proposed rules would have little impact on appliance service/repair shops. Such shops would not be required to have a discarded appliance demanufacturing permit unless the shop actually demanufactures appliances. Any appliances discarded by a service/repair shop would have to be properly demanufactured before they could be recycled. Shop owners may have to pay a fee to send discarded appliances to a permitted demanufacturing facility, but it would be expected that this cost would be passed on to the the person discarding the appliance.

The proposed rules may impact appliance retailers. When a retail store delivers a new appliance, the store usually charges a fee that covers pickup of the old appliance. The appliance store may put the old appliance out on the dock in back for anyone to pick up for the scrap value. Since the proposed rules require discarded appliances to be demanufactured, it is unlikely that scrap metal dealers will continue to take discarded appliances for only the scrap value. Appliance retailers may have to pay a fee to discard an appliance. However, it is assumed the retailers will pass that cost on to the customer through the delivery and pickup fee.

The proposed rules may have an impact on waste haulers who pick up discarded appliances from homeowners. Many haulers use mechanical means, such as a grapple, to pick up the appliance and place it into a truck. When the truck is full, it is taken to the drop-off location and the appliances are dumped out. Such handling can damage the appliance and cause a release of refrigerant, PCBs or mercury into the environment or it may make the appliance difficult to demanufacture. The proposed rules prohibit haulers from using such practices; however, the proposed rules do not prohibit the use of mechanical means of handling discarded appliances and there may be a way to handle appliances mechanically that would not cause damage.

There is also a concern that the proposed rules will result in more illegal dumping of discarded appliances because of the increase in the cost of handling the appliances. Experience at landfills that started charging or increased the fee for taking appliances shows that the number of appliances received after a change went into effect did not decrease. Experiences of other states that have similar rules show that a significant increase in illegal disposal of appliances is not likely.

"(3) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues."

The Iowa Department of Natural Resources (IDNR) may incur some increased costs due to the adoption of these rules. The increased costs will be mainly in the field offices due to an increased inspection workload with the addition of these new permitted facilities. The additional inspections required by the proposed rules will be handled through a reallocation of staff time. The proposed rules are not likely to significantly impact the central office other than reallocating a single FTE's time to administer the permit program. At this time, a staff person is managing the current registration program for these facilities.

These changes, however, may result in lowering costs to the IDNR by making rule enforcement more efficient because they clarify what is required of affected parties. The proposed rules will not impact state general funds since a portion of the state solid waste tonnage fee will cover the administrative costs of the program.

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"(4) Comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction."

Since the proposed rules are merely an orderly and concise presentation of current state and federal regulations, the only additional costs to the regulated community would be in meeting the record-keeping and training requirements. The problems addressed by the rules are noncompliance with current regulations and an inability on the part of the department to verify compliance. In addition, enforcement under the current rules is difficult since violations are not easily discoverable especially if a company never registers with the department. Any additional costs to the department in terms of increased number of inspections and issuance of permits should be offset by greater compliance from the regulated community and, for those who do not comply, a more efficient means of exercising enforcement. The greatest benefit will be a cleaner and safer environment for all Iowans.

"(5) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule."

One of the advisory committee's primary purposes was to determine whether less costly or less intrusive methods exist for achieving the purposes of the proposed rules. It is the determination of the department and the committee that the proposed rules are the least costly and least intrusive method available to effectively achieve the purpose of the proposed rules.

"(6) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule."

The advisory committee considered a wide variety of alternative methods in the development of the proposed rules. One proposal called for a system wherein each individual appliance was documented throughout the process of disposal, demanufacturing, and recycling. The committee also considered reporting requirements on a quarterly or monthly basis. Both of these ideas were rejected when less costly and burdensome alternatives were found to satisfactorily address the purposes of these methods.

The committee considered the imposition of a permit fee, but this was rejected when it was determined that legislative action would be required before these fees could be used for implementation and enforcement of the proposed rules.

II. In addition to addressing the items set forth at §17A.4A(2)"a," the committee further requested information in regard to the following:

1. The relationship between these proposed rules and existing federal regulations.

Following is an explanation of the relationship between the proposed rules and the EPA regulations.

Refrigerant removal requirements:

Federal regulation 40 CFR Section 82.154 prohibits any person maintaining, servicing, repairing or disposing of appliances from knowingly venting or otherwise releasing refrigerants with the exception of de minimus releases associated with recycling or recovery attempts. Further, no person may recover refrigerant from small appliances unless such person has certified to EPA that the recovery equipment meets the standards set forth in 82.158 and that such person is in compliance with applicable requirements. Federal regulation 40 CFR 82.156(f) requires persons who take the final step in the disposal process of a small appliance to either recover the remaining refrigerant from the appliance or verify that the refrigerant has already been properly evacuated. Federal regulation 40 CFR 82.156(h) requires that all persons recovering refrigerant from small appliances for the purpose of disposal must recover 90 percent of the refrigerant in the appliance when the compressor in the appliance is operational, 80 percent of the refrigerant when the compressor is not operational or evacuate the refrigerant to four inches of mercury vacuum. Federal regulation 40 CFR 82.164 requires all persons reclaiming used refrigerant for sale to a new owner must certify to EPA that the refrigerant will be returned to the standard purity.

The proposed rules are intended to allow the department to verify compliance with best management practices as outlined in federal law. Proposed subrule 118.9(2) requires owners of refrigerant recovery and recycling equipment to provide certification to EPA that they have acquired and are using EPA-approved equipment. Paragraph 18.7(1)"h" requires a copy of the certification be provided as part of the permit application. Subrule 118.9(2) requires that refrigerants in appliances must be recovered to EPA standards using equipment meeting EPA requirements (40 CFR Part 82.162 or 82.156(h)) or the person certified to remove refrigerants must verify that the refrigerant has been removed from the appliance before the appliance is removed for recycling or disposal. Subrule 118.9(4) requires facilities that are not an EPA-certified reclamation facility to ship refrigerant to an EPA-certified reclamation facility or dispose of the refrigerant properly.

The proposed rules are intended as a notification to the regulated community of the need to comply with best management practices as currently outlined by the federal requirements and are further intended to make it easier for inspectors to verify compliance. The department does not intend to assume jurisdiction over these federal programs or to apply regulations that are stricter than federal law in regard to processing procedures. The federal regulations with respect to refrigerants are more extensive and far-reaching than the scope of this proposed chapter. This chapter is intended to establish requirements for a limited type of solid waste processing facility, appliance demanufacturers.

Mercury component removal and disposal requirements:

Mercury is a listed hazardous waste regulated under 40 CFR 261.24. Used thermostats and fluorescent lamps containing mercury are also regulated under the Universal Waste Regulations, 40 CFR 273.4, which allow less stringent methods of handling. Leaking or releasing mercury into the environment from thermostats or fluorescent lamps is prohibited under Federal regulation 40 CFR 273.13. Federal labeling requirements for hazardous waste are listed in 49 CFR 172 and 40 CFR 262.

Proposed subrule 118.10(1) requires that all components containing mercury in a discarded appliance be removed. Proposed subrules 118.10(2) to 118.10(5) require that containers storing mercury components be labeled and handled according to EPA requirements 40 CFR part 172 and 49 CFR part 262. This rule does not provide any additional disposal or processing requirements in regard to the mercury-containing component.

PCB capacitor removal requirements:

Federal regulation 40 CFR 761.2(a)(4) makes the assumption that a capacitor manufactured prior to July 2, 1979, whose PCB concentration is not established, contains $\geqq$ 500 ppm PCBs. The assumption is also made that a capacitor manufactured in the United States after July 2, 1979, is non-PCB. If the date of manufacture is not known or if the statement "No PCBs" is not on the capacitor, it is assumed

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the capacitor contains PCBs. These conditions apply to capacitors found in household appliances.

Discarded appliances are commonly shredded and the metal taken to a foundry to be recycled. A byproduct of this process is shredder fluff, which is commonly disposed of at a landfill.

According to 40 CFR 761.3, PCB bulk product waste includes PCB-containing waste from the shredding of automobiles, household appliances or industrial appliances. Federal regulation 40 CFR 761.62 addresses disposal of PCB bulk product waste. Section (b) (1) states, in part, that shredder fluff from processing household appliances may be disposed of in a permitted municipal waste landfill provided all PCB capacitors have been removed prior to shredding.

The proposed Chapter 118 also requires that all capacitors be removed from discarded appliances and those containing PCBs be disposed of as a hazardous waste. Capacitors shown not to contain PCBs may be disposed of as any other nonhazardous waste. A limit is also set on shredder fluff at 50 ppm PCBs for disposal in a landfill.

2. Hazards posed by the chemicals associated with discarded appliances.

- PCBs

When released into the environment, PCBs can spread through the air, water, and soil and be consumed by animals and humans. They are persistent in the environment due to their chemical composition and tend to bioaccumulate in the food chain. As PCBs bioaccumulate, their toxicity increases, making them more dangerous to people and the environment.

Health effects of PCBs include neurotoxicity, reproductive and developmental toxicity, immune system suppression, liver damage, skin irritation, endocrine disruption and potentially cancer, according to EPA studies. Other studies from the U.S. Department of Health and Human Services indicate PCB exposure can result in increased eye discharge, gastrointestinal problems, jaundice and abdominal pain. Populations especially affected by PCBs include nursing infants.

- Mercury

Mercury is a heavy metal and can be found in switches, thermostat probes, thermometers, thermostats, manometers, gauges and various fluorescent lamps. These devices are commonly found in ovens, clothes dryers, water heaters, space heaters, and gas-fired appliances. Humans are exposed through vapor inhalation, water ingestion and food ingestion. Its persistent nature also leads to bioaccumulation and potentially high concentrations in fish (especially predatory).

Similar to PCBs, mercury exposure results in a variety of health effects. The severity of these effects depends on the magnitude of the dose; however, if the dose is high enough, death is possible. Health effects from short-term exposure include neurotoxicity, nausea, vomiting, bloody diarrhea, abdominal pain, and kidney damage. Long-term exposure may result in a damaged central nervous system, loss of hearing, vision and taste. According to the EPA, circulatory problems, such as high blood pressure, acute myocardial infarction, immunobiological problems as well as liver and reproductive medical difficulties also result from mercury exposure. Mercury is also classified as a possible human carcinogen.

- Refrigerants

Refrigerants, such as chlorofluorocarbons (CFCs) and hydrofluorocarbons (HCFCs), are found in appliances such as refrigerators, freezers, air conditioners, dehumidifiers, water coolers, and heat pumps. CFCs and HCFCs are stable, low in toxicity and inexpensive. However, when they are released into the environment, they travel to the stratosphere and damage the ozone layer. These chemicals account for 85 percent of the ozone destruction, while natural sources contribute only 15 percent. The ozone layer is being destroyed faster than it can be naturally created. Ozone depletion is occurring over all latitudes. Specifically, ozone levels over the U.S. have fallen 5 to 10 percent (depending on season).

Unlike mercury and PCBs, refrigerants are not toxic by nature; instead, they are harmful due to their atmospheric reactions. The ozone layer protects the earth from dangerous UV-B rays from the sun. By destroying the ozone, refrigerants increase human and environmental exposure to these rays. Increased exposure to UV-B rays is proven to cause skin cancer, cataracts and lowering of immune systems in humans and animals. It also disrupts plant and aquatic life.

- Sodium chromate

Sodium chromate is a rust inhibitor found in refrigeration equipment that uses ammonia. Sodium chromate may be released to the environment if it is not captured during demanufacturing or it may escape during the shredding of the appliance. It is a potentially lethal compound which must be collected and is subject to EPA hazardous waste regulations. Sodium chromate is readily absorbable into the skin and may result in burns or skin irritation to humans. Ingestion may result in nausea, vomiting, gastrointestinal irritations, burns to the mouth and throat, and kidney, liver and gastrointestinal tract damage.

- Asbestos

Asbestos is found in refrigerators and air conditioners using ammonia as a refrigerant. It is a widely recognized carcinogen when inhaled and is subject to EPA and OSHA regulations.

Implementation of the proposed rules will ensure a reduction in the amount of these hazardous substances.

ARC 1020B

ENVIRONMENTAL PROTECTION COMMISSION[567]

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 455A.6, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 1, "Operation of Environmental Protection Commission," Chapter 9, "Delegation of Construction Permitting Authority," and Chapter 11, "Tax Certification of Pollution Control or Recycling Property," Iowa Administrative Code.

The purpose of Item 1 is to update information.

The purpose of Items 2 through 12 is to update or clarify information.

Any person may make written suggestions or comments on the proposed amendments on or before November 8, 2001. Written comments should be directed to Christine

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Spackman, Department of Natural Resources, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515) 242-5094. E-mail comments should be directed to christine.spackman@dnr.state.ia.us.

A public hearing will be held on November 8, 2001, at 11 a.m. in the Fifth Floor East Conference Room, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa, at which time comments may be submitted orally or in writing.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility, should contact the Department of Natural Resources to advise the Department of any specific needs.

These amendments may impact small businesses.

These amendments are intended to implement Iowa Code section 455A.6.

The following amendments are proposed.

ITEM 1. Amend rule 567—1.3(17A,455A) as follows:

567—1.3(17A,455A) Place of meetings. Meetings are generally held in the Henry A. Wallace Building, ~~900 East Grand Avenue~~ *502 East Ninth Street,* Des Moines, Iowa. The commission may meet at other locations from time to time; if so, the meeting place will be specified in the agenda.

ITEM 2. Amend rule 567—9.2(455B,17A) as follows:

567—9.2(455B,17A) Forms. The following forms are to be used by local agencies implementing this authority:

Form 1 - ~~(reserved) (542-1001)~~ *Review checklist for water main extensions (542-1003)*

Form 2 - ~~(reserved) (542-1002)~~ *Review checklist for sewer extensions (542-1004)*

Form 3 - ~~Review checklist for water main extensions (542-1003)~~ *Permitting authority quarterly report (542-1005)*

~~Form 4 - Review checklist for sewer extensions (542-1004)~~

~~Form 5 - Permitting authority quarterly report (542-1005)~~

ITEM 3. Amend subrule 9.4(1), introductory paragraph, as follows:

9.4(1) Permitting authority ~~supplies~~ *applies* only to extensions which:

ITEM 4. Amend subrule 9.4(3) as follows:

9.4(3) The reviewing engineer shall be ~~registered~~ *licensed* as a professional engineer in Iowa and shall be employed or retained by the governmental subdivision.

ITEM 5. Amend subrule 9.4(5) as follows:

9.4(5) The local public works department shall use the same forms (Form ~~3~~ *1* and Form ~~4~~ *2*) used by the department in reviewing plans, and a copy of the applicable "review checklist" shall be submitted to the department with the permit copy, upon issuance of each permit.

ITEM 6. Amend rule 567—11.2(427,17A) as follows:

567—11.2(427,17A) Form. A complete Form PR-01675, which is available through the local county assessor, the department of revenue and finance, or this department, must be submitted in order to request certification under this chapter. ~~In completing the form, the applicant may adopt by reference any pertinent information contained in an application for a permit submitted to the department.~~

ITEM 7. Amend subrule **11.6(3)**, paragraph **"c,"** subparagraph **(3)**, as follows:

(3) Improvements to real property, e.g., ancillary devices and facilities such as lagoons, ponds and structures *for the storage of manure or* for the storage or treatment of sewage, industrial waste or other waste from a plant or other property.

ITEM 8. Amend subrule **11.6(3)**, paragraph **"c,"** subparagraph **(5)**, as follows:

(5) Property which exclusively conveys or transports accumulated *manure,* sewage, industrial waste or other recovered materials as an integral part of the control operation.

ITEM 9. Amend subrule **11.6(3)**, paragraph **"c,"** by adopting **new** subparagraph **(9)** as follows:

(9) Some examples of property used to store or convey manure include concrete or steel manure storage tanks, earthen manure storage lagoons, concrete or other types of slatted flooring and mechanical manure scraper systems.

ITEM 10. Amend subrule **11.6(3)**, paragraph **"d,"** by adopting **new** subparagraph **(5)** as follows:

(5) Animal confinement buildings, including building ventilation fans.

ITEM 11. Amend subrule **11.6(3)** by adopting **new** paragraph **"e"** as follows:

e. Conversion of waste plastic, wastepaper product, or waste paperboard into new raw materials or products composed primarily of recycled material - normally considered eligible.

(1) Scales.

(2) Grinders.

(3) Plastic extruders.

ITEM 12. Amend subrule **11.6(3)** by adopting **new** paragraph **"f"** as follows:

f. Conversion of waste plastic, wastepaper product, or waste paperboard into new raw materials or products composed primarily of recycled material - normally considered ineligible.

(1) Baling equipment.

(2) Equipment used for recycling glass, steel, wood chips or cans.

ARC 1024B

ENVIRONMENTAL PROTECTION COMMISSION[567]

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 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 22, "Controlling Pollution," Iowa Administrative Code.

The purpose of this rule making is to establish a definition of certain air emission units as "small units" and list those emission units as being exempt from the requirement to obtain an air construction permit. The rule making also establishes a definition of "indoor units" for which no air construction permits are required. It is important to note that the facility retains the obligation to determine whether other

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air permitting requirements still apply to those sources and, if such obligations exist, to meet those.

This rule making is the result of an extensive, cooperative, negotiated rule-making process between the Department and representatives of the Iowa Association of Business and Industry (ABI). Both the Department and ABI are interested in reducing the regulatory burden on industry where the actual emissions of air contaminant sources are likely to have little or no environmental or human health consequences.

Although no changes are proposed to subrule 22.1(1), "Permits required," it is printed here to provide the context to which the exemptions apply.

This rule making makes minor changes to the first paragraph of the "Exemptions" subrule (22.1(2)) to clarify the obligations that otherwise exempt sources must consider when determining if the use of an exemption is appropriate. Emission units or control equipment that must be considered for the purposes of PSD (prevention of significant deterioration), nonattainment area permitting, New Source Performance Standards (NSPS), Emission Standards for Hazardous Air Pollutants and Hazardous Air Pollutant (NESHAP) source categories, and emissions guidelines (EGs) are not eligible for exemption from the construction permitting rules if any of these standards or conditions apply. These restrictions are established because of State Implementation Plan requirements or federal Clean Air Act requirements.

Paragraph 22.1(2)"i" is amended to clarify the intent of language referring to the federal Clean Air Act Section 112(g). The Department has always implemented this language to mean that if emissions equipment emits hazardous air pollutants, excepting those five listed, that the exemption in 22.1(2)"i" cannot be used.

The amendments add a new paragraph 22.1(2)"t" establishing an exemption for containers, storage tanks or vessels containing fluid having a maximum true vapor pressure of less than 0.75 psia. This exemption recognizes that fluids with low vapor pressures have low rates of emissions. Some emission units meeting this definition may fall under NSPS Subpart Kb. The Department will seek an amendment to the Delegation Agreement with U.S. EPA to exempt these sources from permitting under the State Implementation Plan.

The amendments add a new paragraph 22.1(2)"u" establishing an exemption for passive vents or exhausts primarily intended to allow the escape of moisture while handling, transporting, or storing any material. This exemption does not include dryers.

The next part of the amendments adds a significant new exemption for "small units." "Small units" are defined as emission units and associated control equipment that actually emit less than 40 pounds per year of lead and lead compounds expressed as lead, 5 tons per year of sulfur dioxide, 5 tons per year of nitrogen oxides, 5 tons per year of volatile organic compounds, 5 tons per year of carbon monoxide, and 2.5 tons per year of PM10. The presence of other emissions not listed does not affect the use of this exemption except as noted in the first paragraph of the overall exemptions subrule (22.1(2)). The new exemption explains that the owner or operator of a small unit may request a construction permit although one is not required by rule. This is useful for facilities that are seeking to obtain federally enforceable emission or operating limits or to establish federal recognition of the operation of control equipment to avoid permitting requirements of other air regulatory programs such as PSD and Title V Operating Permits.

The small unit exemption also details the process by which either the owner or operator or the Department would identify an emission unit as not meeting the exemption and the process and protections for then obtaining an air construction permit without penalty. The last portion of this new exemption addresses concerns that the operation of many of these small units may together lead to negative environmental impacts. A subcategory, "substantial small unit," is defined as those units that actually emit 75 percent of the "small unit" thresholds. The owner or operator of the facility must notify the Department within 90 days of the end of the first calendar year that the aggregate emissions from substantial small units at the facility exceed any of the notice thresholds defined in the exemption. This gives the Department the opportunity to evaluate the ambient impacts of the aggregate emissions against the health standards.

A new "indoor unit" exemption is added in new paragraph 22.1(2)"w." An "indoor unit" is defined as any emission unit or air contaminant source that is not directly vented or exhausted to the outside atmosphere and includes any air exchange through general ventilation, windows, doors, and cracks. A horizontally discharging powered side vent is not an indoor unit unless it meets both of the following criteria: (1) located more than 15 feet above the ground, and (2) located more than 130 feet from the facility's closest property line. The terms "directly vented or exhausted" and "general ventilation" are given specific definitions for the purpose of this exemption. The indoor unit exemption also details the process by which either the owner or operator or the Department would identify an emission unit as not meeting the exemption and the process and protections for then obtaining an air construction permit without penalty. The last portion of this exemption addresses concerns that, if the emissions from indoor sources exceed certain thresholds, then ambient air may be adversely affected. The owner or operator of the facility must notify the Department within 90 days of placing in service an indoor unit with actual emissions that exceed any of the notice thresholds defined in the small unit exemption (22.1(2)"v").

Any person may make written suggestions or comments on the proposed amendments on or before November 30, 2001. Written comments should be directed to Catharine Fitzsimmons, Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, fax (515)242-5094, or by electronic mail to catharine.fitzsimmons@dnr.state.ia.us.

A public hearing will be held at 1 p.m. on November 26, 2001, in Conference Rooms 3 and 4 at DNR's Air Quality Bureau, 7900 Hickman Road, Urbandale, Iowa, at which time comments may be submitted orally or in writing. All comments must be received no later than November 30, 2001.

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact Catharine Fitzsimmons at (515) 281-8034 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

Amend rule 567—22.1(455B) as follows:

567—22.1(455B) Permits required for new or existing stationary sources.

22.1(1) Permit required. Unless exempted in subrule 22.1(2) or to meet the parameters established in paragraph "c" of this subrule, no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit, or

conditional permit, or permit pursuant to 22.8(455B), or permits required pursuant to 22.4(455B) and 22.5(455B) as required in this subrule. A permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon.

a. Existing sources. Sources built prior to September 23, 1970, are not subject to this subrule, unless they have been modified, reconstructed, or altered on or after September 23, 1970.

b. New or reconstructed major sources of hazardous air pollutants. No person shall construct or reconstruct a major source of hazardous air pollutants, as defined in 40 CFR 63.2 and 40 CFR 63.41 as amended through December 27, 1996, unless a construction permit has been obtained from the department, which requires maximum achievable control technology for new sources to be applied. The permit shall be obtained prior to the initiation of construction or reconstruction of the major source.

c. New, reconstructed, or modified sources may initiate construction prior to issuance of the construction permit by the department if they meet the eligibility requirements stated in subparagraph (1) below. The applicant must assume any liability for construction conducted on a source before the permit is issued. In no case will the applicant be allowed to hook up the equipment to the exhaust stack or operate the equipment in any way that may emit any pollutant prior to receiving a construction permit.

(1) Eligibility.

1. The applicant has submitted a construction permit application to the department, as specified in subrule 22.1(3);

2. The applicant has notified the department of the applicant's intentions in writing five working days prior to initiating construction; and

3. The source is not subject to rule 567—22.4(455B), 567—subrule 23.1(2), 567—subrule 23.1(3), 567—subrule 23.1(4), 567—subrule 23.1(5), or paragraph "b" of this subrule. Prevention of significant deterioration (PSD) provisions and prohibitions remain applicable until a proposed project legally obtains PSD synthetic minor status (i.e., obtains permitted limits which limit the source below the PSD thresholds).

(2) The applicant must cease construction if the department's evaluation demonstrates that the construction, reconstruction or modification of the source will interfere with the attainment or maintenance of the national ambient air quality standards or will result in a violation of a control strategy required by 40 CFR Part 51, Subpart G, as amended through August 12, 1996.

(3) The applicant will be required to make any modification to the source that may be imposed in the issued construction permit.

22.1(2) Exemptions. The provisions of this rule shall not apply to the following listed equipment or control equipment. ~~unless~~ *If* review of the equipment or the control equipment is necessary to comply with rule 22.4(455B), prevention of significant deterioration requirements; rule 22.5(455B), special requirements for nonattainment areas; 567—subrule 23.1(2), new source performance standards (40 CFR Part 60 NSPS); 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61 NESHAP); 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63 NESHAP); or 567—subrule 23.1(5), emission guidelines, ~~in which case~~ *the exemption does not apply and* a permit must be obtained. If equipment is permitted under the provisions of rule 22.8(455B), then no other exemptions shall apply to that equipment.

Records shall be kept at the facility for exemptions that have been claimed under the following paragraphs: 22.1(2)"a" (for equipment > 1.0 MMBTU/hour), 22.1(2)"b," 22.1(2)"e," 22.1(2)"r" or 22.1(2)"s." The records shall contain the following information: the specific exemption claimed and a description of the associated equipment. These records shall be made available to the department upon request.

The following paragraphs are applicable to 22.1(2)"g" and "i." A facility claiming to be exempt under the provisions of paragraph "g" or "i" shall provide to the department the information listed below. If the exemption is claimed for a source not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project. If the exemption is claimed for a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the information listed below shall be provided to the department within 60 days of March 20, 1996. After that date, if the exemption is claimed by a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the source shall not operate until the information listed below is provided to the department:

- A detailed emissions estimate of the actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in *rule* 22.100(455B)), accompanied by documentation of the basis for the emissions estimate;
- A detailed description of each change being made;
- The name and location of the facility;
- The height of the emission point or stack and the height of the highest building within 50 feet;
- The date for beginning actual construction and the date that operation will begin after the changes are made;
- A statement that the provisions of rules 22.4(455B) and 22.5(455B) do not apply; and
- A statement that the accumulated emissions increases associated with each change under paragraph 22.1(2)"i," when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction on the particular change commences), have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23) as amended through March 12, 1996, and adopted in rule 22.4(455B), and will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. This statement shall be accompanied by documentation for the basis of these statements.

The written statement shall contain certification by a responsible official as defined in rule 22.100(455B) of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

a. Fuel-burning equipment for indirect heating and reheating furnaces or cooling units using natural gas or liquefied petroleum gas with a capacity of less than ten million Btu per hour input per combustion unit.

b. Fuel-burning equipment for indirect heating or cooling with a capacity of less than one million Btu per hour input per combustion unit when burning coal, untreated wood or fuel oil. Used oils meeting the specification from 40 CFR

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279.11 as amended through May 3, 1993, are acceptable fuels for this exemption.

c. Mobile internal combustion and jet engines, marine vessels and locomotives.

d. Equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption is also not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, which is normally not fed to livestock, owned by the person or another person, in a feedlot, as defined in Iowa Code section 172D.1, subsection 6, or a confinement building owned or operated by that person and located in this state.

e. Incinerators and pyrolysis cleaning furnaces with a rated refuse burning capacity of less than 25 pounds per hour. Pyrolysis cleaning furnace exemption is limited to those units that use only natural gas or propane. Salt bath units are not included in this exemption.

f. Fugitive dust controls unless a control efficiency can be assigned to the equipment or control equipment.

g. Equipment or control equipment which reduces or eliminates all emission to the atmosphere. If a source wishes to obtain credit for reductions under the prevention of significant deterioration requirements, it must apply for a permit for the reduction prior to the time the reduction is made. If a construction permit has been previously issued for the equipment or control equipment, the conditions of the construction permit remain in effect.

h. Equipment (other than anaerobic lagoons) or control equipment which emits odors unless such equipment or control equipment also emits particulate matter, or any other regulated air contaminant (as defined in *rule* 22.100(455B)).

i. Construction, modification or alteration to equipment which will not result in a net emissions increase (as defined in *paragraph* 22.5(1) "f") of more than 1.0 lb/hr of any regulated air pollutant (as defined in *rule* 22.100(455B)). Emission reduction achieved through the installation of control equipment, for which a construction permit has not been obtained, does not establish a limit to potential emissions.

~~Pollutants covered under the provisions of Section 112(g) of the Clean Air Act~~ *Hazardous air pollutants (as defined in rule 22.100)* are not included in this exemption except for those listed in Table 1. Further, the net emissions rate INCREASE must not equal or exceed the values listed in Table 1.

Table 1

Pollutant	Ton/year
Lead	0.6
Asbestos	0.007
Beryllium	0.0004
Vinyl Chloride	1
Fluorides	3

This exemption is ONLY applicable to vertical discharges with the exhaust stack height 10 or more feet above the highest building within 50 feet. If a construction permit has been previously issued for the equipment or control equipment, the conditions of the construction permit remain in effect. In order to use this exemption, the facility must comply with the information submission to the department as described above.

The department reserves the right to require proof that the expected emissions from the source which is being exempted from the air quality construction permit requirement, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. If the department finds, at any time after a change has been made pursuant to this exemption, evidence of violations of any of the department's rules, the department may require the source to submit to the department sufficient information to determine whether enforcement action should be taken. This information may include, but is not limited to, any information that would have been submitted in an application for a construction permit for any changes made by the source under this exemption, and air quality dispersion modeling.

j. Residential wood heaters, cookstoves, or fireplaces.

k. Asbestos demolition and renovation projects subject to 40 CFR 61.145 as amended through January 16, 1991.

l. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.

m. Storage tanks with a capacity of less than 10,570 gallons and an annual throughput less than 40,000 gallons.

n. Stack or vents to prevent escape of sewer gases through plumbing traps. Systems which include any industrial waste are not exempt.

o. A nonproduction surface coating process that uses only hand-held aerosol spray cans.

p. Brazing, soldering or welding equipment or portable cutting torches used only for nonproduction activities.

q. Cooling and ventilating equipment: Comfort air conditioning not designed or used to remove air contaminants generated by, or released from, specific units of equipment.

r. An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft. For the purposes of this exemption, the manufacturer's nameplate rating at full load shall be defined as the brake horsepower output at the shaft.

s. Equipment that is not related to the production of goods or services and used exclusively for academic purposes, located at educational institutions (as defined in Iowa Code section 455B.161). The equipment covered under this exemption is limited to: lab hoods, art class equipment, wood shop equipment in classrooms, wood fired pottery kilns, and fuel-burning units with a capacity of less than one million Btu per hour fuel capacity. This exemption does not apply to incinerators.

t. Any container, storage tank, or vessel that contains a fluid having a maximum true vapor pressure of less than 0.75 psia. "Maximum true vapor pressure" means the equilibrium partial pressure of the material considering:

- *For material stored at ambient temperature, the maximum monthly average temperature as reported by the National Weather Service, or*
- *For material stored above or below the ambient temperature, the temperature equal to the highest calendar-month average of the material storage temperature.*

u. Any passive vent or exhaust primarily intended to allow the escape of moisture while handling, transporting, or storing any material.

v. Small unit. A notice or construction permit is not required for a small unit regardless of when the emission unit was placed into service.

(1) "Small unit" means any emission unit and associated control that actually emits less than each of the following:

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1. 40 pounds per year of lead and lead compounds expressed as lead;
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide; and
6. 2.5 tons per year of PM10.

The presence of other emissions or another class of emissions from the emission unit shall not affect the applicability of this definition.

(2) Permit requested. If requested in writing by the owner or operator of a small unit, the director may issue a construction permit for that unit.

(3) Requirement to apply for a construction permit. An owner or operator of a small unit will be required to obtain a construction permit, or take the unit out of service, if the emission unit exceeds the small unit emission levels.

1. If during an inspection or other investigation of a facility the department believes that the emission unit exceeds the actual emission levels that define a small emission unit, then the department will submit calculations and detailed information in a letter to the owner or operator. The owner or operator will have 60 days to respond with information to substantiate a claim that the small unit does not exceed the actual emissions levels that define a small emission unit. If the owner or operator is unable to substantiate a claim, to the satisfaction of the department, that the small unit meets the emission levels, then the department will notify the owner.

2. If during the course of operation of a small unit, emissions increase such that the emission unit no longer meets the definition of small unit, the facility will have 90 days from the date it determines that the emission unit is no longer a small unit in which to apply for a construction permit without penalty. The owner or operator shall submit a letter to the department establishing the date it determined that the emission unit no longer met the small unit requirements.

(4) Timeline for application for construction permit. Within 90 days of notification (as established above) by the department or discovery by the facility that the emission unit no longer qualifies as a small unit, the facility shall apply for a construction permit without penalty. The emission unit and control equipment may continue operation without penalty during this period and associated application review period.

(5) Required notice. The owner or operator of the facility will notify the department within 90 days of the end of the first calendar year that the aggregate emissions from "substantial small units" at the facility exceed any of the "notice thresholds" listed below.

(6) "Substantial small unit," for the purposes of this paragraph, means a small unit which actually emits more than:

1. 30 pounds per year of lead and lead compounds expressed as lead;
2. 3.75 tons per year of sulfur dioxide;
3. 3.75 tons per year of nitrogen oxides;
4. 3.75 tons per year of volatile organic compounds;
5. 3.75 tons per year of carbon monoxide; or
6. 1.875 tons per year of PM10.

An emission unit is a substantial small unit only for those substances for which annual emissions exceed the above indicated amount.

(7) "Notice threshold," for the purposes of this paragraph and paragraph "w," means:

1. 0.6 tons per year of lead and lead compounds expressed as lead;
2. 40 tons per year of sulfur dioxide;
3. 40 tons per year of nitrogen oxides;
4. 40 tons per year of volatile organic compounds;
5. 100 tons per year of carbon monoxide; or
6. 15 tons per year of PM10.

w. Indoor unit. A notice or construction permit is not required for an indoor unit regardless of when it was placed into service.

(1) "Indoor unit" means any emission unit or air contaminant source that is not directly vented or exhausted to the outside atmosphere. "Indoor unit" includes, without limitation, any air exchange through general ventilation, windows, doors, and cracks. A horizontally discharging powered side vent is not an indoor unit unless it meets both of the following criteria:

1. Located more than 15 feet above the ground; and
2. Located more than 130 feet from the facility's closest property line.

(2) For the purpose of this paragraph, the following terms are defined as follows:

"Directly vented or exhausted" means a dedicated conduit to the outside atmosphere with the primary purpose to evacuate air contaminants from an emission unit or associated control equipment.

"General ventilation" means the normal exchange of air for odor, temperature and humidity control.

(3) Permit requested. If requested in writing by the owner or operator of an indoor unit, the director may issue a construction permit for that unit.

(4) Requirement to apply for a construction permit. An owner or operator of an emission unit will be required to obtain a construction permit, or take the unit out of service, if the emission unit does not meet the definition of indoor unit. If during an inspection or other investigation of a facility the department believes that the emission unit does not meet the definition of an indoor unit, then the department will submit detailed information in a letter to the owner or operator. The owner or operator will have 60 days to respond with information to substantiate a claim that the indoor unit meets the definition. If the owner or operator is unable to substantiate a claim, to the satisfaction of the department, that the indoor unit meets the definition of an indoor unit, then the department will notify the owner.

If during the course of operation of an indoor unit the unit no longer meets the definition of indoor unit, the facility will have 90 days from the date it determines that the emission unit is no longer an indoor unit in which to apply for a construction permit without penalty. The owner or operator shall submit a letter to the department establishing the date it determined that the emission unit no longer met the indoor unit definition.

(5) Timeline for application for construction permit. Within 90 days of notification (as established above) by the department or discovery by the facility that the emission unit no longer qualifies as an indoor unit, the facility shall apply for a construction permit without penalty. The emission unit and control equipment may continue operation without penalty during this period and associated application review period.

(6) Required notice. The owner or operator of the facility will notify the department within 90 days of placing in service an indoor unit with actual emissions that exceed any notice threshold as defined in paragraph "v."

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22.1(3) and **22.1(4)** No change.

This rule is intended to implement Iowa Code section 455B.133.

ARC 1021B

ENVIRONMENTAL PROTECTION COMMISSION[567]

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 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 22, "Controlling Pollution," Iowa Administrative Code.

Item 1 seeks to revise the deadline for which an application for a significant modification of a Title V permit is due. Currently, subparagraph 22.105(1)"a"(4) requires an application at least 6 months prior to any planned significant modification of a Title V permit. While 40 CFR Part 70 does not specifically address a deadline for significant modification application, Subpart 70.5(a)(1)(ii) states that a complete application to obtain a Title V permit or permit revision is required within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish. This rule making seeks to change the deadline for application submittal to no later than 3 months after commencing operation of the changed source. The DNR has received two requests from the regulated public that this subparagraph be revised or deleted. This rule making is an attempt to address concerns over permit timing issues. Three months is considered adequate time to prepare an application for modification of a Title V permit so that the permit remains consistent with current operations at the facility.

Item 2 reiterates the deadline for which an application for a significant modification of a Title V permit is due. New subrule 22.113(4) is intended to make clear when the application for a significant modification is due.

Any person may make written suggestions or comments on the proposed amendments on or before November 30, 2001. Written comments should be directed to Corey McCoid, Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, fax (515)242-5094, or by electronic mail to corey.mccoid@dnr.state.ia.us.

A public hearing will be held on November 15, 2001, at 11 a.m. in Conference Rooms 2 through 4, Air Quality Bureau, 7900 Hickman Road, Urbandale, Iowa, at which time comments may be submitted orally or in writing. All comments must be received no later than November 30, 2001.

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact Corey McCoid at (515)281-6061 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend subrule **22.105(1)**, paragraph **"a,"** subparagraph **(4)**, as follows:

(4) ~~At least 6 months prior to any planned significant modification of a Title V permit. See rule 22.113(455B).~~ *For a change that is subject to the requirements for a significant permit modification (see rule 22.113(455B)), the permittee shall submit to the department an application for a significant permit modification not later than three months after commencing operation of the changed source unless the existing Title V permit would prohibit such construction or change in operation, in which event the operation of the changed source may not commence until the department revises the permit.*

ITEM 2. Amend rule 567—22.113(455B) by adopting the following **new** subrule:

22.113(4) For a change that is subject to the requirements for a significant permit modification (see rule 22.113(455B)), the permittee shall submit to the department an application for a significant permit modification not later than three months after commencing operation of the changed source unless the existing Title V permit would prohibit such construction or change in operation, in which event the operation of the changed source may not commence until the department revises the permit.

ARC 1022B

ENVIRONMENTAL PROTECTION COMMISSION[567]

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 455D.7, 455E.9 and 455F.5, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 119, "Waste Oil," Chapter 144, "Household Hazardous Materials," Chapter 211, "Grants for Regional Collection Centers of Conditionally Exempt Small Quantity Generators and Household Hazardous Wastes," and Chapter 214, "Household Hazardous Materials Program," and to rescind Chapter 210, "Grants for Solid Waste Comprehensive Planning," and Chapter 212, "Loans for Waste Reduction and Recycling Projects," Iowa Administrative Code.

The rules to be amended describe limitations and programs designed to protect the public health and the environment by regulating disposal of household hazardous materials, and provide for collection of household hazardous materials, hazardous materials generated by conditionally exempt small quantity generators, and provision of educational materials to increase public awareness of household hazardous materials and proper management and disposal of such hazardous materials.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 27, 2001. Such written comments should be directed to Tom Anderson, Land Quality and Waste Management Assistance Division, Department of Natural Resources, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons wishing to convey their views orally should contact Tom

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Anderson at (515)281-8623 or at the Division offices in the Wallace State Office Building.

Also, there will be a public hearing on November 27, 2001, at 9 a.m. in Conference Room 5 West of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 455D.6, 455D.13, and 455E.11 and chapters 455B, division IV, part 1, and 455F.

The following amendments are proposed.

ITEM 1. Amend rule **567—119.2(455D,455B)**, definition of "division," as follows:

"Division" means the *land quality and* waste management ~~authority~~ *assistance* division of the department.

ITEM 2. Rescind subrule **119.4(2)**, paragraph **"d,"** subparagraph **(4)**, and adopt the following **new** subparagraph **(4)** in lieu thereof:

(4) The language "used oil is a household hazardous material" and, at least 2 inches in length, the household hazardous materials program symbol as shown below;

ITEM 3. Amend rule 567—119.7(455B,455D), catchwords, as follows:

567—119.7(455B,455D) ~~Waste management authority~~ *Land quality and waste management assistance* division responsibilities.

ITEM 4. Amend rule 567—144.1(455F) as follows:

567—144.1(455F) Scope. This chapter is intended to implement provisions of Iowa Code sections 455F.1 to 455F.11. The Act requires retailers that sell household hazardous materials to ~~affix display area labels in a prominent location on or near the display area of a household hazardous material.~~

~~The Act requires retailers to~~ maintain and prominently display consumer information booklets which provide information on the proper use of household hazardous materials, and specific instructions for the proper disposal of certain substance categories. Additionally, retailers are required to make available consumer information bulletins about household hazardous materials. Manufacturers or distributors of household hazardous materials who authorize independent contractor retailers to sell products of the manufacturer or distributor on a person-to-person basis are required to provide each independent contractor retailer with sufficient quantities of the booklet. The independent contractor retailer is to provide a copy of the booklet to the customer at the time of the sale.

The Act requires the environmental protection commission to adopt rules which ~~establish a uniform display area label to be used by retailers. The environmental protection commission also must adopt rules which~~ designate the type and amount of information to be included in the consumer information booklets and bulletins. The booklets~~,~~ *and* bulletins ~~and labels~~ are available free from the department of natural resources, but the rules allow the retailers to provide their own.

This chapter contains rules identifying products which are considered to be household hazardous products~~, the minimum size, color and content of labels which identify products, the placement of display area labels~~ and informational signs as well as prescribing the general information to be included in consumer information booklets.

ITEM 5. Amend rule **567—144.2(455F)**, definitions of "display area label" and "informational signs," as follows:

~~"Display area label" means the signage used by a retailer to mark a household hazardous material display area as prescribed by the department.~~

"Informational signs" means signs which explain the household hazardous materials program~~, the significance of the display area labels~~ and direct consumers to the location of informational booklets or other information available in the store.

ITEM 6. Amend rule 567—144.4(455F), catchwords, as follows:

567—144.4(455F) ~~Labeling and sign~~ *Sign* requirements.

ITEM 7. Rescind subrule 144.4(1) and adopt the following **new** subrule in lieu thereof:

144.4(1) Specifications. Informational signs shall be at least 8½″ × 11″ and must contain the program symbol of at least 2″ in size as shown below.

The sign shall explain the significance of the relationship of improper disposal of household hazardous materials to the contamination of groundwater, and shall direct consumers to the location of informational materials in the store.

ITEM 8. Amend subrule 144.4(2) as follows:

144.4(2) General requirements. Retailers required to be permitted under Iowa Code section 455F.7 ~~shall affix display area labels meeting the specifications of 144.4(1)"a" immediately adjacent to the price information at the location where the household hazardous material is displayed for sale in their retail outlet. Where products are individually priced with no corresponding shelf pricing information, the labels shall be affixed immediately in front of, above or below the product displays. All labels must be in locations where they can easily be seen by consumers. Where the same product from the same manufacturer is offered in a variety of sizes or colors on a single shelf, the display area labels may be spaced up to 2 feet apart on the shelf; or if the shelf is 4 feet or less in length, a single label on each shelf is acceptable if an informational sign is placed above the display rack.~~

~~Retailers are not required to label shelves which are in an enclosed area that is not accessible to the consumer, but the retailer~~ must ~~provide copies of the informational booklets~~

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

~~and~~ maintain a list of products sold which are household hazardous materials adjacent to an informational sign. These materials must be at the location where the consumer picks up the products for purchase.

ITEM 9. Amend subrule 144.4(3) as follows:

144.4(3) Information signs. These signs must be displayed at locations in the store close to shelves where household hazardous materials are offered for sale and in the location where informational materials are available. The informational signs are not required to be placed at every location where products are sold, but they should be displayed at areas where there are concentrations of such products ~~and where required by the provisions of 144.4(2)~~. The locations of the signs shall be such that they will be clearly visible to customers.

ITEM 10. Amend subrule 144.4(4) as follows:

144.4(4) Availability. Retailers are responsible for ensuring that ~~labels and~~ signs are all located properly in accordance with the provisions of ~~144.4(2) and~~ 144.4(3). ~~Retailers may print their own display area labels so long as they are identical to those provided by the department.~~ Retailers may print their own information signs so long as they are at least the same size and contain all of the information found on those provided by the department. Retailers may also obtain ~~labels and~~ signs from the department. Order forms for these materials are available on request from the department.

ITEM 11. Amend subrule 144.4(5) as follows:

144.4(5) Variances. Retailers wishing to use ~~labels or~~ signs other than as required by this chapter must request and receive from the department a variance from these rules, provided, however, that a variance is not required to use ~~a label which is larger in overall dimensions or~~ informational signs which are larger than those required by this chapter.

ITEM 12. Rescind and reserve **567—Chapter 210**.

ITEM 13. Amend rule 567—211.11(455F) as follows:

567—211.11(455F) RCC operations support. The department may provide grants to establish RCCs to applicants who have met criteria described in rule 211.8(455F). Funds not obligated for the establishment of RCCs may be disbursed to eligible operating RCCs as operations support. Operations support funding will assist RCCs with the costs associated with day-to-day operations. There shall be no operations support funding awarded to any RCC in excess of actual operations cost as reported on the disposal funding report form as required in rule 567—~~214.11~~ *211.12*(455F). The total operations support funding awarded to all eligible RCCs shall not exceed the amount of available funding.

To be eligible to receive RCC operations support, RCCs must meet the requirements described in rule 567—~~214.11~~ *211.12*(455F). The method to determine the percentage of operations support funds that each eligible RCC may receive is also described in rule 567—~~214.11~~ *211.12*(455F). Funding assistance under this rule may be disbursed to eligible operating RCCs at the same time as the RCC household hazardous material disposal funding, rule 567—~~214.11~~ *211.12*(455F).

ITEM 14. Amend 567—Chapter 211 by adopting the following **new** rule:

567—211.12(455F) Regional collection center household hazardous material disposal funding.

211.12(1) All RCCs are eligible to receive funding from the department to offset the cost associated with proper disposal of household hazardous waste by a licensed hazardous waste contractor. The source for this funding is described in Iowa Code section 455E.11(2)"a"(2)(e). RCCs will receive a percentage of the funds accumulated in this account in an amount equal to the percentage each RCC disposed of, by net weight, compared to the total amount disposed of by all RCCs eligible for disposal funding assistance.

211.12(2) To be eligible to receive disposal funding assistance, an RCC must have hazardous materials removed by a licensed hazardous waste contractor, complete the regional collection center semiannual report on a form supplied by the department and attach the hazardous waste contractor invoice depicting hazardous material types, net weight of hazardous materials, and associated disposal costs charged by the hazardous waste contractor to the RCC.

211.12(3) Each RCC shall submit to the department a completed regional collection center semiannual report regardless of disposal funding assistance eligibility. Regional collection center semiannual reports shall be submitted by September 1 for the portion of the fiscal year January 1 through June 30 and by March 1 for the portion of the fiscal year July 1 through December 31.

211.12(4) RCCs not eligible for disposal funding assistance during any given reporting period may estimate net weights for the purposes of completing the regional collection center semiannual report using conversion factors provided by the department.

ITEM 15. Rescind and reserve **567—Chapter 212**.

ITEM 16. Amend rule **567—214.1(455F)** by rescinding numbered paragraph **"6."**

ITEM 17. Amend rule 567—214.7(455F), introductory paragraph, as follows:

567—214.7(455F) HHM education grants. The department will solicit requests for proposals (RFPs) from applicants twice a year, *unless otherwise designated by the department,* in conjunction with the Toxic Cleanup Day RFP, for education projects.

ITEM 18. Amend rule 567—214.8(455F), introductory paragraph, as follows:

567—214.8(455F) Selection of TCD event host. The department will solicit requests for proposals twice a year, *unless otherwise designated by the department,* from applicants to sponsor TCD events. The following is a list of general requirements for hosting a TCD. The proposals will be evaluated on how well the applicant meets these general criteria:

ITEM 19. Amend rule 567—214.9(455F), introductory paragraph, as follows:

567—214.9(455F) TCD events. The TCD events will provide for proper disposal of household hazardous waste from urban and rural households. All hazardous wastes accepted at the event shall be removed from the site within 24 hours after the end of the collection event, unless otherwise authorized by the department or applicant representative. Brochures and videos on how to establish and set up a TCD are available at the *land quality and* waste management assistance division.

ITEM 20. Rescind and reserve rule **567—214.11(455F)**.

ARC 1023B

ENVIRONMENTAL PROTECTION COMMISSION[567]

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 455B.474, the Environmental Protection Commission proposes to amend Chapter 134, "Certification of Groundwater Professionals," Iowa Administrative Code.

Subrule 134.2(3) is being replaced and subrule 134.3(3) is being rescinded. These subrules were used to implement a transition period from the groundwater professional registration program to a certification process. Subrule 134.3(3) is no longer needed. Subrule 134.3(5) is being amended to clarify that 12 hours of continuing education are required during each two-year certification period in order to receive recertification. The continuing education hours cannot be carried over to the next certification period.

Subrule 134.2(3) is being changed to require professional engineers exempted from the certification examination to take the risk-based corrective action (RBCA) instruction course offered by the Department before certification is granted. Previously, the course was required in the first year of certification as part of the engineers' continuing education. The Department believes attending the course prior to certification is needed to ensure acceptable work is performed from the beginning of certification. The Iowa RBCA procedures and software are not part of normal engineering training.

Applicants who fail to pass the certification examination a second time will be required to complete a regular RBCA course of instruction before retaking the exam. Failing the exam the second time shows a need for a better understanding of the RBCA process. The purpose of certification is to have some assurance the person is competent to perform a RBCA investigation for the petroleum-contaminated site owner. Retaking the RBCA instruction course is required of applicants rather than allowing them to take the exam over and over again.

Any interested person may submit written comments on the proposed amendments on or before November 9, 2001. Written comments should be sent to the Iowa Department of Natural Resources, Attn: Paul Nelson, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319, fax (515)281-8895, or E-mail paul.nelson@dnr.state.ia.us.

A public hearing will be held November 6, 2001, at 1 p.m. in the Fifth Floor West Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 455G.18.

The following amendments are proposed.

ITEM 1. Rescind subrule 134.2(3) and adopt the following **new** subrule in lieu thereof:

134.2(3) In order to be certified as a groundwater professional, the applicant must complete the two-day risk-based correction action (RBCA) course and pass a certification examination offered or authorized by the department.

a. An applicant who fails an initial examination may take a second examination.

b. Failure of the second examination will result in termination of the application. A person may reapply for groundwater professional certification. The applicant must complete a regularly scheduled course of instruction before retaking the certification examination.

c. Professional engineers who qualify for an exemption from taking the certification examination under subrule 134.3(6) must attend the RBCA initial course of instruction in order to be certified.

ITEM 2. Rescind and reserve subrule **134.3(3)**.

ITEM 3. Rescind subrule 134.3(5) and adopt the following **new** subrule in lieu thereof:

134.3(5) Continuing education. All groundwater professionals are required to complete at least 12 hours of continuing education during each two-year certification period.

a. The initial course of instruction required in subrule 134.2(3) may be applied toward the first certification period's continuing education requirements. Continuing education credits may not be carried forward to the next certification period.

b. Continuing education must be in the areas relating to underground storage tank contamination assessment and corrective action activities. Courses other than those provided by the department must be submitted to the department for prior approval as meeting the continuing education requirement.

ITEM 4. Amend subrule 134.3(6) as follows:

134.3(6) Exemption from examination. The department may provide for an exemption from the ~~initial course of instruction and~~ certification examination requirements for a professional engineer registered pursuant to Iowa Code chapter 542B *upon submission of sufficient proof of exemption to the Iowa comprehensive petroleum underground storage tank fund board, as provided in Iowa Code section 455G.18(8).* ~~, if the~~ *The* person ~~is~~ *must be* qualified in the field of geotechnical, hydrological, environmental, groundwater, or hydrological engineering ~~upon submission of sufficient proof of exemption to the Iowa comprehensive petroleum underground storage tank fund board, as provided in Iowa code section 455G.18(8)~~. A groundwater professional exempted under this provision must meet the continuing education requirements of subrule 134.3(5).

ARC 1019B

ENVIRONMENTAL PROTECTION COMMISSION[567]

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 455B.474, the Environmental Protection Commission proposes to amend Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

These amendments incorporate the changes made by 2001 Iowa Acts, House File 636, sections 1 and 2, effective July 1, 2001.

2001 Iowa Acts, House File 636, removed the requirement for the person depositing a regulated substance in an unregistered underground storage tank to notify the owners or operators of their duty to register tanks. Also, the person is not required to report the unregistered tank to the Department or provide the owner or operator with a tank registration form. However, it still remains unlawful for both the depositor and the person accepting the regulated substance to deposit a regulated substance into tanks that have not been registered and issued permanent or annual tank tags.

2001 Iowa Acts, House File 636, makes it unlawful for a person to deposit a regulated substance in an underground storage tank after being notified by the Department that the tank is not covered by an approved form of financial responsibility such as insurance. Item 2 incorporates this requirement. The depositor and person accepting the substance remain subject to fines and penalties for depositing a regulated substance under these conditions. The $25 additional registration fee for failing to register a tank has been increased to $250. Also, the additional $250 fee now applies for failure to obtain annual tank tags.

A major change is the requirement for a person who installs underground storage tanks and the owner or operator to notify the Department in writing of the intent to install a tank. A person selling, installing, modifying or repairing a tank used or intended to be used as an underground storage tank now must notify both the purchaser and owner or operator of the tank of the tank registration requirements.

2001 Iowa Acts, House File 636, section 2, gives the Department authority to deny registration and annual tank tags for underground storage tanks for which the owner or operator has not provided proof of financial responsibility coverage to the Department. Item 3 of these amendments requires owners and operators to provide such proof as a condition of receipt of tank registration and annual tank management fee tags without which the owners and operators cannot lawfully obtain product.

The amendments provide the Department authority to give written authorization to fill untagged underground storage tanks for purposes of testing the tanks or when there is a delay in getting tank tags to the owner or operator.

Any interested person may submit written comments on the proposed amendments on or before November 9, 2001. Written comments should be sent to the Department of Natural Resources, Attn: Paul Nelson, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319; fax (515)281-8895; or E-mail paul.nelson@dnr.state.ia.us.

A public hearing will be held November 6, 2001, at 1 p.m. in the Fifth Floor West Conference Room, Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 455B.473 as amended by 2001 Iowa Acts, House File 636, sections 1 and 2.

The following amendments are proposed.

ITEM 1. Amend subrule **135.3(3)**, paragraph **"c,"** as follows:

c. An owner *or operator* who brings into use an underground storage tank after July 1, 1985, shall complete and submit to the department a copy of the notification form provided by the department within 30 days of ~~the existence of the tank~~ *installing the tank in the ground. The owner or operator shall not allow the deposit of any regulated substance into the tank without prior approval of the department or until the tank has been issued a tank registration tag and is covered by an approved financial responsibility mechanism in accordance with 567—Chapter 136.*

ITEM 2. Amend subrule **135.3(3)** by rescinding paragraphs **"h," "i," "j,"** and **"k,"** and adopting in lieu thereof the following **new** paragraphs:

h. Notification requirement for installing a tank. A person installing an underground storage tank and the owner or operator of the underground storage tank must notify the department of their intent to install the tank 30 days prior to installation. Notification shall be on a form provided by the department.

i. Notification requirements for a person who sells, installs, modifies or repairs a tank. A person who sells, installs, modifies, or repairs a tank used or intended to be used in Iowa shall notify, in writing, the purchaser and the owner or operator of the tank of the obligations specified in paragraphs 135.3(3)"c" and "j" and the financial assurance requirements in 567—Chapter 136. The notification must include the prohibition on depositing a regulated substance into tanks which have not been registered and issued tags by the department. A standard notification form supplied by the department may be used to satisfy this requirement.

j. It is unlawful for a person to deposit or accept a regulated substance in an underground storage tank that has not been registered and issued permanent or annual tank management tags in accordance with rule 567—135.3(455B).

(1) The department may provide written authorization to receive a regulated substance when there is a delay in receiving tank tags or at new tank installations to allow for testing the tank system.

(2) The department may provide known depositors of regulated substances lists of underground storage tank sites that have been issued tank tags and those that have not been issued tank tags. These lists do not remove the requirement for depositors to verify that current tank tags are affixed to the fill pipe prior to delivering product. Regulated substances cannot be delivered to underground storage tanks without current tank tags.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(3) A person shall not deposit a regulated substance in an underground storage tank after receiving written or oral notice from the department that the tank is not covered by an approved form of financial responsibility in accordance with 567—Chapter 136.

k. If an owner or operator fails to register an underground storage tank within 30 days after installation or obtain annual renewal tags by April 1, the owner or operator shall pay an additional $250 upon registration of the tank or application for tank tag renewal. The imposition of this fee does not preclude the department from assessing an additional administrative penalty in accordance with Iowa Code section 455B.476.

ITEM 3. Amend subrule **135.3(5)**, paragraph **"b,"** as follows:

b. The owner or operator of tanks over 1100-gallon capacity must submit a tank management fee of $65 per tank by January 15 of each year. *The owner or operator must also submit written proof that the tanks are covered by an approved form of financial responsibility in accordance with 567—Chapter 136. Upon proper payment of the fee and acceptable proof of financial responsibility, a* ~~A~~ one-year registration tag will then be issued for the period from April 1 to March 31. The department shall refund a tank management fee if the tank is permanently closed prior to the effective date of April 1 for that year.

ITEM 4. Amend subrule **135.3(5)**, paragraph **"d,"** as follows:

d. A person who conveys or deposits a regulated substance shall inspect the underground storage tank to determine the existence or absence of a current registration tag. If the tag is not affixed to the fill pipe or fill pipe cap, the person may not deposit the substance in the tank. ~~except as allowed in 135.3(3)"j."~~

ARC 1008B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 41, "Granting Assistance," appearing in the Iowa Administrative Code.

This amendment eliminates the provisions of not counting toward the 60-month Family Investment Program (FIP) limit a month for which all assistance is returned by the family or a month for which all assistance is reimbursed via support collections or overpayment recoveries.

Federal law limits FIP assistance to families to a total of 60 months in their lifetime. Assistance beyond the 60-month period may be provided to families with hardship conditions that affect their ability to become self-supporting during the 60-month period.

Unless exempt from the 60-month limit, each month that a family receives a FIP grant is counted toward the 60-month limit. Under the current rules, a month of FIP assistance is not counted toward the 60-month limit when:

1. The family returns all FIP assistance for the month.
2. All FIP assistance for the month is reimbursed via support collections.
3. All FIP assistance for the month is reimbursed via overpayment recoveries.

To determine if a month of FIP assistance has been repaid or reimbursed, a month-by-month comparison of FIP paid out to the family versus support collections, overpayment recoveries and voluntary repayments is required. Adjustments to the 60-month period then have to be recorded on the 60-month eligibility tracking system.

The overpayment recovery computer system records only the total amount owed by a family for the time period in question. It does not record the amount owed for each month. For example, if a family owes $30 FIP for June, $100 FIP for July and $200 FIP for August, a $330 overpayment is recorded for the period of June through August.

Each repayment type is recorded on a different computer system. To perform the comparison, information is needed from four different computer systems. There is no interface among the four systems. Because the overpayment recovery system is not set up to record recoveries on a monthly basis, it is incompatible with the other systems.

Major system reprogramming is required to produce any kind of automated monthly report to field staff or to perform an automated monthly comparison of FIP paid out versus FIP repaid for the month. Budget and staff levels cannot support the needed system changes. Lacking the needed technology, the only option is a labor-intensive, cumbersome and error-prone manual process. The additional administrative burden on field staff may adversely impact timely and accurate eligibility determinations for FIP and other assistance programs.

It is not uncommon for families to have received countable FIP assistance on multiple cases over time. They may also have multiple child support or overpayment records. Because some families cycle on and off FIP, the 60-month period may take a family longer than 60 months to complete, making a manual monthly comparison even more complicated. Tracking of repayments and reimbursements would have to continue after the family has gone off FIP to be able to adjust the 60-month period should the family reapply for FIP.

For these reasons, the Department is eliminating the offset criteria. The intent of the 60-month FIP limit is to assist families to become self-sufficient and move off public assistance. A number of states have chosen more restrictive time limits. Iowa is deeply committed to providing assistance to needy families and has chosen the maximum 60-month limit allowed under federal law. In addition, Iowa has chosen to provide assistance beyond the 60-month limit to families that need more time because of barriers that prevent them from reaching self-sufficiency. Families that have reached the 60-month limit and that need additional assistance have an opportunity to obtain the assistance by requesting a hardship exemption. There is no limit on the number of hardship exemptions a family that meets the criteria may receive over time.

This amendment does not provide for a waiver to these changes because families that have reached the 60-month limit and that need additional assistance have an opportunity to obtain the assistance by requesting a hardship exemption. Persons may also request a waiver of the 60-month limit under the Department's general rule on exceptions at rule 441—1.8(17A,217).

HUMAN SERVICES DEPARTMENT[441](cont'd)

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before November 7, 2001.

This amendment is intended to implement Iowa Code chapter 234.

The following amendment is proposed.

Amend subrule **41.30(2)**, paragraph **"d,"** by rescinding and reserving subparagraphs **(3)** and **(4)**.

ARC 1009B

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 77, "Conditions of Participation for Providers of Medical and Remedial Care," and Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

These amendments make the following changes in audiology and hearing aid services covered by the Medicaid program:

- Permit vestibular testing by an audiologist when prescribed by a physician. Audiologists are trained to perform vestibular testing and are reimbursed by Medicare.
- Establish a prior authorization requirement for hearing aids costing more than $650. There are no current upper payment limits on hearing aids. The Audiology and Hearing Aid Dispenser Medicaid Advisory Group recommended prior authorization for hearing aids costing more than $650 as a cost-saving measure.
- Clarify that shipping and handling charges are not included in acquisition costs. Federal regulations prohibit Medicaid reimbursement for shipping and handling.
- Update the term "hearing aid dealer" to "hearing aid dispenser."

These needed corrections were identified while completing the rule assessment mandated by Executive Order Number 8.

These amendments do not provide for waivers to the prior authorization requirement because some limit must be set on the cost of hearing aids from a cost standpoint. The remaining changes either provide a benefit or clarify current policy and do not require a waiver. Individuals may request a waiver of departmental policy under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before November 7, 2001.

Oral presentations may be made by persons appearing at the following meetings. Written comments will also be accepted at these times.

Cedar Rapids – November 8, 2001 10 a.m.
Cedar Rapids Regional Office
Iowa Building - Seventh Floor Conference Room
411 Third Street S.E.
Cedar Rapids, Iowa 52401

Council Bluffs – November 7, 2001 9 a.m.
Administrative Conference Room
Council Bluffs Regional Office
417 E. Kanesville Boulevard
Council Bluffs, Iowa 51501

Davenport – November 8, 2001 10 a.m.
Davenport Area Office
Bicentennial Building - Fifth Floor Conference Room
428 Western
Davenport, Iowa 52801

Des Moines – November 7, 2001 10 a.m.
Des Moines Regional Office
City View Plaza - Conference Room 102
1200 University
Des Moines, Iowa 50314

Mason City – November 7, 2001 10 a.m.
Mason City Area Office
Mohawk Square, Liberty Room
22 North Georgia Avenue
Mason City, Iowa 50401

Ottumwa – November 7, 2001 10 a.m.
Ottumwa Area Office
Conference Room 3
120 East Main
Ottumwa, Iowa 52501

Sioux City – November 7, 2001 1:30 p.m.
Sioux City Regional Office
Fifth Floor
520 Nebraska Street
Sioux City, Iowa 51101

Waterloo – November 7, 2001 10 a.m.
Waterloo Regional Office
Pinecrest Office Building
Conference Room 213
1407 Independence Avenue
Waterloo, Iowa 50703

Any persons who intend to attend a public hearing and have special requirements such as hearing or vision impairments should contact the Bureau of Policy Analysis at (515)281-8440 and advise of special needs.

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

The following amendments are proposed.

ITEM 1. Amend rule 441—77.13(249A) as follows:

441—77.13(249A) Hearing aid ~~dealers~~ *dispensers.* Hearing aid ~~dealers~~ *dispensers* are eligible to participate if they are duly licensed by the state of Iowa. Hearing aid ~~dealers~~ *dispensers* in other states will be eligible to participate if they are duly licensed in that state.

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend rule 441—78.14(249A) as follows:

Amend subrules 78.14(2) to 78.14(5) as follows:

78.14(2) Audiological testings. ~~Specified~~ *A physician or an audiologist shall perform* audiological testing ~~shall be performed by a physician or an audiologist~~ as a part of making a determination that a recipient could benefit from the use of a hearing aid. The *audiologist shall report* audiological testing ~~shall be reported~~ on Form 470-0361, Section B. *The department shall cover vestibular testing performed by an audiologist only when prescribed by a physician.*

78.14(3) Hearing aid evaluation. A *physician or an audiologist shall perform a* hearing aid evaluation ~~establishing that~~ *to establish if* a recipient could benefit from a hearing aid ~~shall be made by a physician or an audiologist~~. The *physician or audiologist shall report the* hearing aid evaluation ~~shall be reported~~ on Form 470-0828, Hearing Aid Evaluation/Selection Report. When a hearing aid is recommended for a recipient, the physician or audiologist recommending the hearing aid shall see the recipient at least one time within 30 days subsequent to purchase of the hearing aid to determine that the aid is adequate.

78.14(4) Hearing aid selection. A physician or audiologist may recommend a specific brand or model appropriate to the recipient's condition. When *a physician or an audiologist makes* a general hearing aid recommendation ~~is made by the physician or audiologist~~, a hearing aid ~~dealer~~ *dispenser* may perform the tests to determine the specific brand or model appropriate to the recipient's condition. The *physician, audiologist or hearing aid dispenser shall report the* hearing aid selection ~~shall be reported~~ on Form 470-0828, Hearing Aid Evaluation/Selection Report.

78.14(5) Travel. When a recipient is unable to travel to the physician or audiologist because of health reasons, *the department shall make* payment ~~shall be made~~ for travel to the recipient's place of residence or other suitable location. ~~Payment~~ *The department shall make payment* to physicians ~~shall be made~~ as specified in 78.1(8) and payment to audiologists ~~shall be made~~ at the same rate ~~at which~~ *it reimburses* state employees ~~are reimbursed~~ for travel.

Amend subrule 78.14(6), introductory paragraph, as follows:

78.14(6) Purchase of hearing aid. ~~Payment shall be made~~ *The department shall make payment* for the type of hearing aid recommended when purchased from an eligible licensed hearing aid ~~dealer~~ *dispenser* pursuant to rule 441—77.13(249A). ~~Payment~~ *The department shall make payment* for binaural amplification ~~shall be made~~ when:

Amend subrule **78.14(7)**, paragraphs **"a"** and **"d,"** as follows:

a. Payment for hearing aids shall be acquisition cost plus a dispensing fee covering the fitting and service for six months. ~~Payment will be made~~ *The department shall make payment* for routine service after the first six months. Dispensing fees and payment for routine service shall not exceed the fee schedule appropriate to the place of service. *Shipping and handling charges are not allowed.*

d. *Prior approval.*

(1) Payment for the replacement of a hearing aid less than four years old shall require prior approval except when the recipient is under 21 years of age. ~~Payment shall be approved~~ *The department shall approve payment* when the original hearing aid is lost or broken beyond repair or there is a significant change in the person's hearing ~~which~~ *that* would require a different hearing aid. (Cross-reference 78.28(4)"a")

(2) Payment for a hearing aid costing more than $650 shall require prior approval. The department shall approve payment for either of the following purposes (Cross-reference 78.28(4)"b"):

1. Educational purposes when the recipient is participating in primary or secondary education or in a postsecondary academic program leading to a degree and an in-office comparison of an analog aid and a digital aid matched (+/- 5dB) for gain and output shows a significant improvement in either speech recognition in quiet or speech recognition in noise or an in-office comparison of two aids, one of which is single channel, shows significantly improved audibility.

2. Vocational purposes when documentation submitted indicates the necessity, such as varying amounts of background noise in the work environment and a need to converse in order to do the job, and an in-office comparison of an analog aid and a digital aid matched (+/- 5dB) for gain and output shows a significant improvement in either speech recognition in quiet or speech recognition in noise or an in-office comparison of two aids, one of which is single channel, shows significantly improved audibility.

ITEM 3. Amend subrule 78.28(4) as follows:

78.28(4) Hearing aids ~~which~~ *that* must be submitted for prior approval are:

a. Replacement of a hearing aid less than four years old (except when the recipient is under 21 years of age). ~~Payment shall be approved~~ *The department shall approve payment* when the original hearing aid is lost or broken beyond repair or there is a significant change in the person's hearing ~~which~~ *that* would require a different hearing aid. (Cross-reference 78.14(7)"~~b~~ *d"(1)*)

b. A hearing aid costing more than $650. The department shall approve payment for either of the following purposes (Cross-reference 78.14(7)"d"(2)):

(1) Educational purposes when the recipient is participating in primary or secondary education or in a postsecondary academic program leading to a degree and an in-office comparison of an analog aid and a digital aid matched (+/- 5dB) for gain and output shows a significant improvement in either speech recognition in quiet or speech recognition in noise or an in-office comparison of two aids, one of which is single channel, shows significantly improved audibility.

(2) Vocational purposes when documentation submitted indicates the necessity, such as varying amounts of background noise in the work environment and a need to converse in order to do the job and an in-office comparison of an analog aid and a digital aid matched (+/- 5dB) for gain and output shows a significant improvement in either speech recognition in quiet or speech recognition in noise or an in-office comparison of two aids, one of which is single channel, shows significantly improved audibility.

ARC 1010B

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 77, "Conditions of Participation for Providers of Medical and Remedial Care," and Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

These amendments add coverage of a dental hygienist's services in screening centers and correct the instructions for submitting a screening center provider application. These needed corrections were identified while completing the rule assessment mandated by Executive Order Number 8.

Dental services provided by dental hygienists in screening centers are currently being approved under the Department's exception to policy process.

These amendments do not provide for waivers because the amendments confer a benefit by expanding services covered in a screening center and clarify policy.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before November 7, 2001.

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

The following amendments are proposed.

ITEM 1. Amend rule 441—77.16(249A) as follows:

441—77.16(249A) Screening centers. Public or private health agencies are eligible to participate as screening centers when they have the staff and facilities needed to perform all of the elements of screening specified in 441—78.18(249A) and meet the department of public health's standards for a child health screening center. The staff members must be employed by or under contract with the screening center. ~~Applications~~ *Screening centers shall direct applications* to participate ~~shall be directed~~ to the ~~Division of Medical Services, Hoover State Office Building, Des Moines, Iowa 50319-0114~~ *Medicaid fiscal agent.*

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

ITEM 2. Amend rule 441—78.18(249A) by adopting the following **new** subrule 78.18(8):

78.18(8) Payment shall be made for dental services provided by a dental hygienist employed by or under contract with a screening center.

ARC 1011B

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," appearing in the Iowa Administrative Code.

This amendment revises Medicaid policy governing payment for transplants as follows:

- Policy is clarified regarding allogeneic bone marrow transplants for the treatment of leukemia. Payment is covered only for treatment of acute myelocytic leukemia in relapse or remission, chronic myelogenous leukemia, and acute lymphocytic leukemia in remission. Payment is not covered for chronic lymphocytic leukemia or any other leukemias not listed.
- Liver transplants for persons with persistent viremia are now covered.
- Heart-lung transplants are now covered on a case-by-case basis. The Iowa Foundation for Medical Care (IFMC) may approve heart-lung transplants where bilateral or unilateral lung transplantation without repair of a congenital cardiac defect is contraindicated.
- Pancreas transplants for persons with type I diabetes mellitus are now covered as follows: Simultaneous pancreas-kidney transplants and pancreas after kidney transplants are covered consistent with Medicare criteria. The Iowa Foundation for Medical Care may approve pancreas transplants alone for persons exhibiting any of the following:

1. A history of frequent, acute, and severe metabolic complications (e.g., hypoglycemia, hyperglycemia, or ketoacidosis) requiring medical attention.
2. Clinical problems with exogenous insulin therapy that are so severe as to be incapacitating.
3. Consistent failure of insulin-based management to prevent acute complications. All pancreas transplants require preprocedure review by the Iowa Foundation for Medical Care. Covered transplants are payable only when performed in a facility that meets requirements specified by the Department. (See subrule 78.3(10).) Transplantation of islet cells or partial pancreatic tissue is not covered, consistent with Medicare criteria.

Most of the changes in policy established by this amendment are currently being covered through exceptions to policy. These changes are supported by medical literature and practice, as reviewed and reported in detail by the Iowa Foundation for Medical Care (IFMC) in the annual Transplant Literature Review done for the Department. Pertaining to pancreas transplants in particular, the proposed changes in coverage and payment policy reflect current coverage and payment criteria in place for the federal Medicare program (i.e., for simultaneous pancreas-kidney and pancreas after kidney transplants) and coverage criteria established by the American Diabetes Association (i.e., for pancreas transplants alone).

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment does not provide for waivers of transplant requirements because individuals may request a waiver of those requirements under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before November 7, 2001.

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

The following amendment is proposed.

Amend subrule **78.1(20)**, paragraph **"a,"** as follows:

a. Payment will be made only for the following organ and tissue transplant services:

(1) Kidney, cornea, skin, and bone transplants.

(2) Allogeneic bone marrow transplants for the treatment of ~~leukemia,~~ aplastic anemia, severe combined immunodeficiency disease ~~(SCID)~~, ~~or~~ Wiskott-Aldrich syndrome, *or the following types of leukemia: acute myelocytic leukemia in relapse or remission, chronic myelogenous leukemia, and acute lymphocytic leukemia in remission.*

(3) Autologous bone marrow transplants for treatment of the following conditions: acute leukemia in remission with a high probability of relapse when there is no matched donor; resistant non-Hodgkin's lymphomas; lymphomas presenting poor prognostic features; recurrent or refractory neuroblastoma; or advanced Hodgkin's disease when conventional therapy has failed and there is no matched donor.

(4) Liver transplants for persons with extrahepatic biliary artesia or any other form of end-stage liver disease, except that coverage is not provided for persons with a malignancy extending beyond the margins of the liver ~~or those with persistent viremia~~.

Liver transplants require preprocedure review by the Iowa Foundation for Medical Care. (Cross-reference 78.1(19) and 78.28(1)"f.")

Covered liver transplants are payable only when performed in a facility ~~which~~ *that* meets the requirements of 78.3(10).

(5) Heart transplants. Artificial hearts and ventricular assist devices, either as a permanent replacement for a human heart or as a temporary life-support system until a human heart becomes available for transplants, are not covered. Heart-lung transplants are ~~not~~ covered *where bilateral or unilateral lung transplantation with repair of a congenital cardiac defect is contraindicated.*

Heart transplants *and heart-lung transplants described above* require preprocedure review by the Iowa Foundation for Medical Care. (Cross-reference 78.1(19) and 78.28(1)"f.") Covered heart transplants are payable only when performed in a facility ~~which~~ *that* meets the requirements of 78.3(10).

(6) Lung transplants. Lung transplants for persons having end-stage pulmonary disease. Lung transplants require preprocedure review by the Iowa Foundation for Medical Care. (Cross-reference 78.1(19) and 78.28(1)"f.") Covered transplants are payable only when performed in a facility ~~which~~ *that* meets the requirements of 78.3(10). Heart-lung transplants are ~~not~~ covered *consistent with criteria in subparagraph (5) above.*

(7) Pancreas transplants for persons with type I diabetes mellitus, as follows:

1. Simultaneous pancreas-kidney transplants and pancreas after kidney transplants are covered.

2. Pancreas transplants alone are covered for persons exhibiting any of the following:

- *A history of frequent, acute, and severe metabolic complications (e.g., hypoglycemia, hyperglycemia, or ketoacidosis) requiring medical attention.*
- *Clinical problems with exogenous insulin therapy that are so severe as to be incapacitating.*
- *Consistent failure of insulin-based management to prevent acute complications.*

The pancreas transplants listed under this subparagraph require preprocedure review by the Iowa Foundation for Medical Care. (Cross-reference 78.1(19) and 78.28(1)"f.")

Covered transplants are payable only when performed in a facility that meets the requirements of 78.3(10).

Transplantation of islet cells or partial pancreatic tissue is not covered.

ARC 1012B

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," appearing in the Iowa Administrative Code.

This amendment revises Medicaid policy governing rehabilitation agencies to clarify that family members receiving therapy may be included as part of the group in group therapy, to update rule references related to supervision of assistants, and to correct a misspelling. These needed corrections were identified while the Department was completing the rule assessment mandated by Executive Order Number 8.

This amendment does not provide for waivers because the amendment is merely meant to clarify policy and make it more understandable.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before November 7, 2001.

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

The following amendment is proposed.

Amend subrule **78.19(1)** as follows:

Amend paragraph **"a,"** subparagraph **(6)**, numbered paragraph **"2,"** as follows:

2. Services must be provided primarily on an individual basis. Group therapy is covered, but total units of service in a month shall not exceed total units of individual therapy. *Family members receiving therapy may be included as part of a group.*

Amend paragraph **"b,"** subparagraph **(2)**, as follows:

(2) A qualified physical ~~therapy~~ *therapist* assistant may provide any restorative services performed by a licensed

HUMAN SERVICES DEPARTMENT[441](cont'd)

physical therapist under supervision of the therapist as set forth in the department of public health, professional licensure division, ~~subrule 200.20(7)~~ *rule 645—201.6(272C)*.

Amend paragraph **"b,"** subparagraph **(8)**, third unnumbered paragraph, as follows:

After 12 months of maintenance therapy, a reevaluation is a covered service, if medically necessary. A reevaluation will be considered medically necessary only if there is a significant change in residential or employment situation or the patient exhibits an increase or decrease in functional ability or motivation, clearing of confusion, or the remission of some other medical condition which previously ~~counterindicated~~ *contraindicated* restorative therapy. A statement by the interdisciplinary team of a person with developmental disabilities recommending a reevaluation and stating the basis for medical necessity will be considered as supporting the necessity of a reevaluation and may expedite approval.

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

(1) To be covered under rehabilitation agency services, occupational therapy services must be included in a plan of treatment, improve or restore practical functions which have been impaired by illness, injury, or disabling condition, or enhance the person's ability to perform those tasks required for independent functioning, be prescribed by a physician under a plan of treatment, be performed by a qualified licensed occupational therapist or a qualified licensed occupational ~~therapist~~ *therapy* assistant under the general supervision of a qualified licensed occupational therapist as set forth in the department of public health, professional licensure division, rule 645—~~201.9(148B)~~ *206.6(272C)*, and be reasonable and necessary for the treatment of the person's illness, injury, or disabling condition.

ARC 1013B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

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

This amendment changes the implementation date for changing of the nursing facility occupancy rate from 80 percent to 85 percent from July 1, 2002, to July 1, 2003. This correction is being made at the request of the Administrative Rules Review Committee, the nursing facility industry, and others interested in long-term care services. This correction will be applied retroactively to July 1, 2001, to coincide with other rules involving implementation of the modified price-based case-mix reimbursement system.

This amendment does not provide for waiver to the Medicaid nursing facility reimbursement system because all facilities should be subject to the same system.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before November 7, 2001.

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

The following amendment is proposed.

Amend subrule **81.6(16)**, paragraph **"a,"** subparagraph **(1)**, as follows:

(1) Non-state-owned nursing facilities. Beginning July 1, 2001, patient days for purposes of the computation of administrative, environmental, and property expenses shall be inpatient days as specified in subrule 81.6(7) or 80 percent of the licensed capacity of the facility, whichever is greater.

Beginning July 1, ~~2002~~ *2003*, and thereafter, patient days for purposes of the computation of administrative, environmental, and property expenses shall be inpatient days as determined in subrule 81.6(7) or 85 percent of the licensed capacity of the facility, whichever is greater.

Patient days for purposes of the computation of all other expenses shall be inpatient days as determined in subrule 81.6(7).

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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 84, "Early and Periodic Screening, Diagnosis, and Treatment," appearing in the Iowa Administrative Code.

These amendments revise rules governing the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program in response to an assessment of the rules completed under the rules review process mandated by Executive Order Number 8. These revisions:

- Add a preamble explaining the purpose of the EPSDT program and contents of the chapter.
- Clarify the definition of "screening."
- Add a cross-reference to explain information services covered by Medicaid and delete unnecessary detail regarding the process, which varies depending on the Medicaid coverage group.
- Clarify coverage of interperiodic screens. Interperiodic screens may be furnished when medically necessary to determine whether a child has a physical or mental illness or condition that may require further assessment, diagnosis or treatment.
- Delete a form that the client is no longer required to sign.

These amendments do not provide for waivers in specified situations because the EPSDT program confers a benefit on children and these amendments are meant to clarify policy and make it more understandable.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Build-

HUMAN SERVICES DEPARTMENT[441](cont'd)

ing, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before November 7, 2001.

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

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 84** by adopting the following **new** Preamble:

PREAMBLE

This chapter defines and structures the early and periodic screening, diagnosis and treatment services provided under the Medicaid program to eligible children under the age of 21. As further described in this rule, services include physical and mental health screenings (including hearing and vision), laboratory tests, immunizations, and health education. Services are provided in compliance with federal regulations at Title 42, Part 441, Subpart B, as amended to November 16, 1984.

ITEM 2. Amend rule **441—84.1(249A)** as follows:

Amend the definition of "screening" as follows:

"Screening" is the use of quick, simple procedures to sort out apparently well persons from those who may have a disease or abnormality and to identify those in need of more definitive study. *These services shall be provided in accordance with reasonable standards of medical and dental practice.*

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

"Interperiodic screen" means a screen that occurs between the times stated in the periodicity schedule in 441—subrule 78.18(3).

ITEM 3. Amend subrules 84.3(4) and 84.3(7) as follows:

84.3(4) Health education including anticipatory guidance. *See 441—subparagraph 78.18(6)"b"(1) for a description of the information services.*

84.3(7) Direct dental referral for children over age ~~one~~ *12 months.*

ITEM 4. Amend rule 441—84.4(249A) as follows:

441—84.4(249A) Referral.

84.4(1) The availability of early and periodic screening shall be discussed with the payee for any Medicaid-eligible child under the age of 21 at the time of application and periodically thereafter~~, but no less often than at the time of the annual in-person review~~ *in compliance with federal regulations at Title 42, Part 441, Subpart B, as amended to November 16, 1984.*

84.4(2) Screening shall be offered to each eligible individual according to the periodicity schedule in 441—subrule 78.18(3) when screening has been accepted, or on at least an annual basis when screening has been rejected. *Interperiodic screens may be furnished when medically necessary to determine whether a child has a physical or mental illness or condition that may require further assessment, diagnosis, or treatment.*

~~**84.4(3)** When an individual has not had a screening examination during the preceding 12 months, the worker shall discuss the desirability of the screening with the recipient at the time of the next review. When the recipient agrees to the referral, the worker shall complete Form MA-2119-0, Referral for Screening, and have the recipient sign it.~~

ARC 1015B

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 88, "Managed Health Care Providers," appearing in the Iowa Administrative Code.

These amendments make the following revisions to policy governing the Iowa Plan for Behavioral Health:

- Change policy to be consistent with contract language that requires the contractor to authorize up to 14 calendar days of additional funding on an administrative basis for enrollees under the age of 18 if a safe and appropriate living arrangement is not available.
- Remove policy requiring the contractor to pay crossover claims and copayment amounts. Due to administrative costs, crossover and copayment claims were never included in the Iowa Plan contract and have remained under fee for service.
- Update a federal regulation citation and obsolete terminology.

These needed corrections were identified while the Department was completing the rule assessment mandated by Executive Order Number 8.

These amendments do not provide for waivers because the amendments are merely meant to clarify policy and make it more understandable.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before November 7, 2001.

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

The following amendments are proposed.

ITEM 1. Amend subrule **88.65(3)**, paragraph **"b,"** subparagraph **(8)**, as follows:

(8) ~~Supported community living~~ *Community support* services.

ITEM 2. Amend rule 441—88.67(249A) by adopting the following **new** subrule:

88.67(8) Lack of discharge plan. When a discharge plan as described in subrule 88.67(7) has not been developed or cannot be implemented, the following shall apply:

a. If the contractor is not required to pay for services at the 24-hour level of care as set forth in subrule 88.73(2) because the services do not meet the criteria of psychosocial necessity or service necessity, the contractor is required (keep kids safe policy) to authorize up to 14 calendar days of additional funding on an administrative basis for enrollees under the age of 18 if a safe and appropriate living arrangement is not available because:

(1) A court order is in effect that must be modified to allow the placement of the child into that living arrangement,

HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) A court order is required to allow placement of the child into the appropriate living arrangement,

(3) A bed is not available in the level of care which has been determined as clinically appropriate for the child, or

(4) Services and support must be arranged to assist the natural family, foster family, or other living arrangement to become ready to assist the enrollee after the enrollee's return to that environment.

b. If 24-hour services provided through the Iowa Plan are being decertified, payment is limited in accordance with subrule 88.73(2) except as provided in paragraph 88.67(8)"a."

ITEM 3. Amend rule 441—88.73(249A) as follows:

Amend subrule 88.73(2) as follows:

88.73(2) Limits on payment responsibility for services other than emergency room services. The contractor is not required to reimburse providers for the provision of mental health services that do not meet the criteria of psychosocial necessity. The contractor is not required to reimburse providers for the provision of substance abuse services ~~which~~ *that* do not meet the criteria of service necessity. The contractor has the right to require prior authorization of covered, required and optional services and to deny reimbursement to providers who do not comply with such requirements. Payment responsibilities for emergency room services are as provided at subrule 88.66(2). *Payment responsibility for services provided under the "keep kids safe" policy is set forth at subrule 88.67(8).*

Rescind and reserve subrule **88.73(4)**.

ARC 1016B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 168, "Child Day Care Grants Programs," appearing in the Iowa Administrative Code.

These amendments revise policy governing the Child Care Grants Program in response to an assessment of the rules completed under the rules review process mandated by Executive Order Number 8. These revisions:

- Remove the maximum grant amounts to allow flexibility in determining the amounts of the grants.
- Clarify that parents or persons serving in the capacity of parents must meet the eligibility guidelines for child care assistance as set forth in 441—Chapters 130 and 170.
- Revise the grant application procedure to require that only the original copy, rather than all five copies, needs to have original signatures; specify that applications cannot be submitted electronically or by fax; and specify that applications must arrive by 4:30 p.m. central standard time.
- Change the time frames for persons wishing to appeal the grant review committee's decision from ten working days to five working days.
- Update terminology and references to the Department.

These amendments do not provide for waivers because these changes confer a benefit on grantees or are merely to update references. Individuals may request a waiver of departmental policy under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before November 7, 2001.

These amendments are intended to implement Iowa Code subsection 234.6(5).

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 168**, title and Preamble, as follows:

CHAPTER 168
CHILD ~~DAY~~ CARE GRANTS PROGRAMS

PREAMBLE

These rules define and structure the child ~~day~~ care grants programs. The grants shall be available for start-up and expansion for school-age child care programs and for wrap-around child care programs.

ITEM 2. Amend rule **441—168.1(234)**, definitions of "child day care services" and "grant review committee," as follows:

"Child ~~day~~ care services" means services for children of low-income parents *or persons who serve in the capacity of the parents* who ~~are in vocational training; or employed 20 or more hours per week, or are employed an average of 20 or more hours per week during the month; or who are unable to provide adequate and necessary care for a child with special needs, or for a limited period of time, when the caring person is absent due to hospitalization, physical or mental illness, or death; or for protective services (without regard to income)~~ *meet the eligibility guidelines for child care assistance as set forth in 441—Chapters 130 and 170.*

"Grant review committee" means a committee appointed by the chief of the bureau of ~~individual and family support and protective services~~ *family and community support.*

ITEM 3. Amend rule 441—168.2(234) as follows:

441—168.2(234) Availability of grants. In any year in which funds are available for child ~~day~~ care grants, the department shall administer grants to eligible applicants. ~~The maximum amount of a school-age child care grant shall be $10,000. The maximum amount of a wrap-around child care grant shall be $40,000.~~ *The amount of the money shall be contingent upon the funds available and shall be granted on an annual basis. The administrator of the division of adult, children, and family services shall approve the allocation of funds.* If sufficient qualified proposals are not received, the department reserves the right to not allocate all grant funds.

ITEM 4. Amend subrule **168.3(2)**, paragraphs **"a"** and **"c,"** as follows:

a. Funds for this grant shall cover the total program costs for one calendar year for *up to and including* 16 children.

c. All children enrolled shall meet eligibility guidelines for child care assistance as set forth in 441—~~Chapter~~ *Chapters* 130 *and 170*. However, no child care assistance subsidy shall be requested since the total costs of the program shall be

HUMAN SERVICES DEPARTMENT[441](cont'd)

provided by this grant.

ITEM 5. Amend rule 441—168.4(234), introductory paragraph, as follows:

441—168.4(234) Request for proposals for grant applications. All applicants shall submit an original and four copies of the application~~, with all five documents having original signatures,~~ to the Iowa Department of Human Services, Bureau of ~~Individual and Family Support and Protective Services~~ *Family and Community Support*, Hoover State Office Building, *1305 E. Walnut,* Des Moines, Iowa 50319-0114. To be qualified, the applications must have arrived in the above office by 4:30 p.m. *central standard time* on the date specified in the announcement. *Applications may not be submitted electronically or by fax.*

ITEM 6. Amend rule 441—168.9(234) as follows:

441—168.9(234) Appeals. Applicants dissatisfied with the grant review committee's decision may file an appeal with the Appeals Section, ~~Bureau of Policy Analysis,~~ Hoover State Office Building, *1305 E. Walnut,* Des Moines, Iowa 50319-0114. The letter of appeal must be received within ~~ten~~ *five* working days of the date of the notice of decision; must be based on a contention that the process was conducted outside of statutory authority, violated state or federal law, policy or rule, did not provide adequate public notice, was altered without adequate public notice, or involved conflict of interest by staff or committee members; and must include a request for the director to review the decision and the reasons for dissatisfaction. The amount of the grant is not grounds for appeal. Within ten working days of the receipt of the appeal the director, or the director's designee, shall review the appeal request and issue a final decision.

No disbursements shall be made to any applicant for a period of ~~ten~~ *five* working days following the notice of decision. If an appeal is filed within the ~~ten~~ *five* working days, all disbursements shall be held pending a final decision on the appeal.

ARC 1041B

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of 2001 Iowa Acts, Senate File 500, section 8(2c) and section 11, the Insurance Division gives Notice of Intended Action to amend Chapter 15, "Unfair Trade Practices," Iowa Administrative Code.

The Commissioner was directed by 2001 Iowa Acts, Senate File 500, to adopt rules on audit of medical claims by insurers and prompt payment by insurers of clean claims for health care benefits. These rules contain definitions and guidelines for insurers and health care providers for compliance with these two new requirements.

Any person may make written comments on the proposed rules on or before November 6, 2001. These comments should be directed to Rosanne Mead, Assistant Commissioner, Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be transmitted by fax to (515)281-3059 or by E-mail to rosanne.mead@iid.state.ia.us.

A public hearing will be held at 10:30 a.m. on November 7, 2001, at the offices of the Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Persons wishing to provide oral comments should contact Rosanne Mead no later than November 6, 2001, to be placed on the agenda.

These rules are intended to implement Iowa Code chapter 507B as amended by 2001 Iowa Acts, Senate File 500.

The following new rules are proposed.

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

191—15.16(507B) Audit procedures for medical claims.

15.16(1) Prohibitions. The following applies to all claims paid on or after January 1, 2002:

a. Absent a reasonable basis to suspect fraud, an insurer may not audit a claim more than two years after the submission of the claim to the insurer or a claim for which the payor gave prior approval for the care provided.

b. An insurer may not audit a claim with an aggregate value of less than $25.

15.16(2) Standards.

a. In auditing a claim, the insurer must make a reasonable effort to ensure that the audit is performed by a person or persons with medical knowledge of the medical service provided and with knowledge of the procedure codes applicable to the particular type of provider being audited.

b. In auditing a claim, the auditor must use the procedure code that was in effect on the date the medical service was provided.

15.16(3) Contents of audit request. All correspondence regarding the audit of a claim must include the following information:

a. The name, address, telephone number and contact person of the insurer conducting the audit,

b. The name of the entity performing the audit if not the insurer, and

c. The specific coding or billing procedure that is under review.

This rule is intended to implement Iowa Code section 507B.4, subsection 9, as amended by 2001 Iowa Acts, Senate File 500.

ITEM 2. Adopt the following **new** rule:

191—15.17(507B) Prompt payment of claims.

15.17(1) Definitions and scope.

a. For purposes of this rule the following definitions apply:

"Circumstance requiring special treatment" means:

1. A claim that an insurer has a reasonable basis to suspect may be fraudulent or that fraud or a material misrepresentation may have occurred under the benefit certificate or policy or in obtaining such certificate or policy; or

2. A matter beyond the insurer's control, such as an act of God, insurrection, strike or other similar labor dispute, fire or power outage or, for a group-sponsored health plan, the failure of the sponsoring group to pay premiums to the insurer in a timely manner; or

3. Similar unique or special circumstances which would reasonably prevent an insurer from paying an otherwise clean claim within 30 days.

"Clean claim" means clean claim as defined in 2001 Iowa Acts, Senate File 500, section 8(2b).

"Coordination of benefits for third-party liability" means a claim for benefits by a covered person who has coverage under more than one health benefit plan.

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"Insurer" means insurer as defined in 2001 Iowa Acts, Senate File 500, section 7.

"Properly completed billing instrument" means:

1. In the case of a health care provider that is not a health care professional:

- The Health Care Finance Administration (HCFA) Form 1450 or similar form adopted by its successor Centers for Medicare/Medicaid Services (CMS) as adopted by the National Uniform Billing Committee (NUBC) with data element usage prescribed in the UB-92 National Uniform Billing Data Elements Specification Manual, or
- The electronic format for institutional claims adopted as a standard by the Secretary of Health and Human Services pursuant to Section 1173 of the Social Security Act; or

2. In the case of a health care provider that is a health care professional:

- The HCFA Form 1500 paper form or its successor as adopted by the National Uniform Claim Committee (NUCC) and further defined by the NUCC in its implementation guide; or
- The electronic format for professional claims adopted as a standard by the Secretary of Health and Human Services pursuant to Section 1173 of the Social Security Act; and

3. Any other information reasonably necessary for an insurer to process a claim for benefits under the benefit certificate or policy with the insured contract.

b. This subrule applies to claims submitted on or after January 1, 2002, and is limited to policies issued, issued for delivery, or renewed in this state.

15.17(2) Insurer duty to promptly pay claims and pay interest.

a. Insurers subject to this subrule shall either accept and pay or deny a clean claim within 30 days after the insurer's receipt of such claim. A clean claim is considered to be paid on the date upon which a check, draft, or other valid negotiable instrument is written. Insurers shall implement procedures to ensure that these payments are promptly delivered.

b. Insurers or entities that administer or process claims on behalf of an insurer who fail to pay a clean claim within 30 days after the insurer's receipt of all information reasonably necessary to establish a clean claim shall pay interest. Interest shall accrue at the rate of 10 percent per annum commencing on the thirty-first day after the insurer's receipt of all information necessary to establish a clean claim. Interest will be paid to the claimant or provider based upon who is entitled to the benefit payment as determined by the terms of the applicable benefit certificate or policy.

c. Insurers shall have 30 days from the receipt of a claim to request additional information to establish a clean claim. An insurer shall provide a written or electronic notice to the claimant or health care provider if additional information is needed to establish a clean claim. The notice shall include a full explanation of the information necessary to establish a clean claim.

15.17(3) Certain insurance products exempt. Claims paid under the following insurance products are exempt from the provisions of this subrule: liability insurance, workers' compensation or similar insurance, automobile or homeowners insurance, medical payment insurance, disability income insurance, or long-term care insurance.

This rule is intended to implement 2001 Iowa Acts, Senate File 500, section 8, and Iowa Code section 507B.4 as amended by 2001 Iowa Acts, Senate File 500.

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INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 514D.3, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 37, "Medicare Supplement Insurance Minimum Standards," Iowa Administrative Code.

These amendments are proposed to conform the Iowa rules to recent changes in the federal Social Security Act as amended by the Medicare, Medicaid, and SCHIP Improvement and Protection Act of 2000. The federal amendments became effective in December 2000.

Any person may make written comments on the proposed amendments on or before November 6, 2001. These comments should be directed to Rosanne Mead, Assistant Commissioner, Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be transmitted by fax to (515)281-3059 or by E-mail to rosanne.mead@iid.state.ia.us.

A public hearing will be held at 9 a.m. on November 7, 2001, at the offices of the Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Persons wishing to provide oral comments should contact Rosanne Mead no later than November 6, 2001, to be placed on the agenda.

These amendments are intended to implement Iowa Code chapter 514D.

The following amendments are proposed.

ITEM 1. Amend paragraph **37.7(2)"e"** as follows:

e. Coverage for the coinsurance amount or in the case of hospital outpatient department services *paid* under a prospective payment system, the copayment amount of Medicare Eligible Expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

ITEM 2. Amend subparagraph **37.7(3)"i"(2)** by adopting the following **new** numbered paragraph **"7"**:

7. Tetanus and diphtheria booster (every ten years).

ITEM 3. Amend subrule 37.24(1) as follows:

37.24(1) Eligible persons are those individuals described in subrule 37.24(2) who~~, subject to 37.24(2)"b," apply to enroll under the policy not later than 63 days after the date of the termination of enrollment described in subrule 37.24(2)~~ *seek to enroll under the policy during the period specified in subrule 37.24(3)* and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subrule 37.24(~~3~~5) that is offered and available for issuance to new enrollees by issuer, shall not discriminate in the pricing of such Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such Medicare supplement policy.

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ITEM 4. Amend subparagraph **37.24(2)"b"(1)** as follows:

(1) The certification of the organization or plan under this part has been terminated ~~or the organization or plan has notified the individual of an impending termination of such certification~~; or

ITEM 5. Amend subparagraph **37.24(2)"b"(2)** as follows:

(2) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides ~~or has notified the individual of an impending termination or discontinuance of such plan~~; or

ITEM 6. Rescind subparagraph **37.24(2)"b"(5)** and renumber subparagraph **37.24(2)"b"(6)** as **37.24(2)"b"(5)**.

ITEM 7. Amend paragraph **37.24(2)"c"** as follows:

c. The individual is enrolled with:

(1) An eligible organization under a contract under Section 1876 *of the Social Security Act* (Medicare ~~risk or~~ cost); or

(2) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999; or

(3) An organization operating under an agreement under Section 1833(a)(1)(A) *of the Social Security Act* (health care payment plan); or

(4) and (5) No change.

ITEM 8. Amend paragraph **37.24(2)"e"** as follows:

e. The individual was enrolled under a Medicare supplement policy and terminated enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under Part C of Medicare, any eligible organization under a contract under Section 1876 *of the Social Security Act* (Medicare ~~risk or~~ cost), any similar organization operating under demonstration project authority, any PACE ~~program~~ *provider* under Section 1894 of the Social Security Act, ~~an organization under an agreement under Section 1833(a)(1)(A) (health care prepayment plan),~~ or a Medicare Select policy; and the subsequent enrollment under 37.24(2)"e" was terminated by the enrollee during any period within the first 12 months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act); or

ITEM 9. Amend paragraph **37.24(2)"f"** as follows:

f. The individual upon first becoming enrolled for benefits under Part B of Medicare at age 65 or older enrolls in a Medicare+Choice plan under Part C of Medicare or ~~in~~ *with* a PACE ~~program~~ *provider* under Section 1894 *of the Social Security Act* and disenrolls from the plan or program by no later than 12 months after the effective date of enrollment.

ITEM 10. Adopt **new** subrules 37.24(3) and 37.24(4) as follows and renumber existing subrules **37.24(3)** and **37.24(4)** as **37.24(5)** and **37.24(6)**.

37.24(3) Guaranteed issue time periods.

a. In the case of an individual described in paragraph 37.24(2)"a," the guaranteed issue period begins on the date the individual receives a notice of termination or cessation of some or all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of such a termination or cessation) and ends 63 days after the date of the applicable notice.

b. In the case of an individual described in paragraphs 37.24(2)"b," "c," "e" or "f" whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated.

c. In the case of an individual described in subparagraph 37.24(2)"d"(1), the guaranteed issue period begins on the earlier of (1) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice, if any, and (2) the date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated.

d. In the case of an individual described in paragraph 37.24(2)"b," subparagraph 37.24(2)"d"(2), subparagraph 37.24(2)"e"(2), paragraph 37.24(2)"e" or paragraph 37.24(2)"f" who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date.

e. In the case of an individual described in subrule 37.24(2) but not described in the preceding paragraphs 37.24(3)"a" to "d," the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

37.24(4) Extended Medigap access for interrupted trial periods.

a. In the case of an individual described in paragraph 37.24(2)"e" (or deemed to be so described pursuant to this paragraph) whose enrollment with an organization or provider described in that paragraph is involuntarily terminated within the first 12 months of enrollment and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment as described in paragraph 37.24(2)"e."

b. In the case of an individual described in paragraph 37.24(2)"f" (or deemed to be so described pursuant to this paragraph) whose enrollment with a plan or in a program described in that paragraph is involuntarily terminated within the first 12 months of enrollment and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment as described in paragraph 37.24(2)"f."

c. For purposes of paragraphs 37.24(2)"e" and "f," no enrollment of an individual with an organization or provider described in paragraph 37.24(2)"e," or with a plan or in a program described in paragraph 37.24(2)"f," may be deemed to be an initial enrollment under paragraph 37.24(4)"c" after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

ITEM 11. Amend renumbered paragraph **37.24(5)"b"** as follows:

b. Paragraph 37.24(2)"e" is the same Medicare supplement policy in which the individual was previously enrolled if available from the same issuer, or, if not so available, a policy described in paragraph 37.24(~~3~~ 5) "a."

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INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code chapter 508E, the Insurance Division hereby gives Notice of Intended Action to adopt Chapter 48, "Viatical and Life Settlements," Iowa Administrative Code.

Proposed Chapter 48 provides for the administration of viatical and life settlements by providing rules under which viatical and life settlements may be made, by requiring the licensure of viatical settlement brokers and viatical settlement providers, and by requiring disclosures and other provisions by which viators may be protected.

A copy of the proposed rules may be obtained from the Insurance Division's Web site at http://www.iid.state.ia.us.

Any interested person may make written or electronic suggestions or comments on the proposed rules until 4:30 p.m. on Friday, November 9, 2001. Such material should be directed to Jim Thornton, Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059; E-mail Jim.Thornton@iid.state.ia.us.

There will be a public hearing on the proposed rules at 2 p.m. on Thursday, November 15, 2001, at the offices of the Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Persons wishing to provide oral comments should contact Jim Thornton no later than November 9, 2001, to be placed on the agenda. Persons with special needs should contact the Insurance Division prior to the hearing if accommodations need to be made.

It is the Division's intent to adopt these rules following the public comment period and make them effective February 1, 2002, except for the viatical settlement broker licensing requirement, 191—subrule 48.3(2), which shall become effective July 1, 2002. This delay in effective dates is necessary to allow the licensing test to be developed and to allow prospective viatical settlement brokers time to take said test for licensure.

These rules are intended to implement Iowa Code chapter 508E.

The following **new** chapter is proposed.

CHAPTER 48
VIATICAL AND LIFE SETTLEMENTS

191—48.1(508E) Purpose and authority. The purpose of this chapter is to provide for the administration of viatical and life settlements in this state by providing rules under which viatical and life settlements may be made, disclosures and other provisions by which viators may be protected, and safeguards by which viatical settlement providers may be monitored and remain in good standing. These rules are adopted by the commissioner pursuant to the authority in Iowa Code chapter 508E.

191—48.2(508E) Definitions.

"Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell a life insurance policy or an interest in a life insurance policy pursuant to a viatical settlement contract.

"Business character report" means a statement certified by an independent third party which has conducted a comprehensive review of the applicant's background and has indicated that the biographical information provided in the report, as completed by the applicant, has no inaccurate or conflicting information. An independent third party is one that has no affiliation with the applicant and is in the business of providing background checks or investigations. Business character reports must be current and shall not be older than one year prior to the date the application is filed. The business character report shall be in the format prescribed by the commissioner.

"Business of viatical settlements" means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating of viatical settlement contracts or viatical settlement investment contracts.

"Escrow agent" means an individual or institution that has established an escrow or trust account with a state-chartered or federally chartered financial institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation (FDIC) and with whom an escrow account has been established for use by a viatical settlement provider or viatical settlement purchaser.

"Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but:

1. Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and
2. Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

"Financing entity" does not include a nonaccredited investor or viatical settlement purchaser.

"Life settlement" means a viatical settlement in which the viator has not been diagnosed as terminally or chronically ill. For purposes of these rules, unless otherwise distinguished, the term "life settlement" shall be synonymous with viatical settlement.

"Person" means a natural person or a legal entity including, but not limited to, an individual, partnership, limited liability company, association, trust, or corporation.

"Policy" means an individual or group policy, group certificate, contract or arrangement of life insurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.

"Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider un-

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der which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

"Special purpose entity" means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or licensed viatical settlement provider.

"Viatical settlement broker" means a person that, on behalf of a viator and for a fee, commission or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, a certified public accountant or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

"Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, will be paid to the viator in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement with a viator to provide for lump sum settlements or annuities pursuant to subrule 48.9(16) only, such settlements to be made at the time of assignment. "Viatical settlement contract" does not mean a written agreement entered into between a viator and a person having an insurable interest in the viator's life.

"Viatical settlement investment agent" means a person who solicits or arranges for the purchase of a viatical settlement investment contract by a viatical settlement purchaser and who is acting on behalf of an issuer as defined in Iowa Code chapter 502.

"Viatical settlement investment contract" means a contract or agreement that is entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy and that is entered into for the purpose of deriving an economic benefit. A viatical settlement investment contract is a security under Iowa Code chapter 502.

"Viatical settlement provider" means a person other than a viator that enters into or effectuates a viatical settlement contract. A viatical settlement provider may be an issuer of securities requiring registration of the viatical settlement investment contract pursuant to Iowa Code chapter 502. "Viatical settlement provider" does not include:

1. A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;

2. The issuer of a life insurance policy providing accelerated benefits;

3. An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, purchaser, special purpose entity or related provider trust;

4. A financing entity;

5. A special purpose entity;

6. A related provider trust;

7. A viatical settlement purchaser; or

8. An institutional buyer as defined in rule 191—50.46(502) or a qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, and who purchases a viaticated policy from a viatical settlement provider. An institutional buyer under rule 191—50.46(502) shall include an accredited investor.

"Viatical settlement purchaser" means a person who gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit. Viatical settlement purchaser does not include:

1. A viatical settlement provider or viatical settlement broker licensed and acting under these rules; or

2. An institutional buyer as defined in rule 191—50.46(502) or a qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933. An institutional buyer under rule 191—50.46(502) shall include an accredited investor.

"Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

"Viator" means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract to sell the life insurance policy or certificate. For the purposes of this rule, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. "Viator" does not include:

1. A viatical settlement provider or viatical settlement broker as defined in this rule.

2. An institutional buyer as defined in rule 191—50.46(502) or a qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, and who purchases a viaticated policy from a viatical settlement provider. An institutional buyer under rule 191—50.46(502) shall include an accredited investor, as long as such accredited investor is not the named insured or owner of the policy to be viaticated.

3. A financing entity.

4. A special purpose entity.

5. A related provider trust.

191—48.3(508E) License requirements.

48.3(1) Viatical settlement provider. A person shall not operate as a viatical settlement provider without first obtaining a license from the commissioner of the state of residence of the viator.

a. Upon the filing of an application in the format prescribed by the commissioner and the payment of an application fee in the amount of $100 and the costs of an initial examination, the commissioner shall make an investigation of

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each applicant and issue a license if the commissioner finds that the applicant:

(1) Has provided a detailed plan of operation, which includes details of the proposed operation in this state;

(2) Is competent and trustworthy and intends to act in good faith in the capacity of viatical settlement provider;

(3) Has a good business reputation and has had experience, training or education so as to be qualified in the business of a viatical settlement provider;

(4) If a legal entity, has provided proof of licensure and a certificate of good standing from the state of its domicile;

(5) Has provided either:

1. A copy of the current year's audited financial statement, and a copy of audited financial statements for each of the previous five years; or

2. At the commissioner's discretion, a copy of the current year's consolidated annual audited financial statement with a financial guarantee from the provider's ultimate controlling person, and unaudited financial statements from the provider for the current year and each of the previous five years;

(6) Maintains books and records in compliance with generally accepted accounting principles;

(7) Has provided proof of a fidelity bond on each officer and director in the amount of $100,000 issued by an insurance carrier rated with one of the four highest categories by A.M. Best, or a comparable rating by another rating agency;

(8) Has provided business character reports for the following: officers and directors (as listed on the most recent financial statement), key managerial personnel (including any vice presidents or other individuals who will control the operations of the applicant), and individuals with a 10 percent or more beneficial ownership in the applicant who will exercise control over the applicant;

(9) Has provided the initial viatical settlement contracts and disclosure statements for approval and such contracts and statements have been approved;

(10) Has provided information regarding the identity of the escrow agent to be used; and

(11) Has provided a report of any civil, criminal or administrative actions taken or pending against the viatical settlement provider in any state or federal court or agency, regardless of outcome, excluding misdemeanor traffic citations and juvenile offenses.

b. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this rule.

c. In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement provider complies with the requirements of this subrule.

48.3(2) Viatical settlement broker. A person shall not operate as a viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator. Upon the filing of an application in the format prescribed by the commissioner and the payment of an application fee in the amount of $100, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

a. Has passed the test required by the commissioner or has taken and passed a test on viatical and life settlement contracts required by another state insurance department;

b. Is competent and trustworthy and intends to act in good faith in the capacity of viatical settlement broker;

c. Has a good business reputation and has had experience, training or education so as to be qualified in the business of a viatical settlement broker;

d. Has provided a report of any civil, criminal or administrative actions taken or pending against the viatical settlement broker in any state or federal court or agency, regardless of outcome, excluding misdemeanor traffic citations and juvenile offenses; and

e. Has provided proof that the applicant is covered individually by an errors and omissions policy for an amount of not less than $100,000 liability per occurrence and not less than $100,000 total annual aggregate for all claims during the policy period.

In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement broker complies with the requirements of this subrule.

48.3(3) Governing law where viators are residents of different states. For purposes of this subrule, if there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement contract shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators. If another state does not have a substantially similar statute or rule to Iowa Code chapter 508E and this rule, the actions related to the viatical settlement contract shall be governed by the law of this state.

48.3(4) Commissioner to be used for service of process. The commissioner shall not issue a license to an applicant unless either a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

48.3(5) License term.

a. A viatical settlement provider or viatical settlement broker who meets the requirements of this rule, unless otherwise denied licensure pursuant to rule 48.12(508E), shall be issued a license.

b. A viatical settlement provider license is valid for one year and automatically terminates on March 31 of the renewal year unless renewed pursuant to subrule 48.3(6).

c. A viatical settlement broker license is valid for three years and automatically terminates on March 31 of the renewal year unless renewed pursuant to subrule 48.3(6).

d. A viatical settlement provider license or a viatical settlement broker license may remain in effect for the term of the license, unless revoked or suspended, as long as all required fees are paid in the time prescribed by the commissioner.

e. The license issued to a viatical settlement provider or viatical settlement broker shall be a limited license that allows the licensee to operate only within the scope of its license.

48.3(6) License renewal. A viatical settlement provider license or a viatical settlement broker license may be renewed as follows:

a. A viatical settlement provider license may be renewed by payment of $100 within the time prescribed by the commissioner and by demonstration that the viatical settle-

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ment provider continues to meet the requirements of subrule 48.3(1) and has provided the reports required by rule 48.6(508E). If renewal is approved, the license will be renewed effective March 31 of the renewal year, will be valid for one year, and will automatically terminate on March 31 of the following renewal year unless renewed pursuant to this subrule.

b. A viatical settlement broker license may be renewed by payment of $100. If renewal is approved, the license will be renewed effective March 31 of the renewal year, will be valid for three years, and will automatically terminate on March 31 of the following renewal year unless renewed pursuant to this subrule.

c. If a viatical settlement provider or viatical settlement broker fails to pay the renewal fee within the time prescribed, or a viatical settlement provider fails either to meet the requirements of subrule 48.3(1) or to submit the reports required in rule 48.6(508E), such nonpayment or failure shall result in lapse of the license.

d. A licensed viatical settlement broker who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance may request from the commissioner a waiver of renewal procedures. Such viatical settlement broker may also request a waiver of any examination requirement or any other penalty or sanction imposed for failure to comply with renewal procedures.

48.3(7) Duty to notify commissioner of cessation of business in the state. If a viatical settlement provider intends to cease business in Iowa, it must notify the commissioner of those intentions and of its plan of operation for such cessation at least 180 days before the cessation occurs. This requirement ensures that servicing of the viatical settlement investment contracts continues and all current business can be completed. This requirement is not meant to imply that a company must continue to accept new viatical or life settlement business during the 180-day period.

48.3(8) Duty to notify commissioner of changes.

a. A viatical settlement provider shall provide to the commissioner any new or revised information about officers, stockholders holding 10 percent or more of the stock of the company, partners, directors, members or designated employees within 30 days of the date the addition or revision occurred.

b. A viatical settlement provider or viatical settlement broker shall inform the commissioner in writing of any change of name or address within 30 days of the date of such change. In addition, a viatical settlement provider shall provide the commissioner with 30 days' notice of the cancellation or nonrenewal of a fidelity bond required for licensure under subrule 48.3(1) and the name of the carrier that will be providing coverage subsequent to such cancellation or nonrenewal.

c. A viatical settlement provider or viatical settlement broker shall report to the commissioner any administrative action taken against the viatical settlement provider or viatical settlement broker in another state or federal jurisdiction or by another governmental agency in this state within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent to the order, or other relevant legal documents. Within 30 days of the initial pretrial hearing date, a viatical settlement provider or viatical settlement broker shall report to the commissioner any criminal prosecution of the viatical settlement provider or viatical settlement broker taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

48.3(9) Commissioner may use outside assistance. In order to assist with the commissioner's duties, the commissioner may contract with a nongovernmental entity including, but not limited to, the National Association of Insurance Commissioners (NAIC) or any affiliate or subsidiary the NAIC oversees, to perform any ministerial functions related to licensing of viatical settlement providers or viatical settlement brokers that the commissioner deems appropriate including, but not limited, to the collection of fees.

191—48.4(508E) Approval of viatical settlement contracts and disclosure statements.

48.4(1) A viatical settlement provider or viatical settlement broker shall not use a viatical settlement application, a viatical settlement contract or a viatical settlement disclosure statement form in this state unless it has been filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement form or disclosure statement if, in the commissioner's opinion, the provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the commissioner's discretion, the commissioner may require the submission of advertising material.

48.4(2) The initial viatical settlement contracts and disclosure statements shall be filed for approval with the viatical settlement provider's application for licensure, as required under subparagraph 48.3(1)"a"(9). A distinct form number shall be assigned to each viatical settlement form the provider will be using.

48.4(3) If a viatical settlement provider enters into a viatical settlement contract that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain the following:

a. A provision that the viatical settlement provider will effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated and that benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company;

b. A provision that the viatical settlement provider will, upon acknowledgment of the perfection of the transfer, either:

(1) Advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy; or

(2) Send to the insured a copy of the document(s) sent from the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy; and

c. A provision that apportions the premiums to be paid by the viatical settlement provider and the viator. It is permissible for the viatical settlement contract to specify that all premiums shall be paid by the viatical settlement provider. The viatical settlement contract also may require that the viator reimburse the viatical settlement provider only for the premiums attributable to the retained interest.

48.4(4) In order to ensure that viators receive a reasonable return for viaticating an insurance policy when life expectancy is less than 25 months, a viatical settlement provider shall pay to a viator a discounted amount of the face value of the policy which amount shall be calculated at least at the following rates:

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Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loans Received by Viator
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but less than 25 months	60%
25 months or more	Cash surrender value of policy

The percentage may be reduced by 5% for viaticating a policy written by an insurer rated less than the highest four categories by A.M. Best, or a comparable rating by another rating agency.

For a viatical settlement in which the viator has a life expectancy of 25 months or more, a viatical settlement provider or broker shall not enter into a viatical settlement contract that provides a payment to the viator that is unreasonable or unjust. As listed above, such payment must at least be equal to the cash surrender value of the policy. In determining whether a payment is unreasonable or unjust, the commissioner may consider, among other factors, the life expectancy of the insured; the applicable rating of the insurance company that issued the subject policy by a rating service generally recognized by the insurance industry, regulators and consumer groups; and prevailing discount rates in the viatical and life settlement market in Iowa or, if insufficient data is available for Iowa, the prevailing rates nationally or in other states that maintain this data.

48.4(5) If a viatical settlement provider subsequently desires to change the viatical settlement contract documents or disclosure statements approved at the time of licensure, the provider shall submit the modified contract documents or disclosure statements to the commissioner for approval in triplicate, along with a postage-paid return envelope. The viatical settlement provider shall identify its name and address in the cover letter and also reference the form number of the modified viatical settlement contract document or disclosure statement. Black-lining the modifications made within the document(s) should expedite the form review and approval process.

191—48.5(508E) Disclosures.

48.5(1) With each application for a viatical settlement contract, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by the viator and the viatical settlement broker. The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall provide the following information:

a. There are possible alternatives to a viatical settlement contract including any accelerated death benefits or policy loans offered under the prospective viator's life insurance policy;

b. Some or all of the proceeds of the viatical settlement contract may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor;

c. Proceeds of the viatical settlement contract could be subject to the claims of creditors;

d. Receipt of the proceeds of a viatical settlement contract may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies;

e. The viator has the right to rescind a viatical settlement contract for 15 calendar days after the receipt of the viatical settlement proceeds by the viator, as provided in subrule 48.9(10), and, if the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans and loan interest to the viatical settlement provider or viatical settlement purchaser;

f. Funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer's or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated;

g. Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator, and assistance should be sought from a financial adviser;

h. When entering into a viatical settlement contract, having a recent physical exam is in the viator's best interest, since an accurate life expectancy can only be predicted based on current medical records;

i. Disclosure to a viator shall include distribution of the NAIC's most current form of brochure describing the process of viatical settlements, or such other form approved by the commissioner;

j. The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other, may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase."; and

k. The insured may be contacted by either the viatical settlement provider or viatical settlement broker or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once per year if the insured has a life expectancy of more than two years, once every three months if the insured has a life expectancy of more than one year but less than two years, and no more than once per month if the insured has a life expectancy of one year or less.

48.5(2) A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker, and provide the following information:

a. The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated;

b. The name, address and telephone number of the viatical settlement provider;

c. The amount and method of calculating the broker's compensation, including anything of value paid or given to a viatical settlement broker for the placement of a policy;

d. If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of

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a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with the viator's insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement;

e. The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate and, if known, the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the viatical settlement provider's interest in those benefits; and

f. The name, business address, and telephone number of the independent third-party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

48.5(3) If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the viatical settlement provider shall communicate the change in ownership or beneficiary to the insured in writing by certified mail within 20 days after the change.

48.5(4) If the viatical settlement provider is an issuer of securities under Iowa Code chapter 502, the disclosure document shall meet the requirements of rule 191—50.122(502).

48.5(5) If the viator is not the insured, then these disclosures must be affirmatively made to the insured, as well as the viator, and written consent to the viatication must be received from both parties.

191—48.6(508E) Reporting requirements.

48.6(1) On March 1 of each calendar year, the secretary and either the president or the vice-president of each viatical settlement provider licensed in this state shall make a report under oath of all viatical settlement transactions in which the viator is a resident of this state and for all states in the aggregate that contains the following information for the previous calendar year:

a. For viatical settlements contracted during the reporting period:

(1) Date of viatical settlement contract;

(2) Viator's state of residence at the time of the contract;

(3) Mean life expectancy, in months, of the insured at time of contract;

(4) Face amount of policy viaticated;

(5) Net death benefit viaticated;

(6) Estimated total premiums to keep policy in force for mean life expectancy;

(7) Net amount paid to viator;

(8) Source of policy (B-Broker; D-Direct Purchase; SM-Secondary Market);

(9) Type of coverage (I-Individual; G-Group);

(10) Within the contestable or suicide period, or both, at the time of viatical settlement (yes or no);

(11) If the insured is diagnosed as terminally or chronically ill, the general disease classification applicable to such insured; and

(12) Type of funding (I-Institutional; P-Private).

b. For viatical settlements in which death of the insured has occurred during the reporting period:

(1) Date of viatical settlement contract;

(2) Viator's state of residence at the time of the contract;

(3) Mean life expectancy, in months, of the insured at time of contract;

(4) Net death benefit collected;

(5) Total premiums paid to maintain the policy (WP-Waiver of Premium; NA-Not Applicable);

(6) Net amount paid to viator;

(7) If the insured was diagnosed as terminally or chronically ill, the general disease classification applicable to such insured;

(8) Date of death of insured;

(9) Amount of time, in months, between date of contract and date of death of insured;

(10) Difference between the number of months that passed between the date of contract and the date of death of insured and the mean life expectancy in months as determined by the reporting company;

c. Name and address of each viatical settlement broker through whom the reporting company purchased a policy from a viator who resided in this state at the time of contract;

d. Number of policies reviewed and rejected; and

e. Number of policies purchased from persons other than a viator (on the secondary market) as a percentage of total policies purchased.

48.6(2) On or before March 1 of each year, the secretary and either the president or the vice-president of each viatical settlement provider licensed in this state shall make a report under oath of the following or shall provide the following documentation:

a. That the viatical settlement provider has at all times maintained books and records in compliance with generally accepted accounting principles;

b. That the viatical settlement provider has obtained and furnished to the commissioner either:

(1) A copy of the current year's audited financial statement; or

(2) At the commissioner's discretion, a copy of the current year's consolidated annual audited financial statement with a financial guarantee from the provider's ultimate controlling person; and

c. That the viatical settlement provider has maintained fidelity bonds on each officer and director in the amount of $100,000.

191—48.7(508E) Privacy. Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, viatical settlement investment agent, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity shall not disclose that identity as an insured or the insured's financial or medical information to any other person unless the disclosure:

1. Is necessary to effect a viatical settlement contract between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

2. Is necessary to effect a viatical settlement investment contract between the viatical settlement purchaser and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

3. Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of rules 48.8(508E) and 48.11(508E);

4. Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;

5. Is necessary to permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

6. Is necessary to allow the viatical settlement provider

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or viatical settlement broker or the provider's or broker's authorized representatives to make contacts for the purpose of determining health status; or

7. Is required to purchase stop-loss coverage.

191—48.8(508E) Examination or investigations.

48.8(1) Authority, scope and scheduling of examinations.

a. The commissioner may conduct an examination of a viatical settlement provider or viatical settlement broker as often as the commissioner deems appropriate.

b. For purposes of completing an examination under this chapter, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the viatical settlement provider or viatical settlement broker.

c. The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

d. In lieu of an examination of any foreign or alien viatical settlement provider or viatical settlement broker licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the viatical settlement provider or viatical settlement broker as prepared by the commissioner for the viatical settlement provider's or viatical settlement broker's state of domicile or port-of-entry state.

e. The provisions of Iowa Code chapter 507 shall apply to viatical settlement providers and viatical settlement brokers. The commissioner shall examine the affairs, transactions, accounts, records and assets of each viatical settlement provider as often as the commissioner deems advisable. The expense of such examination shall be assessed against the viatical settlement provider in the same manner as insurers are assessed for examinations.

f. Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to this subrule.

48.8(2) Record retention requirements.

a. Executed documents. A person required to be licensed by this rule shall retain copies of all of the following records until the earlier of five years after the death of the viator or until completion of an examination following the death of the viator:

(1) Executed viatical settlement contracts, viatical settlement investment contracts, underwriting documents, policy forms, and applications from the date of the execution of the viatical settlement contract or viatical settlement investment contract, whichever is later; and

(2) All checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of viatical settlement contract funds from the date of the transaction; and

(3) All other records and documents related to the requirements of this rule.

b. Unexecuted documents. A person required to be licensed by these rules shall retain copies of all of the following records for one year: viatical settlement contracts, viatical settlement investment contracts, underwriting documents, policy forms, and applications that were proposed but not accepted by a potential viator, from the date of the proposed viatical settlement contract or viatical settlement investment contract, whichever is later.

c. This subrule does not relieve a person of the obligation to produce these documents to the commissioner after the retention period has expired if the person has retained the documents.

d. Records required to be retained by this subrule must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

191—48.9(508E) Requirements and prohibitions.

48.9(1) A viatical settlement investment agent shall not have any contact directly or indirectly with the viator or have knowledge of the identity of the viator.

48.9(2) A viatical settlement investment agent is deemed to represent the viatical settlement provider with whom the viatical settlement investment agent is appointed or contracted.

48.9(3) Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.

48.9(4) Before entering into a viatical settlement contract, a viatical settlement provider shall obtain:

a. If the viator is the insured and has a life expectancy of 24 months or less, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

b. A document in which the insured consents to the release of the insured's medical records to a viatical settlement provider, viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

48.9(5) Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued the insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by subrule 48.9(6).

48.9(6) The viatical settlement provider shall deliver a copy of the medical release required under subrule 48.9(4)"b," a copy of the viator's application for the viatical settlement contract, the notice required under subrule 48.9(5) and a request for verification of coverage to the insurer that issued the life insurance policy that is the subject of the viatical transaction. The NAIC's form for verification shall be used unless standards for verification are developed by the commissioner.

48.9(7) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation regarding the validity of the insurance contract.

48.9(8) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, represents that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator is entering into the viatical settle-

ment contract freely and voluntarily and, for persons who are chronically ill or terminally ill under the definitions of Iowa Code sections 508E.2(1)and (3), acknowledges that the insured is chronically ill or terminally ill and that the chronic or terminal illness or condition was diagnosed after the life insurance policy was issued.

48.9(9) All medical information solicited or obtained by any viatical settlement provider or viatical settlement broker shall be subject to the provisions of 191—Chapter 90, which governs the confidentiality of medical information.

48.9(10) All viatical settlement contracts entered into in this state shall provide the viator with an unconditional right to rescind the viatical settlement contract for at least 15 calendar days from the receipt of the viatical settlement contract proceeds. If the insured dies during the viatical settlement contract rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or viatical settlement purchaser of all viatical settlement contract proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or viatical settlement purchaser.

48.9(11) The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary of the insurance policy or certificate directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document (or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the viatical settlement provider), the viatical settlement provider shall pay or transfer the proceeds of the viatical settlement contract into an escrow or trust account established with a state-chartered or federally chartered financial institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation (FDIC) and with whom an escrow account has been established by a viatical settlement provider or viatical settlement purchaser. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider within three business days. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator within three business days.

48.9(12) Failure to tender consideration to the viator for the viatical settlement contract within the time required by subrule 48.9(11) renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

48.9(13) Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or viatical settlement broker licensed in this state or the provider's or broker's authorized representatives and shall be limited to once per year if the insured has a life expectancy of more than two years, once every three months for an insured with a life expectancy of more than one year, and no more than once per month for an insured with a life expectancy of one year or less. The viatical settlement provider or viatical settlement broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subrule shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

48.9(14) With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a beneficiary, to the estate of the viator.

48.9(15) Payment by the escrow agent of the proceeds of a viatical settlement contract shall be by means of wire transfer to the account of the viator or by certified check or cashier's check.

48.9(16) Payment of the proceeds to the viator pursuant to a viatical settlement contract shall be made in a lump sum except where the viatical settlement provider has purchased a single-premium paid-up annuity issued by a licensed insurance company to the viator. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible.

48.9(17) A viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall not provide identifying information about either the insured or the viator to any person, unless the insured and viator provide written consent to the release of the information at or before the time of the viatical settlement transaction pursuant to subrule 48.5(1) and rule 48.7(508E) or if such release is necessary to report suspected fraudulent viatical settlement acts pursuant to subrule 48.11(4).

48.9(18) A viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall obtain from a person that is provided with identifying information about either the insured or the viator a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured or the viator for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider, viatical settlement broker or viatical settlement investment agent is served with a subpoena and thereby compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last-known addresses within five business days after receiving notice of the subpoena.

48.9(19) A viatical settlement provider shall not act also as a viatical settlement broker, whether entitled to collect a fee directly or indirectly, related to the same viatical settlement contract.

48.9(20) A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

48.9(21) A viatical settlement provider shall not use a longer life expectancy than is reasonable based on all medical and actuarial information available at the time of a viatical settlement transaction in order to reduce the payout to which the viator is entitled.

48.9(22) A viatical settlement provider or viatical settlement broker shall not discriminate in the making or solicitation of viatical settlement contracts on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with or without dependents.

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48.9(23) A viatical settlement provider or viatical settlement broker shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to an insured or viator, or to any other person acting as an agent of an insured or viator with respect to a viatical settlement contract.

48.9(24) A viatical settlement provider shall not knowingly solicit individuals who have treated or have been asked to treat the illness of an insured whose coverage would be the subject of a viatical settlement contract.

48.9(25) A viatical settlement provider shall not structure a viatical settlement investment contract in a manner which requires an insurer to keep track of more than ten beneficiaries for each insurance contract being viaticated.

48.9(26) Viatical settlement contracts entered into within first two years of issuance of insurance.

a. A person shall not enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

(1) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 24 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

(2) The viator is a charitable organization exempt from taxation under 26 U.S.C. §501(c)(3);

(3) The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

1. The viator or insured is terminally ill or chronically ill, as defined in Iowa Code section 508E.2(1) or (3);
2. The viator's spouse dies;
3. The viator divorces the viator's spouse;
4. The viator retires from full-time employment;
5. The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment;
6. The viator was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;
7. A final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a substantial part of the viator's assets;
8. The viator experiences a significant decrease in income that is unexpected and that impairs the viator's reasonable ability to pay the policy premium; or
9. The viator or insured disposes of ownership interests in a closely held corporation.

b. Copies of the independent evidence described in this subrule and documents required by subrule 48.9(6) shall be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

48.9(27) If a viatical settlement broker performs any of the activities required of the viatical settlement provider by this rule, the viatical settlement provider is deemed to have fulfilled the requirements of this rule.

48.9(28) Insurance company practices.

a. Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a viatical settlement provider or a viatical settlement broker within 30 calendar days of the date a request is received, including the insurer's intent to pursue an additional investigation regarding possible fraud or the validity of the insurance contract, subject to the following conditions:

(1) A current authorization consistent with applicable law, signed by the policy owner or certificate holder, accompanies the request;

(2) In the case of an individual policy, submission of a form substantially similar to the NAIC's most current form describing verification of coverage for individual policies, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form;

(3) In the case of group insurance coverage, submission of a form substantially similar to the NAIC's most current form describing verification of group life insurance benefits,

1. Which has been completed by the viatical settlement provider or viatical settlement broker in accordance with the instructions on the form, and
2. Which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

b. Nothing in this subrule shall prohibit a life insurance company and a viatical settlement provider or a viatical settlement broker from using another verification of coverage form that has been mutually agreed upon in writing in advance of submission of the request.

c. A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this subrule in excess of any usual and customary charges to contract holders, certificate holders or insureds for similar services.

d. The life insurance company may send an acknowledgment of receipt of the request for verification of coverage to the policyowner(s) or certificate holder(s) and, in cases in which the policyowner or certificate holder is other than the insured, to the insured. The acknowledgment may contain a description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract and said acknowledgment may compare the benefits of accelerating the death benefits to the viatication of the policy.

e. If the viatical settlement provider submits to the insurer a copy of the owner's or insured's certification described in subrule 48.9(8) when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this subrule and the insurer shall timely respond to the request.

191—48.10(508E) Advertising for viatical settlements.

48.10(1) The purpose of this rule is to ensure that prospective viators are provided with clear and unambiguous statements in the advertisement of viatical settlements and to ensure the clear, truthful and adequate disclosure of the benefits, risks, limitations and exclusions of any viatical settlement contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissi-

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ble and impermissible conduct in the advertising of viatical settlements to ensure that product descriptions are presented in a manner that prevents unfair, deceptive or misleading advertising and is conducive to accurate presentations and descriptions of viatical settlements through the advertising media and material used by viatical settlement providers or viatical settlement brokers. A viatical settlement investment contract is a "security" as set forth in Iowa Code section 502.102(19); therefore, the advertising requirements of rule 191—50.120(502) are applicable.

48.10(2) This rule shall apply to any advertising of viatical settlement contracts or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. Where disclosure requirements are established pursuant to federal regulation, this subrule shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

48.10(3) Every viatical settlement provider or viatical settlement broker shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the viatical settlement provider or viatical settlement broker. A system of control shall include regular routine notification, at least once per year, to agents and others authorized by the viatical settlement provider or viatical settlement broker who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement provider or viatical settlement broker.

48.10(4) An advertisement shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception. An advertisement shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

48.10(5) The information required to be disclosed under this rule shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

48.10(6) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving prospective viators as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, or that an offer is made to refund the payment if the viator is not satisfied, or that the viatical settlement contract includes a "free look" period that satisfies or exceeds legal requirements does not remedy misleading statements.

48.10(7) An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

48.10(8) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.

48.10(9) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

48.10(10) Testimonials, appraisals or analysis used in advertisements must: be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract, product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the viatical settlement provider or viatical settlement broker makes as its own all the statements contained therein, and the statements are subject to all the provisions of this subrule.

a. If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the viatical settlement provider or related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

b. An advertisement shall not state or imply that a viatical settlement contract, benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement provider or viatical settlement broker is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the viatical settlement provider or viatical settlement broker, or receives any payment or other consideration from the viatical settlement provider or viatical settlement broker for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

c. When an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period of five years after its use.

48.10(11) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

48.10(12) An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services or methods of marketing.

48.10(13) The name of the viatical settlement provider or viatical settlement broker shall be clearly identified in all advertisements about the viatical settlement provider or viatical settlement broker or its viatical settlement contract, products or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

48.10(14) An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement provider or viatical settlement broker, name of a particular division of the viatical settlement provider or viatical settlement broker, service mark, slogan, symbol or other device or reference without disclosing the name of the viatical settlement provider or viatical settlement broker, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement provider or viatical settlement broker, or to create the

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impression that a company other than the viatical settlement provider or viatical settlement broker would have any responsibility for the financial obligation under a viatical settlement contract.

48.10(15) An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

48.10(16) An advertisement may state that a viatical settlement provider or viatical settlement broker is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing viatical settlement provider or viatical settlement broker may not be so licensed. The advertisement may ask the audience to consult the viatical settlement provider's or viatical settlement broker's Web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.

48.10(17) An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.

48.10(18) The name of the viatical settlement provider or viatical settlement broker shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the viatical settlement provider or viatical settlement broker, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or to deceive as to the true identity of the viatical settlement provider or viatical settlement broker or to create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the viatical settlement provider or viatical settlement broker.

48.10(19) An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U.S. government endorses, approves or favors:

a. Any viatical settlement provider or viatical settlement broker or its business practices or methods of operation;

b. The merits, desirability or advisability of any viatical settlement contract;

c. Any viatical settlement contract; or

d. Any life insurance policy or life insurance company.

48.10(20) If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

48.10(21) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the viatical settlement provider or viatical settlement broker during the prior six months.

48.10(22) In recommending a viatical settlement contract, viatical settlement brokers and viatical settlement providers shall make suitable recommendations.

191—48.11(508E) Fraud prevention and control.

48.11(1) Definition. "Fraudulent viatical settlement act" includes:

a. Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, conspires in the commission of, conspires to commit, or permits its employees or its agents to engage in acts including but not limited to:

(1) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, insurer, insurance producer or any other person, false material information, or concealing material information, as part of, in support of or concerning a fact material to one or more of the following:

1. An application for the issuance of a viatical settlement contract or insurance policy;

2. The underwriting of a viatical settlement contract or insurance policy;

3. A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;

4. Premiums paid on an insurance policy;

5. Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;

6. The reinstatement or conversion of an insurance policy;

7. The solicitation, offer, effectuation or sale of a viatical settlement contract or insurance policy;

8. The issuance of written evidence of a viatical settlement contract or insurance policy; or

9. A financing transaction.

(2) Employing any device, scheme, or artifice to defraud related to viaticated policies.

b. Instances in which, in the furtherance of a fraud or to prevent the detection of a fraud, any person commits or permits its employees or its agents to:

(1) Remove, conceal, alter, destroy or sequester from the commissioner the assets or records of a viatical settlement provider or viatical settlement broker or other person engaged in the business of viatical settlement contracts;

(2) Misrepresent or conceal the financial condition of a viatical settlement provider or viatical settlement broker, insurer or other person;

(3) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of viatical settlement contracts; or

(4) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the commissioner.

c. Embezzlement, theft, misappropriation or conversion of moneys, funds, premiums, credits or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner or any other person engaged in the business of viatical settlement contracts or insurance.

d. Recklessly entering into, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the viator or the viator's agent intended to defraud the policy's issuer. "Recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substan-

tial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.

e. Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subrule.

48.11(2) Fraudulent viatical settlement acts, interference and participation of convicted felons prohibited.

a. A person shall not commit a fraudulent viatical settlement act.

b. A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this rule or investigations of suspected or actual violations of this rule.

c. A person in the business of viatical settlement contracts shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlement contracts, unless the person's resident state has granted the person consent to work in the business of insurance, pursuant to 18 U.S.C. Section 1033(e)(2).

48.11(3) Fraud warning required.

a. Viatical settlement contracts and applications for viatical settlement contracts, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

b. The lack of a statement as required in paragraph "a" of this subrule does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

48.11(4) Mandatory reporting of fraudulent viatical settlement acts.

a. Any person engaged in the business of viatical settlement contracts having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

b. Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

191—48.12(508E) Penalties; injunctions; civil remedies; cease and desist.

48.12(1) Unfair trade practices. A violation of this rule shall be considered an unfair trade practice under Iowa Code chapter 507B and subject to the penalties contained in that chapter.

48.12(2) Unauthorized insurer. A person doing the activities of a viatical settlement provider or a viatical settlement broker without license under this chapter shall be deemed an unauthorized insurer and shall be subject to the penalties of Iowa Code chapter 507A.

48.12(3) License revocation and denial. The commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a viatical settlement provider or viatical settlement broker if the commissioner finds that:

a. There was any material misrepresentation in the application for the license;

b. The viatical settlement provider or viatical settlement broker or any officer, partner, member or key management employee has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;

c. The viatical settlement provider made unreasonable payments to viators;

d. The viatical settlement provider or viatical settlement broker or any officer, partner, member or key management employee has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

e. The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this rule;

f. The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

g. The viatical settlement provider or viatical settlement broker no longer meets the requirements of rule 48.3(508E) for initial licensure;

h. The viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, a viatical settlement purchaser, an institutional buyer as defined in rule 191—50.46(502) or a qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, a financing entity, a special purpose entity, or a related provider trust; or

i. The viatical settlement broker or viatical settlement provider or any of its officers, partners, members or key management personnel has violated any provision of Iowa Code chapter 508E or of these rules.

48.12(4) If the commissioner denies a license application or suspends, revokes or refuses to renew the license of a viatical settlement provider or viatical settlement broker, the commissioner shall conduct a hearing in accordance with 191—Chapters 2 and 3.

48.12(5) A viatical settlement provider licensed in this state that fails to file the annual statement referred to in subparagraph 48.3(1)"a"(5) and paragraph 48.3(6)"b" in the time required shall pay and forfeit an administrative penalty in the sum of $500 for deposit pursuant to Iowa Code section 505.7. The viatical settlement provider's right to transact further new business in this state shall immediately cease until the provider has fully complied with this rule.

48.12(6) In addition to the penalties and other enforcement provisions of this rule, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain the person from committing the violation.

48.12(7) The commissioner may issue, in accordance with 191—Chapters 2 and 3, a cease and desist order upon a person that violates any provision of these rules, any regulation or order adopted by the commissioner or any written agreement entered into with the commissioner.

48.12(8) If the commissioner finds that an activity in violation of this rule presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains in effect for 90 days. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a

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court of competent jurisdiction pursuant to 191—Chapters 2 and 3.

191—48.13(508E) Severability. If any rule or portion of a rule or its applicability to any person or circumstance is held invalid by a court, the remainder of these rules or the rules' applicability to other persons or circumstances shall not be affected.

These rules are intended to implement Iowa Code chapter 508E.

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INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249G.2, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 72, "Long-Term Care Asset Preservation Program," Iowa Administrative Code.

The proposed amendments modify the process for approval of the required training program, reduce the number of education credits required and specify the content of the training. The amendments also change numerous references from "qualified" to "approved" to avoid confusion with similar references in the Internal Revenue Code.

Any person may make written comments on the proposed amendments on or before November 6, 2001. These comments should be directed to Rosanne Mead, Assistant Commissioner, Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be transmitted by fax to (515)281-3059 or by E-mail to rosanne.mead@iid.state.ia.us.

A public hearing will be held at 11:30 a.m. on November 7, 2001, at the offices of the Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Persons wishing to provide oral comments should contact Rosanne Mead no later than November 6, 2001, to be placed on the agenda.

These amendments are intended to implement Iowa Code chapter 249G.

The following amendments are proposed.

ITEM 1. Amend rule **191—72.3(249G)**, definitions of "asset disregard," "asset protection," "authorized designee," "certificate holder," "qualified insured," "qualified long-term care insurance policy or certificate," and "service summary," as follows:

"Asset disregard" means a $1 increase in the amount of assets an individual who purchases ~~a qualified~~ *an approved* long-term care policy may retain, upon qualification for Medicaid, for each $1 of benefit paid out under the individual's ~~qualified~~ *approved* long-term care policy for Medicaid-eligible long-term care services in determining eligibility for the Medicaid program.

"Asset protection" means the right extended by 441 IAC 75.5(5) to beneficiaries of ~~qualified~~ *approved* long-term care insurance policies and certificates to an asset disregard under the Iowa long-term care asset preservation program.

"Authorized designee" means any person designated in writing to the insurance company by the policyholder or certificate holder of ~~a qualified~~ *an approved* long-term care policy or certificate for purposes of notification under paragraph 72.7(1)"h."

"Certificate holder" means an owner of ~~a qualified~~ *an approved* long-term care insurance certificate or the beneficiary of ~~a qualified~~ *an approved* long-term care certificate.

"Qualified insured" means the following:

1. An individual who by reason of age is eligible for parts "A" and "B" of the Medicare program (42 U.S.C. 1395 et seq.) who is either

- The beneficiary of ~~a qualified~~ *an approved* long-term care policy or certificate approved by the division of insurance; or
- Enrolled in a prepaid health care delivery plan that provides long-term care services and qualifies under this rule; or

2. An individual who is eligible for an asset disregard under ~~a qualified~~ *an approved* long-term care policy or certificate. An individual does not have to be a qualified insured to purchase ~~a qualified~~ *an approved* long-term care policy or certificate.

"~~Qualified~~ *Approved* long-term care insurance policy or certificate" means any long-term care insurance policy or certificate ~~qualified~~ *approved* for sale to Iowa residents by the division of insurance as meeting standards promulgated under rules 191—72.6(249G) and 191—72.7(249G).

"Service summary" means a written summary, prepared by an issuer for a qualified insured, which identifies the following:

1. The specific ~~qualified~~ *approved* policy or certificate.
2. The total benefits paid for services to date.
3. The amount of benefits qualifying for asset protection.

ITEM 2. Amend rule 191—72.5(249G) as follows:

Amend the introductory paragraph as follows:

191—72.5(249G) Standards for marketing. No long-term care insurance policy or certificate which does not meet the requirements of this chapter and has not been approved by the division of insurance as a ~~qualified~~ long-term care insurance policy or certificate may be advertised, solicited, or issued for delivery in this state as ~~a qualified~~ *an approved* long-term care insurance policy or certificate. Each issuer seeking to qualify a long-term care policy or certificate for participation in the Iowa long-term care asset preservation program must do the following:

Amend paragraph **72.5(2)"b"** as follows:

b. Received a description of the issuer's ~~qualified~~ *approved* long-term care policy or certificate benefit option meeting the requirements of subrule 72.6(2).

Amend paragraph **72.5(2)"e"** as follows:

e. Received a description regarding mandatory inflation protection that shall be in the following format:

NOTICE TO APPLICANT REGARDING
MANDATORY INFLATION PROTECTION

In order for this long-term care policy [certificate] to remain ~~qualified~~ *approved* by the state of Iowa and qualify to provide asset protection for the state Medicaid program, daily coverage benefits must meet or exceed standards established by the state of Iowa. Depending on the option you choose to automatically inflate daily coverage benefits, premiums may rise over the life of the policy [certificate]. [Insert issuer name] will provide you with a graphic comparison showing the differences in premiums and benefits, over at least a

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20-year period, between a policy that increases benefits over the policy period and a policy that does not increase benefits. Failure to maintain the required daily coverage benefits will result in the policy [certificate] losing its qualification status and no longer being allowed to provide asset protection. It is [insert issuer name]'s responsibility to automatically inflate coverage benefit levels in order to maintain qualification; it is your responsibility to make premium payments in order to maintain qualification.

Amend subrule 72.5(3), introductory paragraph, as follows:

72.5(3) Report to the commissioner of the division of insurance all sales involving replacement of existing policies and certificates by ~~qualified~~ *approved* policies or certificates within 30 days of the issue date of the newly issued ~~qualified~~ *approved* policy or certificate. The report shall include the following:

ITEM 3. Amend paragraph **72.5(4)"a"** as follows:

a. Provide written evidence to the division of insurance that procedures are in place to ensure that no producer or telemarketer will be authorized to market, sell, solicit, or otherwise contact any person for the purpose of marketing ~~a qualified~~ *an approved* long-term care insurance policy or certificate unless the producer or telemarketer has completed ~~16 hours~~ *eight credits* of training approved by the division of insurance *and specifically covering* ~~on long-term care insurance, in general, and~~ the Iowa long-term care asset preservation program ~~specifically~~ *and Medicaid.* Such assurances shall be in the form of a document *submitted to the division of insurance and* signed by the producer or telemarketer and a representative of the company attesting to the completion of the required training by the producer ~~and submitted to the division of insurance~~.

ITEM 4. Amend paragraph **72.5(4)"b"** as follows:

b. Issuers shall provide written evidence to the division of insurance that procedures are in place to ensure that no producer, broker, solicitor, or individual will be authorized to market, sell, solicit, or otherwise contact any person for the purpose of marketing a certified long-term care insurance policy or certificate unless, ~~prior to relicensure~~ *on an annual basis*, the producer, broker, solicitor, or individual completes ~~4~~ *two* hours of continuing education training ~~every 12 months after the completion of the initial 16 hours of training required.~~ *specifically covering the Iowa long-term care asset preservation program and Medicaid. The annual training courses must be approved by the division of insurance.* Such assurances shall be in the form of a document signed by the producer, broker, solicitor, or individual and a representative of the company attesting to the completion of the required training by the producer, broker, solicitor, or individual and shall be made available to the division of insurance upon request.

ITEM 5. Amend paragraph **72.5(4)"d"** as follows:

d. Issuers shall submit training courses used for continuing education for approval to the *outside vendor under contract with the* division of insurance at least 30 days prior to the beginning of the course. Requests received later may be disapproved.

ITEM 6. Amend subrule 72.5(6) as follows:

72.5(6) Long-term care insurance policies or certificates sold after July 1, 1994, that are not ~~qualified~~ *approved* under the Iowa long-term care asset preservation program must include a statement on the outline of coverage, the policy or certificate application, and the front page of the policy or certificate in bold type and in a separate box as follows: "THIS POLICY [CERTIFICATE] DOES NOT QUALIFY FOR MEDICAID ASSET PROTECTION UNDER THE IOWA LONG-TERM CARE ASSET PRESERVATION PROGRAM. ~~HOWEVER, THIS POLICY [CERTIFICATE] IS AN APPROVED LONG-TERM CARE INSURANCE POLICY [CERTIFICATE] UNDER STATE INSURANCE REGULATIONS.~~ FOR INFORMATION ABOUT POLICIES AND CERTIFICATES QUALIFYING UNDER THE IOWA LONG-TERM CARE ASSET PRESERVATION PROGRAM, CALL THE SENIOR HEALTH INSURANCE INFORMATION PROGRAM OF THE DIVISION OF INSURANCE AT 1-515-281-5705."

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INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 514J.14, the Insurance Division gives Notice of Intended Action to amend Chapter 76, "External Review," Iowa Administrative Code.

The proposed amendments incorporate into Chapter 76 changes in the external review procedure in Iowa Code chapter 514J as amended by 2001 Iowa Acts, Senate File 500. The amendments also clarify the scope of the rules and clarify procedures.

Any person may make written comments on the proposed amendments on or before November 6, 2001. These comments should be directed to Rosanne Mead, Assistant Commissioner, Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be transmitted by fax to (515)281-3059 or by E-mail to rosanne.mead@iid.state.ia.us.

A public hearing will be held at 10 a.m. on November 7, 2001, at the offices of the Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Persons wishing to provide oral comments should contact Rosanne Mead no later than November 6, 2001, to be placed on the agenda.

These amendments are intended to implement Iowa Code chapter 514J as amended by 2001 Iowa Acts, Senate File 500.

The following amendments are proposed.

ITEM 1. Amend rule 191—76.1(78GA,SF276) as follows:

191—76.1(~~78GA,SF276~~ *514J*) Purpose. This chapter is intended to implement ~~1999 Iowa Acts, Senate File 276,~~ *Iowa Code chapter 514J* to provide a uniform process for enrollees of carriers providing health insurance coverage to request an external review of a coverage decision based upon medical necessity. Carriers defined in ~~1999 Iowa Acts, Senate File 276, section 8(1),~~ *Iowa Code section 514J.2(1) and organized delivery systems as defined in Iowa Code section 514J.2(6)* are subject to these rules.

INSURANCE DIVISION[191](cont'd)

~~This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 7.~~

ITEM 2. Amend rule 191—76.2(78GA,SF276) as follows:

191—76.2(~~78GA,SF276~~ *514J*) Applicable law. The rules contained in this chapter ~~and 1999 Iowa Acts, Senate File 276,~~ shall apply to *any sickness or accident plan and any plan of* health insurance ~~policies~~, *health care benefits or health care services provided by an insurance company, a health maintenance organization, or a nonprofit health service corporation,* and *any plan established pursuant to Iowa Code chapter* 509A ~~plans~~ delivered or issued for delivery in this state.

~~This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 7.~~

ITEM 3. Amend rule 191—76.3(78GA,SF276) as follows:

191—76.3(~~78GA,SF276~~ *514J*) Notice of coverage decision and content. The notice required under ~~1999 Iowa Acts, Senate File 276,~~ *Iowa Code chapter 514J* shall contain the following information:

1. to 4. No change.

~~This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 10.~~

ITEM 4. Amend rule 191—76.4(78GA,SF276) as follows:

191—76.4(~~78GA,SF276~~ *514J*) External review request.

76.4(1) The enrollee shall send a copy of the carrier's *or organized delivery system's* written notice *containing the coverage decision* with the enrollee's request for an external review to the insurance commissioner within 60 days of the receipt of the coverage decision. *The notice shall be sent to the commissioner at the Insurance Division, 330 Maple Street, Des Moines, Iowa 50319.*

76.4(2) No change.

~~This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 10.~~

ITEM 5. Rescind rule 191—76.5(78GA,SF276) and adopt in lieu thereof the following **new** rule:

191—76.5(514J) Certification process.

76.5(1) The commissioner shall fax the certification decision to the carrier or organized delivery system, the enrollee or the enrollee's treating health care provider acting on behalf of the enrollee, within the two-day period specified in Iowa Code section 514J.5(1).

76.5(2) The commissioner has two business days to rule on a carrier or organized delivery system's contest of the commissioner's certification decision. The commissioner shall provide a written notice of the determination by fax within the two-day period to the carrier or organized delivery system and the enrollee or the enrollee's treating health care provider acting on behalf of the enrollee.

ITEM 6. Amend rule 191—76.6(78GA,SF276) as follows:

191—76.6(~~78GA,SF276~~ *514J*) Expedited review.

76.6(1) The enrollee's treating health care provider shall directly contact the carrier *or organized delivery system* for an expedited review if the enrollee's treating health care provider states that delay would pose an imminent or serious threat to the enrollee.

76.6(2) The enrollee's treating health care provider and the carrier *or organized delivery system* shall select an independent review entity to conduct the external review within 72 hours. In the event that the enrollee's treating health care provider and the carrier *or organized delivery system* cannot reach an agreement upon the selection of an independent review entity, the enrollee's treating health care provider shall notify the commissioner who shall select an independent review entity.

76.6(3) The carrier *or organized delivery system* and enrollee's treating health care provider shall provide any additional medical information to the review entity.

76.6(4) No change.

76.6(5) In the event the carrier *or organized delivery system* does not find that a delay would pose an imminent or serious threat to the enrollee, the enrollee's treating health care provider may ask the commissioner to immediately review the request for certification as an expedited review.

76.6(6) No change.

~~This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 14.~~

ITEM 7. Amend rule 191—76.7(78GA,SF276) as follows:

191—76.7(~~78GA,SF276~~ *514J*) Decision notification. The independent review entity shall immediately notify the carrier *or organized delivery system,* enrollee or enrollee's treating health care provider, and insurance division of the external appeal decision. *The initial notification shall be delivered by telephone or fax transmission and a hard copy of the notice may be delivered by regular mail.*

~~This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 18.~~

ITEM 8. Amend rule 191—76.8(78GA,SF276) as follows:

191—76.8(~~78GA,SF276~~ *514J*) Carrier information.

76.8(1) Each carrier *or organized delivery system* shall provide to the commissioner the name or title, telephone and fax numbers and E-mail address of an individual who shall be the carrier's *or organized delivery system's* contact person for external review procedures. Any changes in personnel or communication numbers shall be immediately sent to the commissioner.

76.8(2) Each carrier or organized delivery system shall provide to the commissioner a detailed description of the process the carrier or organized delivery system has in place to ensure compliance with the requirements found in this chapter and in Iowa Code chapter 514J. The description shall include:

a. An explanation of how the carrier or organized delivery system determines when a person has qualified for external review to receive a notice from the carrier or organized delivery system, and

b. A copy of the notice sent to persons who fall within the scope of the law.

~~This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 13.~~

ITEM 9. Amend rule 191—76.9(78GA,SF276) as follows:

191—76.9(~~78GA,SF276~~ *514J*) Certification of independent review entity.

76.9(1) No change.

76.9(2) The independent review entity shall develop written policies and procedures governing all aspects of the ex-

INSURANCE DIVISION[191](cont'd)

ternal review process including, at a minimum, the following:

a. Procedures to ensure that external reviews are conducted within the times frames specified in ~~1999 Iowa Acts, Senate File 276~~ *this chapter and Iowa Code chapter 514J*, and that any required notices are provided in a timely manner.

b. No change.

c. Procedures to ensure that the enrollee, or the enrollee's treating health provider acting on behalf of the enrollee, is notified in writing of the enrollee's right to object to the independent review entity selected by the carrier or organized delivery system or the person selected as the reviewer by the independent review entity by notifying the commissioner at the Insurance Division, 330 Maple Street, Des Moines, Iowa 50319 within ten days of the mailing of the notice by the independent review entity.

~~c~~ *d.* Procedures to ensure the confidentiality of medical and health treatment records and review materials.

~~d~~ *e.* Procedures to ensure adherence to the requirements of ~~1999 Iowa Acts, Senate File 276,~~ *this chapter and Iowa Code chapter 514J* by any contractor, subcontractor, subvendor, agent or employee affiliated with the certified independent review entity.

76.9(3) No change.

76.9(4) The independent review entity shall establish a toll-free telephone service to receive information relating to external reviews pursuant to ~~1999 Iowa Acts, Senate File 276~~ *this chapter and Iowa Code chapter 514J*. The system shall develop a procedure to ensure the capability of accepting, recording, or providing instruction to incoming telephone calls during other than normal business hours. The independent review entity shall also establish a facsimile and electronic mail service.

76.9(5) No change.

76.9(6) The independent review entity shall provide the commissioner such data, information, and reports as the commissioner determines necessary to evaluate the external review process established under ~~1999 Iowa Acts, Senate File 276~~ *Iowa Code chapter 514J*.

76.9(7) No change.

~~This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 12.~~

ITEM 10. Adopt the following **new** implementation sentence at the end of **191—Chapter 76**:

These rules are intended to implement Iowa Code chapter 514J as amended by 2001 Iowa Acts, Senate File 500.

ARC 1003B

LABOR SERVICES DIVISION[875]

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 88.5 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 26, "Construction Safety and Health Rules," Iowa Administrative Code.

The proposed amendment adopts new federal safety standards for steel erection. This amendment enhances protections provided to workers engaged in steel erection and updates the general provisions that address steel erection. This amendment sets performance-oriented criteria, where possible, to protect employees from steel erection hazards such as working under loads; hoisting, landing and placing decking; column stability; double connections; hoisting, landing and placing steel joists; and falls to lower levels. To effectuate this, the amendment contains requirements for hoisting and rigging, structural steel assembly, beam and column connections, joint erection, systems-engineered metal building erection, fall protection and training.

The principal reasons for adoption of this amendment are to implement Iowa Code chapter 88 and to protect the safety and health of Iowa workers. Adoption of this amendment is required by 29 Code of Federal Regulations 1953.23(a)(2) and Iowa Code section 88.5(1)"a."

A public hearing will be held on November 7, 2001, at 10 a.m. in the Stanley Room, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa. Any interested person will be given the opportunity to make an oral statement and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

Written data or arguments to be considered in adoption may be submitted no later than November 7, 2001, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209, or faxed to (515)281-7995. Electronic mail may be sent to kathleen.uehling@iwd.state.ia.us.

The Division has determined that this Notice of Intended Action may have an impact on small business. This amendment will not necessitate additional annual expenditures exceeding $100,000 by any one political subdivision or agency or any contractor providing services to political subdivisions or agencies.

The Division will issue a regulatory analysis as provided by Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 19, 2001, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Appropriate requests are described in Iowa Code section 17A.4A.

This amendment is intended to implement Iowa Code section 88.5.

The following amendment is proposed.

Amend rule **875—26.1(88)** by inserting at the end thereof:

66 Fed. Reg. 5265 (January 18, 2001)
66 Fed. Reg. 37137 (July 17, 2001)

ARC 1032B

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 Board of Nursing hereby gives Notice of Intended Action to amend Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code.

This amendment provides for the submission of a request for inactive status in writing or over the Internet 60 days prior to license expiration.

Any interested person may make written comments or suggestions on or before November 6, 2001. Such written materials should be directed to the Executive Director, Board of Nursing, RiverPoint Business Park, 400 S.W. Eighth Street, Suite B, Des Moines, Iowa 50309-4685. Persons who want to convey their views orally should contact the Executive Director at (515)281-3256 or in the Board office at 400 S.W. Eighth Street, by appointment.

This amendment is intended to implement Iowa Code chapters 17A, 147 and 152.

The following amendment is proposed.

Rescind subrule **3.7(6)**, paragraph **"a,"** subparagraph **(3)**, and adopt in lieu thereof the following **new** subparagraph **(3)**:

(3) Submit a request for inactive status, either in writing or over the Internet, 60 days prior to license expiration. Inactive status becomes effective when the current license expires.

ARC 1033B

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 Board of Nursing hereby gives Notice of Intended Action to amend Chapter 4, "Discipline," Iowa Administrative Code.

These amendments explain authority to review or investigate complaint information, correct a code reference, expand provisions for informal settlements, define nurse licensure compact terms, note additional grounds for discipline, clarify the licensure reinstatement application process, and identify requirements for rehearing.

Any interested person may make written comments or suggestions on or before November 6, 2001. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who want to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at S.W. 8th Street, by appointment.

These amendments are intended to implement Iowa Code chapters 17A, 147, 152, and 272C.

The following amendments are proposed.

ITEM 1. Rescind subrule 4.2(2) and adopt in lieu thereof the following **new** subrule:

4.2(2) The executive director, or an authorized designee, may review and investigate any complaint information received, in order to determine the probability that a violation of Iowa law or administrative rule has occurred.

ITEM 2. Rescind rule 655—4.6(17A,147,152,272C), introductory paragraph, and adopt in lieu thereof the following **new** introductory paragraph:

655—4.6(17A,147,152,272C) Grounds for discipline. A licensee may be disciplined for failure to comply with the rules promulgated by the board and for any wrongful act or omission related to nursing practice, licensure or professional conduct.

ITEM 3. Amend subrule **4.6(2)**, paragraph **"g,"** to read as follows:

g. Failure to comply with the requirements of Iowa Code chapter ~~139C~~ *139A*.

ITEM 4. Amend subrule **4.6(3)** by adopting the following **new** paragraphs:

c. Failing to provide written notification of a change of address to the board within 30 days of the event.

d. Failing to notify the board within 30 days from the date of the final decision in a disciplinary action taken by the licensing authority of another state, territory or country.

e. Failing to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction wherein it occurred.

ITEM 5. Rescind subrule **4.6(4)**, paragraphs **"a"** to **"p,"** and adopt in lieu thereof the following **new** paragraphs **"a"** to **"s"**:

a. Performing nursing services beyond the authorized scope of practice for which the individual is licensed or prepared.

b. Allowing another person to use one's nursing license for any purpose.

c. Failing to comply with any rule promulgated by the board related to minimum standards of nursing.

d. Improper delegation of nursing services, functions, or responsibilities.

e. Committing an act or omission which may adversely affect the physical or psychosocial welfare of the patient or client.

f. Committing an act which causes physical, emotional, or financial injury to the patient or client.

g. Engaging in sexual conduct, including inappropriate physical contact or any behavior that is seductive, demeaning, or exploitative, with regard to a patient or client.

h. Failing to report to, or leaving, a nursing assignment without properly notifying appropriate supervisory personnel and ensuring the safety and welfare of the patient or client.

i. Violating the confidentiality or privacy rights of the patient or client.

NURSING BOARD[655](cont'd)

j. Discriminating against a patient or client because of age, sex, race, creed, illness, or economic or social status.

k. Failing to assess, accurately document, or report the status of a patient or client.

l. Misappropriating medications, property, supplies, or equipment of the patient, client, or agency.

m. Fraudulently or inappropriately using or permitting the use of prescription blanks or obtaining prescription medications under false pretenses.

n. Practicing nursing while under the influence of alcohol, illicit drugs, or while impaired by the use of legitimately prescribed pharmacological agents or medications.

o. Being involved in the unauthorized manufacture, possession, distribution, or use of a controlled substance.

p. Pleading guilty to or being convicted of a misdemeanor or felony related to the practice of nursing, without regard to the jurisdiction wherein the action occurred.

q. Engaging in behavior that is contradictory to professional decorum.

r. Failing to report suspected wrongful acts or omissions committed by a licensee of the board.

s. Failing to comply with an order of the board.

ITEM 6. Rescind rule 655—4.9(17A,147,152,272C) and adopt in lieu thereof the following **new** rule:

655—4.9(17A,147,152,272C) Informal settlement. Pursuant to the provisions of Iowa Code sections 17A.10, 17A.12 and 272C.3, the board may consider resolution of disciplinary matters through informal settlement prior to filing charges or the commencement of contested case proceedings. The executive director or a designee may negotiate with the licensee regarding a proposed disposition of the controversy. Upon consent of both parties, the board will review the proposal for action.

ITEM 7. Rescind rule 655—4.11(17A,147,152,272C) and adopt in lieu thereof the following **new** rule:

655—4.11(17A,147,152,272C) Application for reinstatement. Any person whose license to practice nursing has been suspended, revoked or voluntarily surrendered by order of the board may apply for reinstatement. A request for reinstatement must be accomplished in accordance with the terms and conditions specified in the board's order and filed in conformance with these rules.

4.11(1) If the license was voluntarily surrendered, or if the order for suspension or revocation did not establish terms and conditions for reinstatement, an initial application may not be filed until one year has elapsed from the date of the order. Persons who have failed to satisfy the terms and conditions imposed by the board shall not be entitled to reinstatement.

4.11(2) Proceedings for reinstatement shall be initiated by the respondent by making application for licensure reinstatement with the board. The application shall be docketed in the original case in which the license was revoked, suspended or voluntarily surrendered and shall be subject to the same rules of procedure as other contested cases before the board. The person filing the application for reinstatement shall immediately serve a copy upon the attorney for the state of Iowa and shall in the same manner serve any additional documents filed in connection with the application.

4.11(3) The application shall allege facts and circumstances which, if established, will be sufficient to enable the board to determine that the basis for the revocation, suspension, or voluntary surrender no longer exists and that it shall be in the public interest for the license to be reinstated. The application shall include written evidence supporting the applicant's assertion that the basis for the revocation, suspension, or voluntary surrender no longer exists and that it shall be in the public interest for the license to be reinstated. Such evidence may include, but is not limited to: medical and mental health records establishing successful completion of any necessary medical or mental health treatment and aftercare recommendations; documentation verifying successful completion of any court-imposed terms of probation; statements from support group sponsors verifying active participation in a support group; verified statements from current and past employers attesting to employability; and evidence establishing that prior professional competency or unethical conduct issues have been resolved. The burden of proof to establish such facts shall be on the applicant.

4.11(4) The executive director or an appointed designee shall review the application for reinstatement and determine if it conforms to the requirements imposed by these rules. Applications failing to comply with these requirements will be denied. Such denial shall be in writing, stating the grounds, and may be appealed to the board in compliance with the provisions of Iowa Code chapter 17A.

4.11(5) Applications not denied for failure to conform to the requirements imposed by these rules shall be set for hearing before the board. The hearing shall be a contested case hearing within the meaning of Iowa Code section 17A.12, and the order to grant or deny reinstatement shall incorporate findings of fact and conclusions of law. If reinstatement is granted, terms and conditions may be imposed.

ITEM 8. Rescind rule 655—4.13(17A,147,152,272C) and adopt in lieu thereof the following **new** rule:

655—4.13(17A,147,152,272C) Contested case proceedings. Contested case proceedings before the board of nursing are held in accordance with the provisions of Iowa Code chapter 17A. The following rules apply to board activities initiated upon a determination of probable cause that result in the issuance of a notice of hearing. Any adverse agency action to limit or revoke the multistate licensure privilege granted under the provisions of the nurse licensure compact shall be conducted as a contested case proceeding.

ITEM 9. Amend rule 655—4.14(17A) as follows:

Amend the introductory paragraph as follows:

655—4.14(17A,*152E*) Definitions. Except where otherwise specifically defined by law:

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

"Adverse action" means a home or remote state action.

"Home state" means the party state, which is the nurse's primary state of residence.

"Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority, including actions against an individual's license such as revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

"Remote state" means a party state, other than the home state, where either of the following applies:

1. Where the patient is located at the time nursing care is provided.

2. In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing care is located.

"Remote state action" means either of the following:

NURSING BOARD[655](cont'd)

1. Any administrative, civil, equitable, or criminal action permitted by a remote state's laws which is imposed on a nurse by the remote state's licensing board or other authority, including actions against an individual's multistate licensure privilege to practice in the remote state.

2. Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards of remote states.

ITEM 10. Rescind subrule 4.36(2) and adopt in lieu thereof the following **new** subrule:

4.36(2) Content of application. An application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, upon showing good cause, the applicant requests an opportunity to submit additional evidence.

ARC 1038B

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 Board of Nursing hereby gives Notice of Intended Action to adopt new Chapter 17, "Child Support Noncompliance," Iowa Administrative Code.

These rules implement Iowa Code chapter 252J, which addresses child support noncompliance.

Any interested person may make written comments or suggestions on or before November 6, 2001. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who want to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at S.W. 8th Street, by appointment.

These rules are intended to implement Iowa Code chapter 252J.

The following **new** chapter is proposed.

CHAPTER 17
CHILD SUPPORT NONCOMPLIANCE

655—17.1(252J) Definitions. For the purpose of this chapter the following definitions shall apply.

"Certificate" means a document known as a certificate of noncompliance which is provided by the child support unit certifying that the named licensee is not in compliance with a support order or with a written agreement for payment of support entered into by the child support unit and the licensee.

"Child support unit" means the child support recovery unit of the Iowa department of human services.

"Denial notice" means a board notification denying an application for the issuance or renewal of a license as required by Iowa Code chapter 252J.

"Revocation or suspension notice" means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by Iowa Code chapter 252J.

"Withdrawal certificate" means a document known as a withdrawal of a certificate of noncompliance provided by the child support unit certifying that the certificate is withdrawn and that the board may proceed with the issuance, reinstatement, or renewal of a license.

655—17.2(252J) Issuance or renewal of a license—denial. The board shall deny the issuance or renewal of a license upon the receipt of a certificate from the child support unit. This rule shall apply in addition to the procedures set forth in Iowa Code chapter 252J.

17.2(1) Service of denial notice. Notice shall be served upon the licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

17.2(2) Effective date of denial. The effective date of the denial of the issuance or renewal of a license, as specified in the denial notice, shall be 60 days following service of the denial notice upon the licensee.

17.2(3) Preparation and service of denial notice. The executive director of the board is authorized to prepare and serve the denial notice upon the licensee.

17.2(4) Licensee responsible to inform board. Licensees and applicants shall keep the board informed of all court actions and all child support unit actions taken under or in connection with Iowa Code chapter 252J. Licensees and applicants shall also provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code chapter 252J, all court orders entered in such actions, and withdrawal of certificates issued by the child support unit.

17.2(5) Reinstatement following license denial. All board fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 252J.

17.2(6) Effect of filing in district court. In the event a licensee files a timely district court action following service of a board denial notice, the board shall continue with the intended action described in the denial notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

17.2(7) Final notification. The board shall notify the licensee in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the applicant or licensee if the license is issued or renewed following the board's receipt of a withdrawal certificate.

655—17.3(252J) Suspension or revocation of a license. The board shall suspend or revoke a license upon the receipt of a certificate from the child support unit according to the procedures set forth in Iowa Code chapter 252J.

17.3(1) Service of revocation or suspension notice. Revocation or suspension notice shall be served upon the licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

NURSING BOARD[655](cont'd)

17.3(2) Effective date of revocation or suspension. The effective date of the suspension or revocation of a license, as specified in the revocation or suspension notice, shall be 60 days following service of the notice upon the licensee.

17.3(3) Preparation and service of revocation or suspension notice. The executive director of the board is authorized to prepare and serve the revocation or suspension notice upon the licensee and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event that the license is on suspension, the executive director shall notify the licensee of the board's intention to revoke the license.

17.3(4) Licensee responsible to inform board. The licensee shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J. Licensees shall also provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code chapter 252J, all court orders entered in such actions, and any withdrawal certificates issued by the child support unit.

17.3(5) Reinstatement following license suspension or revocation. A licensee shall pay all board fees required for license renewal or license reinstatement before a license will be reinstated after the board has suspended a license pursuant to Iowa Code chapter 252J.

17.3(6) Effect of filing in district court. In the event a licensee files a timely district court action pursuant to Iowa Code chapter 252J and following service of a revocation or suspension notice, the board shall continue with the intended action described in the revocation or suspension notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the suspension or revocation, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

17.3(7) Final notification. The board shall notify the licensee in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license and shall similarly notify the licensee if the license is reinstated following the board's receipt of a withdrawal certificate.

These rules are intended to implement Iowa Code chapter 252J.

ARC 1039B

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 Board of Nursing hereby gives Notice of Intended Action to adopt new Chapter 18, "Student Loan Default or Noncompliance," Iowa Administrative Code.

These rules implement Iowa Code chapter 261, which addresses student loan default or noncompliance.

Any interested person may make written comments or suggestions on or before November 6, 2001. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who want to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at S.W. 8th Street, by appointment.

These rules are intended to implement Iowa Code chapter 261.

The following **new** chapter is proposed.

CHAPTER 18
STUDENT LOAN DEFAULT OR NONCOMPLIANCE

655—18.1(261) Definitions. For the purpose of this chapter the following definitions shall apply:

"Applicant" means an individual who is seeking the issuance of a license.

"Board" means the board of nursing.

"Certificate" means a document known as a certificate of noncompliance from the college student aid commission certifying that the named licensee is not in compliance with the terms of an agreement for payment of a student loan obligation.

"Commission" means the college student aid commission.

"Denial notice" means a board notification denying an application for the issuance or renewal of a license as required by Iowa Code chapter 261.

"License" means a certificate issued to a person to practice as a registered nurse, licensed practical nurse, or advanced registered nurse practitioner under the laws of this state.

"Licensee" means an individual to whom a license has been issued.

"Revocation or suspension notice" means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by Iowa Code chapter 261.

"Withdrawal certificate" means a document known as a withdrawal of a certificate of noncompliance provided by the commission certifying that the certificate is withdrawn and that the board may proceed with issuance, reinstatement, or renewal of a license.

655—18.2(261) Issuance or renewal of a license—denial. The board shall deny the issuance or renewal of a license upon receipt of a certificate from the commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127.

655—18.3(261) Service of denial notice. Notice shall be served upon the licensee by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

18.3(1) Effective date of denial. The effective date of the denial of issuance or renewal of a license, as specified in the notice, shall be 60 days following service of the notice upon the licensee.

18.3(2) Preparation and service of denial notice. The executive director of the board is authorized to prepare and serve the notice upon the licensee.

18.3(3) Responsibility to inform board. Applicants and licensees shall keep the board informed of all court actions and all commission actions taken under or in connection with the Act and shall provide the board copies, within seven

NURSING BOARD[655](cont'd)

days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and any withdrawal certificates issued by the commission.

18.3(4) Reinstatement following license denial. All board fees required for application, license renewal, or license reinstatement shall be paid by applicants or licensees, and all continuing education requirements shall be met, before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 261.

18.3(5) Effect of filing in district court. In the event an applicant or licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed by the court.

18.3(6) Final notification. The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license and shall similarly provide notification to the applicant or licensee when the license is issued or renewed following the board's receipt of a withdrawal certificate.

655—18.4(261) Suspension or revocation of a license. The board shall suspend or revoke a license upon receipt of a certificate from the commission according to the procedures set forth in Iowa Code chapter 261. This rule shall apply in addition to the procedures set forth in Iowa Code chapter 261.

18.4(1) Service of revocation or suspension notice. Notice shall be served upon the licensee by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

18.4(2) Effective date of revocation or suspension. The effective date of the revocation or suspension of a license, as specified in the notice, shall be 60 days following service of the notice upon the licensee.

18.4(3) Preparation and service of revocation or suspension notice. The executive director of the board is authorized to prepare and serve the notice upon the licensee and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event that the license is on suspension, the executive director shall notify the licensee of the board's intention to revoke the license.

18.4(4) Licensee/applicant responsible to inform board. Licensees shall keep the board informed of all court actions and all commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and any withdrawal certificates issued by the commission.

18.4(5) Reinstatement following license suspension or revocation. All board fees required for license renewal or license reinstatement shall be paid by licensees, and all continuing education requirements shall be met, before a license will be renewed or reinstated after the board has suspended a license pursuant to Iowa Code chapter 261.

18.4(6) Effect of filing in district court. In the event a licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed by the court.

18.4(7) Final notification. The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license and shall similarly notify the licensee when the license is reinstated following the board's receipt of a withdrawal certificate.

655—18.5(261) Share information. Notwithstanding any statutory confidentiality provision, the board may share information with the commission through manual or automated means for the sole purpose of identifying applicants or licensees subject to enforcement under Iowa Code chapter 261.

These rules are intended to implement Iowa Code sections 261.121 to 261.127.

ARC 1029B

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 103A.7, the Building Code Commissioner hereby gives Notice of Intended Action to amend Chapter 16, "State of Iowa Building Code," Iowa Administrative Code, with the approval of the Building Code Advisory Council.

The Department of Public Safety is required by 2001 Iowa Acts, Senate File 185, to establish a certification program for installers of manufactured homes in Iowa. The program will be supported by fees paid by installers seeking certification and by other fees collected in relation to the manufactured housing program.

The proposed amendments establish the certification program, implement related fees and adjust other fees related to manufactured housing in Iowa. The certification program is established as a two-track program. Licensed manufactured housing retailers may apply for certification of installers at an annual fee of $250. A licensed retailer may list up to four employees as certified installers under a single certificate. Each crew that installs a manufactured home must be headed by an installer whose name appears on the certification application submitted to the Department of Public Safety. Changes to the names of certified installers on a retailer in-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

staller certification may be made upon submission of an application for certification amendment to the Building Code Commissioner, with the payment of an additional fee of $50. Independent manufactured home installers may apply for certification of individual installers at an annual application fee of $100 apiece.

A public hearing regarding these amendments will be held on November 14, 2001, at 10:30 a.m. in the Third Floor Conference Room, Wallace State Office Building, East 9th and Grand, Des Moines, Iowa. Persons may present their views concerning these amendments either orally or in writing at the public hearing. In addition, persons interested in the rules concerning manufactured homes in Iowa, including those persons not affected by the rule-making action proposed here, are invited to submit any comments regarding any of these rules, which are, generally, 661—16.620(103A) through 661—16.629(103A). The Department plans to undertake more comprehensive rule making regarding manufactured homes in the near future and would welcome any comments that might contribute to that proposal as it is being developed. Persons who wish to make oral presentations at the hearing should contact the Building Code Bureau, Fire Marshal Division, Iowa Department of Public Safety, 621 East 2nd Street, Des Moines, Iowa 50309; or by telephone at (515)281-5132 at least one day prior to the hearing.

Any interested persons may make oral or written comments concerning these proposed amendments to the Building Code Bureau by mail, telephone, or in person at the above address at least one day prior to the public hearing. Comments may also be submitted by electronic mail to admrule@dps.state.ia.us at least one day prior to the public hearing.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 1030B**. The content of that submission is incorporated by reference.

These amendments are intended to implement 2001 Iowa Acts, Senate File 185, section 4.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

October 1, 2000 — October 31, 2000	7.75%
November 1, 2000 — November 30, 2000	7.75%
December 1, 2000 — December 31, 2000	7.75%
January 1, 2001 — January 31, 2001	7.75%
February 1, 2001 — February 28, 2001	8.00%
March 1, 2001 — March 31, 2001	7.25%
April 1, 2001 — April 30, 2001	7.00%
May 1, 2001 — May 31, 2001	7.00%
June 1, 2001 — June 30, 2001	7.25%
July 1, 2001 — July 31, 2001	7.50%
August 1, 2001 — August 31, 2001	7.25%
September 1, 2001 — September 30, 2001	7.25%
October 1, 2001 — October 31, 2001	7.00%
November 1, 2001 — November 30, 2001	6.75%

UTILITIES DIVISION

Notice of Formal Notice and Comment Proceeding

The Iowa Utilities Board (Board) hereby gives notice, pursuant to 199 IAC 5.3(3) (2001), that on August 9, 2001, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), filed a petition for determination of effective competition and deregulation pursuant to Iowa Code section 476.1D. Iowa Telecom asks the Board to determine that its existing retail local exchange service in the exchanges of Armstrong, Bennett, Coon Rapids, Delmar, Forest City, Lowden, Manning, Oxford Junction, and Stanwood are subject to effective competition and should be deregulated. If the Board grants that request and deregulates Iowa Telecom's retail local exchange services in the identified exchanges, Iowa Telecom requests a determination by the Board that a deregulation accounting plan is not required of Iowa Telecom because its rates are presently regulated pursuant to a price regulation plan under Iowa Code section 476.97.

In support of its petition, Iowa Telecom states that in each of the exchanges a competitive local exchange carrier (CLEC) has applied for and received a certificate of public convenience and necessity to permit the CLEC to offer competitive telecommunications services in the identified exchange. Iowa Telecom alleges that these CLECs have acquired a substantial percentage of the local exchange service provided in each exchange. (Iowa Telecom included alleged market share data as a part of Exhibit B to its exchange, but Iowa Telecom requested confidential treatment for that exhibit, so the Board will not use specific numbers from the exhibit in this order.)

On September 10, 2001, responses to Iowa Telecom's petition were filed by several interested persons, raising various issues regarding the petition and requesting formal notice and comment proceedings. Pursuant to 199 IAC 5.3(1), the Board has therefore initiated a formal notice and comment proceeding, identified as Docket No. INU-01-1, to determine whether all retail local exchange services offered within the identified exchanges are subject to effective competition and should be deregulated.

The Board intends to develop a complete evidentiary record concerning the application of the criteria in subrule 5.6(1) to the identified services. Participants in the docket will be permitted to file sworn statements of position by October 29, 2001, and counterstatements by November 19, 2001. An oral presentation, at which all participants will be permitted to cross-examine other participants, will commence on December 11, 2001. Further details may be obtained from the Board's order, available on the Board's Web site at http://www.state.ia.us/government/com/util.

ARC 1007B

CORRECTIONS DEPARTMENT[201]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 356.36, the Department of Corrections hereby amends Chapter 51, "Temporary Holding Facilities," Iowa Administrative Code.

These rules provide for the standards for temporary holding facility inspections. This amendment was suggested by the Iowa League of Cities to ensure consistent inspection standards between Chapter 50, "Jail Facilities," and Chapter 51.

In compliance with Iowa Code section 17A.4(2), the Department of Corrections finds that notice and public participation are impracticable due to the brief period between the approval of this amendment and the effective date of rule 201—51.7(356,356A).

The Department of Corrections also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment should be waived and the amendment made effective upon filing on September 25, 2001, so that the amendment takes effect as soon as possible because rule 201—51.7(356,356A) became effective September 12, 2001.

The Department of Corrections Board approved this amendment on September 21, 2001.

This amendment became effective September 25, 2001.

This amendment is intended to implement Iowa Code section 356.36.

The following amendment is adopted.

Adopt **new** subrule 51.7(6) as follows:

51.7(6) Holding cells shall provide a minimum of 20 square feet per detainee with a total capacity of eight detainees per cell. Holding cells need not contain any fixture other than a means whereby detainees may sit. Drinking water and toilet facilities shall be made available under staff supervision. Detainees will be supplied blankets if detained overnight in the holding cell.

[Filed Emergency 9/25/01, effective 9/25/01]
[Published 10/17/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/01.

ARC 1001B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 455B.200, the Environmental Protection Commission hereby amends Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

This amendment imposes a deadline to qualify for the exception allowing an owner of a confinement feeding operation to remove and apply manure from a manure storage structure in accordance with a manure management plan that has been submitted but not yet approved by the Department of Natural Resources. Under this amendment, manure management plans must be submitted to the Department of Natural Resources prior to September 18, 2001, to qualify for the exception; manure management plans submitted on or after that date would have to be approved by the Department of Natural Resources before manure could be removed from a manure storage structure.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 13, 2001, as **ARC 0731B**. No written comments were received and no oral comments were made at the July 3, 2001, public hearing.

One change from the proposed amendment in the Notice of Intended Action is that the deadline has been extended from August 21, 2001, to September 18, 2001.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Commission finds that this amendment confers a benefit on a portion of the public and that the normal effective date of the amendment should be waived and this amendment should be made effective September 18, 2001.

This amendment is intended to implement Iowa Code section 455B.203.

This amendment became effective September 18, 2001.

The following amendment is adopted.

Amend subrule 65.16(3) as follows:

65.16(3) Manure shall not be removed from a manure storage structure, which is part of a confinement feeding operation required to submit a manure management plan, until the department has approved the plan. As an exception to this requirement, until July 1, 2002, the owner of a confinement feeding operation may remove and apply manure from a manure storage structure in accordance with a manure management plan ~~which has been~~ submitted to the department *prior to September 18, 2001*, but which has not been approved within the required 60-day period. Manure shall be applied in compliance with rule 65.2(455B).

[Filed Emergency After Notice 9/18/01, effective 9/18/01]
[Published 10/17/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/01.

ARC 1030B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby amends Chapter 16, "State of Iowa Building Code," Iowa Administrative Code.

The Department of Public Safety is required by 2001 Iowa Acts, Senate File 185, to establish a certification program for installers of manufactured homes in Iowa. The program will be supported by fees paid by installers seeking certification and by other fees collected in relation to the manufactured housing program.

The adopted amendments establish the certification program, implement related fees and adjust other fees related to manufactured housing in Iowa. The certification program is established as a two-track program. Licensed manufactured housing retailers may apply for certification of installers at an annual fee of $250. A licensed retailer may list up to four employees as certified installers under a single certificate.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Each crew that installs a manufactured home must be headed by an installer whose name appears on the certification application submitted to the Department of Public Safety. Changes to the names of certified installers on a retailer installer certification may be made upon submission of an application for certification amendment to the Building Code Commissioner, with the payment of an additional fee of $50. Independent manufactured home installers may apply for certification of individual installers at an annual application fee of $100 apiece.

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. The installer certification program established by 2001 Iowa Acts, Senate File 185, is entirely fee-based. Consequently, establishing the program and implementing the fees in as timely a fashion as possible is a necessity.

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 these amendments be made effective October 1, 2001, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by ensuring that installations of manufactured houses in Iowa are undertaken by installers certified by the Department of Public Safety, a process which will identify them and provide documentation of their relevant training and experience.

These amendments are also published herein under Notice of Intended Action as **ARC 1029B** to allow for public comment.

These amendments are intended to implement 2001 Iowa Acts, Senate File 185, section 4.

These amendments became effective on October 1, 2001.

The following amendments are adopted.

ITEM 1. Rescind rule 661—16.622(103A) and adopt in lieu thereof the following **new** rule:

661—16.622(103A) Certification of manufactured home installers. On or after January 1, 2002, there shall be at least one person certified as a manufactured home installer present at the installation of any manufactured home in Iowa. The installation of a manufactured home shall be under the direct supervision of a certified manufactured home installer who shall be present at all times at the installation site while any installation work is proceeding.

On or after December 1, 2001, and before January 1, 2002, the installation of a manufactured home shall be under the direct supervision of a certified manufactured home installer or a person whose application for certification as a manufactured home installer is pending with the building code commissioner.

EXCEPTION: Installation of a manufactured home may be completed by the owner of the home whether or not the person is certified as a manufactured home installer. All other requirements of these rules pertaining to manufactured homes still apply.

16.622(1) Installer certification. There are two forms of installer certification: certification of licensed manufactured home retailers and certification of independent manufactured home installers.

a. Licensed manufactured home retailers. A licensed manufactured home retailer may apply for manufactured home retailer installer certification on an application form prescribed and provided by the building code commissioner. The annual fee for installer certification as a retailer is $250, payable at the time of application. The fee covers certification for the next state fiscal year or the balance of the current fiscal year. A retailer may list up to four employees to be certified in a single manufactured home retailer installation certification. The completed application shall clearly identify each listed employee and shall provide information regarding the training and experience related to manufactured home installation of each listed employee. If, during the course of the state fiscal year covered by an existing retailer installation certification, the retailer wishes to amend the identities of any of the employees listed as certified installers, or wishes to add an installer if the current certification identifies fewer than four certified installers, the retailer may file an amended application for installer certification on a form prescribed by the building code commissioner. The fee for filing an amended application is $50, payable with the application. Application fees provided in this rule are not refundable in the event that an application is denied.

At any installation that takes place pursuant to the authority of a retailer installation certification, one of the individuals identified in the application for that certificate, or a subsequent amended application for that certificate, as a certified installer shall be present, in charge of, and responsible for the installation.

A licensed manufactured home retailer may apply for independent installer certification, pursuant to paragraph "b," for one or more employees. In this event, a separate certification shall be required for each employee to be certified.

b. Independent manufactured home installers. An independent installer of manufactured homes may apply for manufactured home installer certification, on a form prescribed and provided by the building code commissioner. The application shall clearly identify the applicant and shall contain a description of the applicant's training and experience related to manufactured home installation. The annual fee for installer certification as an independent installer is $100, payable at the time of application. The fee covers certification for the next state fiscal year or the balance of the current fiscal year. Each application for certification as an independent manufactured home installer shall indicate an individual to be certified as a manufactured home installer, who shall be present, in charge of, and responsible for any manufactured home installation that occurs under the authority of that certificate.

16.622(2) Review of application for certification. Upon receipt of an application for certification as a manufactured home installer, staff of the building code bureau shall review the application and recommend approval or denial to the building code commissioner. If an application is approved, the certificate shall be issued to the applicant. If an application is denied, the applicant shall be notified and given an explanation of the reason or reasons for denial. Denials of applications by the building code commissioner may be appealed according to the contested case provisions of 661—Chapter 10. An appeal may be filed as a request for case proceeding as provided in rule 661—10.304(17A). An appeal must be filed within 30 days of the date of the denial.

16.622(3) Suspension or revocation of certification. An existing installer certification may be suspended or revoked for cause pursuant to a recommendation by the staff of the building code bureau to the building code commissioner. Suspensions or revocations of installer certifications may be appealed subject to the provisions of 661—Chapter 10 for contested case proceedings. An appeal may be filed as a request for case proceeding as provided in rule 661—10.304(17A). An appeal must be filed within 30 days of the date of the suspension or revocation.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

16.622(4) Civil penalties. In addition to possible suspension or revocation of installer certification, a person who violates the rules governing manufactured home installation may be subject to civil penalties. Civil penalties may be assessed by the building code commissioner based on recommendation from staff of the building code bureau. Assessments of civil penalties may be appealed subject to the provisions of 661—Chapter 10 for contested case proceedings. An appeal may be filed as a request for case proceeding as provided in rule 661—10.304(17A). An appeal must be filed within 30 days of the date of the assessment of the civil penalty.

ITEM 2. Rescind subrule 16.625(5) and adopt in lieu thereof the following **new** subrule:

16.625(5) Fees. All remittances of fees shall be made by check or money order payable to Iowa Department of Public Safety—Building Code Bureau. Fees shall be remitted to the Manufactured Home Program, Building Code Bureau, Fire Marshal Division, Iowa Department of Public Safety, 621 East 2nd Street, Des Moines, Iowa 50309.

The following table sets out the fee schedule for the manufactured home program.

Installation seal	$25
Installation seal replacement	$10
Retailer installer certification application	$250
Retailer installer certification amended application	$50
Independent installer certification application	$100
Verification inspections requested by installer or owner	Fee varies according to cost to the department
Ground support and anchoring system approval	$100

[Filed Emergency 9/27/01, effective 10/1/01]
[Published 10/17/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/01.

ARC 1046B

AGRICULTURAL DEVELOPMENT AUTHORITY[25]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.9A and 175.6(14), the Agricultural Development Authority hereby adopts Chapter 11, "Waiver or Variance of Rules," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 4, 2001, as **ARC 0599B**. No comments were received. The adopted rules are identical to the rules published under Notice.

These rules are intended to comply with Executive Order Number 11 and with Iowa Code section 17A.9A, which provides for waivers or variances of administrative rules. These rules are based on the Attorney General's uniform waiver rules.

These rules shall become effective November 21, 2001.

These rules are intended to implement Iowa Code section 17A.9A and chapter 175.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 11] is being omitted. These rules are identical to those published under Notice as **ARC 0599B**, IAB 4/4/01.

[Filed 9/28/01, effective 11/21/01]
[Published 10/17/01]

[For replacement pages for IAC, see IAC Supplement 10/17/01.]

ARC 1017B

BANKING DIVISION[187]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 524.213 and 17A.9A and Executive Order Number 11, the Banking Division hereby adopts Chapter 12, "Uniform Waiver and Variance Rules," Iowa Administrative Code.

The new chapter describes the procedures for applying for, issuing, or denying waivers and variances from Division rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 22, 2001, as **ARC 0890B**. A public hearing was held on September 11, 2001, at 10 a.m. in the Banking Division Conference Room, 200 East Grand Avenue, Suite 300, Des Moines, Iowa. No parties attended the public hearing, and no written comments were received prior to the hearing. The adopted rules are identical to those published under Notice.

These rules were adopted by the Division on September 26, 2001.

These rules will become effective November 21, 2001.

These rules are intended to implement Executive Order Number 11 and Iowa Code section 17A.9A.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 12] is being omitted. These rules are identical to those published under Notice as **ARC 0890B**, IAB 8/22/01.

[Filed 9/26/01, effective 11/21/01]
[Published 10/17/01]

[For replacement pages for IAC, see IAC Supplement 10/17/01.]

ARC 1025B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 455A.6, the Environmental Protection Commission hereby adopts new Chapter 13, "Waivers or Variances from Administrative Rules," Iowa Administrative Code.

The purpose of this rule making is to adopt waiver rules to implement Iowa Code section 17A.9A and Executive Order Number 11, signed by Governor Vilsack on September 14, 1999. These rules adopt by reference 561—Chapter 10, "Waivers or Variances from Administrative Rules." 561—Chapter 10 was Adopted and Filed and was published in the Iowa Administrative Bulletin as **ARC 0942B** on September 19, 2001.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 21, 2001, as **ARC 0573B**. The Department received no comments. These rules are identical to those published under Notice.

These rules are intended to implement Iowa Code section 17A.9A and Executive Order Number 11.

These rules will become effective on November 21, 2001.

The following **new** chapter is adopted.

CHAPTER 13
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

567—13.1(17A) Adoption by reference. The commission adopts by reference 561—Chapter 10, Iowa Administrative Code, provided that the word "commission" is substituted for "department" throughout.

567—13.2(17A) Report to commission. The director shall submit reports of decisions regarding requests for waivers or variances to the commission at its regular meetings.

These rules are intended to implement Iowa Code chapter 17A.9A and Executive Order Number 11.

[Filed 9/27/01, effective 11/21/01]
[Published 10/17/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/01.

ARC 1026B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 60, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limits or Prohibitions," and Chapter 63, "Monitoring, Analytical and Reporting Requirements," Iowa Administrative Code.

The purpose of these amendments is to update references to federal effluent and pretreatment standards and associated analytical methods. References to federal effluent and pretreatment standards found in rules 62.4(455B) and 62.5(455B) are amended to reflect updates to Title 40, Code of Federal Regulations (CFR). The change to rule 60.2(455B) updates the definition of "Act" to include amendments to the Water Pollution Control Act through July 1, 2001. The change to subrule 63.1(1) updates the reference to the latest federally approved methods for the analysis of wastewater samples.

In accordance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary. Under rule 62.2(455B), the Commission has determined previously that good cause exists for exempting from the notice and public participation requirements of Iowa Code section 17A.4(1) the adoption by reference of certain federal effluent and pretreatment standards. The Commission found that public participation is unnecessary since the Commission must adopt effluent and pretreatment standards at least as stringent as the enumerated promulgated federal standards in order to have continued approval by the Environmental Protection Agency (EPA) of the Department's NPDES program. Iowa Code section 455B.173(3) requires that the effluent and pretreatment standards adopted by the Commission not be more stringent than the enumerated promulgated federal standards. The Commission also found that public participation is unnecessary when updating the reference to approved methods for analysis because these methods are required by EPA to be used to implement federal effluent and pretreatment standards.

These amendments may have an impact upon small businesses.

The Commission adopted these amendments on September 17, 2001.

These amendments will become effective November 21, 2001.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendments are adopted.

ITEM 1. Amend rule **567—60.2(455B)**, definition of "Act," as follows:

"Act" means the Federal Water Pollution Control Act as amended through July 1, ~~2000~~ *2001*, 33 U.S.C. §1251 et seq.

ITEM 2. Amend rule 567—62.4(455B), introductory paragraph, as follows:

567—62.4(455B) Federal effluent and pretreatment standards. The federal standards, 40 Code of Federal Regulations (CFR), revised as of July 1, ~~2000~~ *2001*, are applicable to the following categories:

ITEM 3. Amend subrule 62.4(37) as follows:

62.4(37) Centralized waste treatment point source category. ~~Reserved.~~ *The following is adopted by reference: 40 CFR Part 437.*

ITEM 4. Amend rule 567—62.5(455B) as follows:

567—62.5(455B) Federal toxic effluent standards. The following is adopted by reference: 40 CFR Part 129, revised as of July 1, ~~2000~~ *2001*.

ITEM 5. Amend subrule **63.1(1)**, paragraph **"a,"** as follows:

a. The following is adopted by reference: 40 Code of Federal Regulations (CFR) Part 136, revised as of July 1, ~~2000~~ *2001*.

[Filed Without Notice 9/27/01, effective 11/21/01]
[Published 10/17/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/01.

ARC 1002B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 514I.5(8), the Department of Human Services hereby amends Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," appearing in the Iowa Administrative Code.

The HAWK-I Board adopted these amendments September 17, 2001. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on August 8, 2001, as **ARC 0873B**.

These amendments revise policy governing the HAWK-I program to:

- Remove the reference that HAWK-I is available to children who are ineligible for other health insurance. The eligibility for other health insurance is not a factor of eligibility. Rather, the criterion is whether or not the child actually has the coverage.
- Simplify the process for calculating self-employment income. Instead of following the more complicated rules of the Medicaid program, the HAWK-I program will use information from the income tax return.
- Clarify what constitutes family size in situations where absent parents apply for children that do not live with them and in situations where there is shared custody.
- Incorporate additional legal references in the policy related to alien status. This change is being made in response to public comments received as part of Executive Order Number 8.
- Clarify when a referral is made to the HAWK-I program from the Medicaid program that the third-party administrator does not have to obtain an additional signature when the Department has a signature on file in the county office.
- Incorporate the decisions of the HAWK-I Board regarding the imposition of waiting lists. This amendment is necessary in the event the funding for the program is exhausted prior to the end of the fiscal year.
- Allow the third-party administrator to automatically select a health plan and enroll the child when the family has

not affirmatively made a selection, rather than to deny the application.

- Clarify that, in a case of eligibility granted based on false information, only the amount of the premium is subject to recovery.
- Clarify what information the health plans provide to the Department and what information they provide to the third-party administrator. This amendment is being made pursuant to public comments received in response to Executive Order Number 8.
- Add a new rule that establishes a procedure for the use of funds that are donated to the program.

These amendments do not provide for waivers in specified situations because the amendments are primarily technical in nature and provide policy clarification. Persons may request a waiver of policy under the Department's general rule on exceptions at rule 441—1.8(17A,217).

The following change was made to the Notice of Intended Action:

The Preamble was revised by not striking the word "transitional" at the request of the Administrative Rules Review Committee.

These amendments are intended to implement Iowa Code chapter 514I.

These amendments shall become effective December 1, 2001.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 86**, preamble, as follows:

These rules define and structure the department of human services healthy and well kids in Iowa (HAWK-I) program. The purpose of this program is to provide transitional health care coverage to *uninsured* children *who are* ineligible for Title XIX (Medicaid) assistance ~~or other health insurance~~. The program is implemented and administered in compliance with Title XXI of the federal Social Security Act. The rules establish requirements for the third-party administrator responsible for the program administration and for the participating health plans that will be delivering services to the enrollees.

ITEM 2. Amend rule 441—86.2(514I) as follows:

Amend subrule **86.2(2)**, paragraph **"a,"** subparagraph **(1)**, numbered paragraph **"2,"** as follows:

2. Earned income from self-employment. Earned income from self-employment means the net profit determined by comparing gross income with the allowable costs of producing the income. The ~~net profit from~~ *allowable costs of producing* self-employment income shall be determined ~~according to the provisions of 441—subparagraphs 75.57(2)"f"(1) through (7)~~ *by the costs allowed for income tax purposes*. Additionally, the costs of depreciation of capital assets identified for income tax purposes shall be allowed as a cost of doing business for self-employed persons. A person is considered self-employed when any of the following conditions exist. The person:

- Is not required to report to the office regularly except for specific purposes such as sales training meetings, administrative meetings, or evaluation sessions; or
- Establishes the person's own working hours, territory, and methods of work; or
- Files quarterly reports of earnings, withholding payments, and FICA payments to the Internal Revenue Service.

Amend subrule **86.2(3)**, paragraph **"b,"** as follows:

b. Parents. Any parent living with the child under the age of 19 shall be included in the family size. This includes the biological parent, stepparent, or adoptive parent of the child and is not dependent upon whether the parents are married to each other. *In situations where the parents do not live together but share joint legal or physical custody of the children, the family size shall be based on the household in which the child spends the majority of time. If both parents share legal or physical custody equally, either parent may apply for the child and the family size shall be based on the household of the applying parent.*

Amend subrule 86.2(7) as follows:

86.2(7) Citizenship and alien status. The child shall be a citizen or lawfully admitted alien. The criteria established under ~~Section 402(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996~~ *8 U.S.C. Section 1612(a)(2)(A)* and the Balanced Budget Act of 1997, *subsection 5302,* shall be followed when determining whether a lawfully admitted alien child is eligible to participate in the HAWK-I program. The citizenship or alien status of the parents or other responsible person shall not be considered when determining the eligibility of the child to participate in the program.

ITEM 3. Amend subrules 86.3(6), 86.3(7), 86.3(10), and 86.3(11) as follows:

86.3(6) Application not required. An application shall not be required when a child becomes ineligible for Medicaid and the county office of the department makes a referral to the HAWK-I program, in which case, Form 470-3563, HAWK-I Referral, shall be accepted in lieu of an application. The original Medicaid application or the last review form *that is on file in the county office of the department,* whichever is more current, shall suffice to meet the signature requirements.

86.3(7) Information and verification procedure. The decision with respect to eligibility shall be based primarily on information furnished by the applicant or enrollee. The third-party administrator shall notify the applicant or enrollee in writing of additional information or verification that is required to establish eligibility. ~~This~~ *The third-party administrator shall provide this* notice ~~shall be provided~~ to the applicant or enrollee personally or by mail or facsimile. Failure of the applicant or enrollee to supply the information or verification or refusal by the applicant or enrollee to authorize the third-party administrator to secure the information shall serve as a basis for rejection of the application or cancellation of coverage. ~~Five~~ *The applicant or enrollee shall have ten* working days ~~shall be allowed for the applicant or enrollee~~ to supply the information or verification requested by the third-party administrator. The third-party administrator may extend the deadline for a reasonable period of time when the applicant or enrollee is making every effort but is unable to secure the required information or verification from a third party.

86.3(10) Waiting lists. When *the department has established that all of the* funds appropriated for this ~~purpose~~ *program* are obligated, ~~pending~~ *the third-party administrator shall deny all subsequent* applications for HAWK-I coverage ~~shall be denied by the third-party administrator~~ *unless Medicaid eligibility exists.*

a. ~~A~~ *The third-party administrator shall mail a* notice of decision ~~shall be mailed by the third-party administrator~~. The notice shall state that ~~the~~*:*

(1) The applicant meets *the* eligibility requirements but *that* no funds are available and that the applicant will be placed on a waiting list, or ~~that the~~

(2) The person does not meet eligibility requirements. *In which case, the applicant shall not be put on a waiting list.*

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. Prior to an applicant's being denied or placed on the waiting list, the third-party administrator shall refer the application to the Medicaid program for an eligibility determination. If Medicaid eligibility exists, the department shall approve the child for Medicaid coverage in accordance with 441—86.4(514I).

~~a~~ *c.* ~~Applicants shall be entered~~ *The third-party administrator shall enter applicants* on the waiting list on the basis of the date a completed Form 470-3564 is date-stamped by the third-party administrator. In the event that more than one application is received on the same day, *the third-party administrator shall enter* applicants ~~shall be entered~~ on the waiting list on the basis of the day of the month of the oldest child's birthday, the lowest number being first on the list. ~~Any~~ *The third-party administrator shall decide any* subsequent ties ~~shall be decided~~ by the month of birth of the oldest child, January being month one and the lowest number.

~~b~~ *d.* If funds become available, *the third-party administrator shall select* applicants ~~shall be selected~~ from the waiting list based on the order ~~of the waiting~~ *in which their names appear on the* list and ~~notified by the third-party administrator~~ *shall notify them of their selection.*

~~c. The third-party administrator shall establish that the applicant continues to be eligible for HAWK-I coverage.~~

~~d~~ *e.* After ~~eligibility is reestablished~~ *being notified of the availability of funding,* the applicant shall have 15 working days to ~~enroll in the program~~ *confirm the applicant's continued interest in applying for the program and to provide any information necessary to establish eligibility.* If the applicant does not ~~enroll in~~ *confirm continued interest in applying for* the program *and does not provide any additional information necessary to establish eligibility* within 15 working days, *the third-party administrator shall delete* the applicant's name ~~shall be deleted~~ from the waiting list and ~~the third-party administrator~~ shall contact the next applicant on the waiting list.

86.3(11) Falsification of information. A person is guilty of falsification of information if that person, with the intent to gain HAWK-I coverage for which that person is not eligible, knowingly makes or causes to be made a false statement or representation or knowingly fails to report to the third-party administrator or the department any change in circumstances affecting that person's eligibility for HAWK-I coverage in accordance with rule 441—86.2(514I) and rule 441—86.10(514I).

In cases of founded falsification of information, the department may proceed with disenrollment in accordance with rule 441—86.7(514I) and require repayment for the amount that was paid to a health plan by the department ~~and any amount paid out by the plan while the person was ineligible~~.

ITEM 4. Amend rule 441—86.4(514I) as follows:

Amend subrule 86.4(2) as follows:

86.4(2) HAWK-I enrollee appears eligible for Medicaid. At the time of the annual review, if it appears the child may be eligible for Medicaid in accordance with the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), *the third-party administrator shall make* a referral ~~shall be made~~ to the ~~county~~ department ~~office~~ for a determination of Medicaid eligibility as stated in subrule 86.4(1) above. However, the child shall remain eligible for the HAWK-I program pending the Medicaid eligibility determination unless the 12-month certification period expires first.

Amend subrule **86.4(4)**, paragraph **"b,"** as follows:

b. The third-party administrator shall date-stamp the referral, notify the family of the referral, and proceed with an eligibility determination under the HAWK-I program. *The third-party administrator shall use* Form 470-3563, Referral to HAWK-I, ~~shall be used~~ *as an application for the HAWK-I program.* If needed, *the third-party administrator shall obtain* copies of supporting documentation ~~and signatures shall be obtained~~ from the case record at the county office of the department.

ITEM 5. Amend subrule 86.6(3) as follows:

86.6(3) Failure to select a plan. When more than one plan is available, if the applicant fails to select a plan within ten working days of the written request to make a selection, the ~~application shall be denied unless good cause exists~~ *third-party administrator shall select the plan and notify the family of the enrollment. The third-party administrator shall select the plan on a rotating basis to ensure an equitable distribution between participating plans.*

If the third-party administrator has assigned a child a plan, the family has 30 days to request enrollment into another participating plan. All changes shall be made prospectively and shall be effective on the first day of the month following the month of the request. If the family has not requested a change of enrollment into another available plan within 30 days, the provisions of 86.6(2) shall apply.

ITEM 6. Amend subrule **86.13(2)** as follows:

Rescind and reserve paragraph **"a."**

Amend paragraph **"b"** as follows:

b. Outreach materials*, application forms, or other materials developed and produced by the department* to any organization or individual making a request *for the materials. If the request is for quantities exceeding ten, the third-party administrator shall forward the request to Iowa prison industries for dissemination.*

ITEM 7. Amend subrule **86.15(9)** as follows:

Amend paragraph **"a,"** introductory paragraph, as follows:

a. The plan shall comply with the provisions of rule 441—79.3(249A) regarding maintenance and retention of clinical and fiscal records and shall file a letter with the commissioner of insurance as described in Iowa Code section 228.7. In addition, the plan *or subcontractor of the plan, as appropriate,* must maintain a medical records system that:

Amend paragraph **"b"** by rescinding and reserving subparagraphs **(2)**, **(3)**, **(4)**, and **(6)**.

Adopt the following **new** paragraph **"c"**:

c. Each plan shall at a minimum provide reports and plan information to the department as follows:

(1) Information regarding the plan's appeal process.

(2) A plan for a health improvement program.

(3) Periodic financial, utilization and statistical reports as required by the department.

(4) Time-specific reports which define activity for child health care, appeals and other designated activities which may, at the department's discretion, vary among plans, depending on the services covered or other differences.

(5) Other information as directed by the department.

ITEM 8. Amend 441—Chapter 86 by adopting the following **new** rule:

441—86.17(514I) Use of donations to the HAWK-I program. If an individual or other entity makes a monetary donation to the HAWK-I program, the department shall deposit the donation into the HAWK-I trust fund. The department shall track all donations separately and shall not

commingle the donations with other moneys in the trust fund. The department shall report the receipt of all donations to the HAWK-I board.

86.17(1) If the donor specifically identifies the purpose of the donation, regardless of the amount, the donation shall be used as specified by the donor as long as the identified purpose is permissible under state and federal law.

86.17(2) If the donation is less than $5,000 and the donor does not specifically identify how it is to be used, the department shall use the moneys in the following order:

a. For the direct benefit of enrollees (e.g., premium payments).

b. For outreach activities.

c. For other purposes as determined by the HAWK-I board.

86.17(3) If the donation is more than $5,000 and the donor does not specify how the funds are to be used, the HAWK-I board shall determine how the funds are to be used.

[Filed 9/19/01, effective 12/1/01]
[Published 10/17/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/01.

ARC 1018B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals hereby amends Chapter 30, "Food and Consumer Safety," and Chapter 31, "Food Establishment and Food Processing Plant Inspections," Iowa Administrative Code.

These amendments are intended to implement 2001 Iowa Acts, Senate File 62, which creates an exemption to the definitions of "food establishment" and "food processing plant." These amendments state that a residence in which honey is stored, prepared, packaged, labeled, or from which honey is distributed is not a food establishment or food processing plant for which licensure is required under Iowa Code chapter 137F.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 8, 2001, as **ARC 0871B**. No comments were received on these amendments. These amendments are identical to those published under Notice.

These amendments will become effective November 21, 2001.

These amendments are intended to implement Iowa Code chapter 137F as amended by 2001 Iowa Acts, Senate File 62.

The following amendments are adopted.

ITEM 1. Amend rule **481—30.2(10A)**, definition of "food establishment," by adopting the following **new** numbered paragraph:

15. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.

ITEM 2. Amend rule **481—30.2(10A)**, definition of "food processing plant," as follows:

"Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. "Food processing plant" does not include *any of the following:*

1. A premises covered by a Class "A" beer permit as provided in Iowa Code chapter 123.

2. A premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.

ITEM 3. Amend 481—31.1(137F) by adopting the following **new** subrule:

31.1(17) Section 3-201.11 is amended to allow honey which is stored; prepared, including by placement in a container; or labeled on or distributed from the premises of a residence to be sold in a food establishment.

[Filed 9/26/01, effective 11/21/01]
[Published 10/17/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/01.

ARC 1031B

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby rescinds Chapter 2, "Nursing Education Programs," Iowa Administrative Code, and adopts a new Chapter 2 with the same title.

These rules:

1. Update definitions to reflect current trends in nursing education, i.e., distance learning and discontinuation of hospital-based diploma programs, and add a definition of "curriculum."

2. Require board-approved nursing programs leading to advanced registered nurse practitioner registration to be at the master's or post-master's level.

3. Expand the definition of "faculty" to include individuals who teach nursing in a nursing program on the basis of education, licensure or practice as a registered nurse.

4. Update accrediting agencies to reflect current practices.

5. Link curricula to scope of practice of the licensed practical nurse, registered nurse, and advanced registered nurse practitioner identified in 655—Chapters 6 and 7.

6. Identify program responsibility to notify students and prospective students of instances when a course with a clinical component may not be taken (relocated from Chapter 3).

7. Reduce the faculty-to-student ratio in the prelicensure program from 1:10 to 1:8 when direct patient care is provided.

8. Require programs to seek board approval for changes that reduce the human, physical or learning resources provided by the controlling institution to meet program needs.

9. Require programs to notify the Board of plans to deliver a cooperative program of study in conjunction with an institution that does not provide a degree in nursing.

These rules were published under Notice of Intended Action in the Iowa Administrative Bulletin on June 27, 2001, as **ARC 0758B**. These rules are identical to those published under Notice.

These rules will become effective November 21, 2001.

NURSING BOARD[655](cont'd)

These rules are intended to implement Iowa Code section 152.5 and chapter 152E.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 2] is being omitted. These rules are identical to those published under Notice as **ARC 0758B**, IAB 6/27/01.

[Filed 9/28/01, effective 11/21/01]
[Published 10/17/01]

[For replacement pages for IAC, see IAC Supplement 10/17/01.]

ARC 1028B

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code.

This amendment requires licensees who regularly examine, attend, counsel or treat adults or children to document on the renewal application completion of mandatory training on abuse identification and reporting. This amendment also requires licensees to keep compliance records on file. Exemptions for licensees are set out.

This amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on June 27, 2001, as **ARC 0757B**. This amendment is identical to that published under Notice.

This amendment will become effective November 21, 2001.

This amendment is intended to implement Iowa Code section 135.11.

The following amendment is adopted.

Amend subrule **3.7(3)** by adopting the following **new** paragraphs **"c"** to **"h"**:

c. A licensee who regularly examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for rule suspension as identified in paragraph "g."

d. A licensee who regularly examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for rule suspension as identified in paragraph "g."

e. A licensee who regularly examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training on abuse identification and reporting in dependent adults and children or condition(s) for rule suspension as identified in paragraph "g."

Training may be completed through separate courses as identified in paragraphs "c" and "d" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse.

f. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "c" to "e," including program date(s), content, duration, and proof of participation.

g. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including waiver of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 655—Chapter 5.

h. The board may select licensees for audit of compliance with the requirements in paragraphs "c" to "g."

[Filed 9/28/01, effective 11/21/01]
[Published 10/17/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/01.

ARC 1034B

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 5, "Continuing Education," Iowa Administrative Code.

These amendments:

1. Reduce the continuing education requirement from 45 to 36 contact hours/3.6 CEUs for a three-year license.
2. Eliminate the credit carry-over exception.
3. Eliminate special approval requirements for self-study if the course is recognized by mandatory states or the four nursing accrediting organizations: American Nurses' Association, National League for Nursing, National Federation of Licensed Practical Nurses, and National Association of Practical Nurse Education and Service.
4. Clarify the special approval requirement for a self-study course, Internet course, or live presentation attended outside Iowa.
5. Add a provision for accepting make-up credit for audit failures.
6. Eliminate the requirement for waiting one year to reapply for provider approval when an approved provider has voluntarily relinquished approved provider status.

The remaining amendments eliminate duplication, clarify intent, and provide for consistency of terms.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on August 8, 2001, as **ARC 0877B**. These amendments are identical to those published under Notice.

Item 4, the amendment to subrule 5.2(2), paragraph "c," was also Adopted and Filed Emergency and was published in the Iowa Administrative Bulletin on August 8, 2001, as **ARC 0878B**.

These amendments will become effective November 21, 2001, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

These amendments are intended to implement Iowa Code chapter 272C.

NURSING BOARD[655](cont'd)

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 5] is being omitted. These amendments are identical to those published under Notice as **ARC 0877B**, IAB 8/8/01.

[Filed 9/28/01, effective 11/21/01]
[Published 10/17/01]

[For replacement pages for IAC, see IAC Supplement 10/17/01.]

ARC 1035B

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 6, "Nursing Practice for Registered Nurses/Licensed Practical Nurses," Iowa Administrative Code.

This amendment permits the LPN to be supervised by an RN via teleconferencing when the RN can be on site within ten minutes.

This amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on June 27, 2001, as **ARC 0763B**. This amendment is identical to that published under Notice.

This amendment will become effective November 21, 2001.

This amendment is intended to implement Iowa Code chapter 152.

The following amendment is adopted.

Amend rule 655—6.6(152) by adopting the following new subrule:

6.6(5) The licensed practical nurse shall be permitted to provide supportive and restorative care in a county jail facility or municipal holding facility operating under the authority provided by Iowa Code chapter 356. The supportive and restorative care provided by the licensed practical nurse in such facilities shall be performed under the supervision of a registered nurse, as defined in subrule 6.2(5). The registered nurse shall perform the initial assessment and ongoing application of the nursing process. The registered nurse shall be available 24 hours per day by teleconferencing equipment, and the time necessary to be readily available on site to the licensed practical nurse shall be no greater than ten minutes. This exception to the proximate area requirement is limited to a county jail facility or municipal holding facility operating under the authority of Iowa Code chapter 356 and shall not apply in any other correctional facility.

[Filed 9/28/01, effective 11/21/01]
[Published 10/17/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/01.

ARC 1036B

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 7, "Advanced Registered Nurse Practitioners," Iowa Administrative Code.

This amendment eliminates the requirement that advanced registered nurse practitioners (ARNPs) purchase the Iowa Pharmacy Law and Information Manual and the recommendation that ARNPs subscribe to the Iowa Board of Pharmacy Examiners Newsletter. This amendment requires the ARNPs to access that information electronically.

This amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on June 27, 2001, as **ARC 0762B**. This amendment is identical to that published under Notice.

This amendment will become effective November 21, 2001.

This amendment is intended to implement Iowa Code chapter 152.

The following amendment is adopted.

Amend rule **655—7.1(152)**, definition of "prescriptive authority," to read as follows:

"Prescriptive authority" is the authority granted to an ARNP registered in Iowa in a recognized nursing specialty to prescribe, deliver, distribute, or dispense prescription drugs, devices, and medical gases when the nurse is engaged in the practice of that nursing specialty. Registration as a practitioner with the Federal Drug Enforcement Administration and the Iowa board of pharmacy examiners extends this authority to controlled substances. ARNPs shall ~~obtain a copy of the Iowa Pharmacy Law and Informational Manual.~~ *access the Iowa board of pharmacy examiners Web site for Iowa pharmacy law and administrative rules and* ~~ARNPs are encouraged to subscribe to~~ the Iowa Board of Pharmacy *Examiners* Newsletter.

[Filed 9/28/01, effective 11/21/01]
[Published 10/17/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/01.

ARC 1037B

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 12, "RN Certifying Organizations/Utilization and Cost Control Review," Iowa Administrative Code.

These amendments update the list of national certifying organizations identified by the Board and streamline the utilization and cost control review process.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on June 27, 2001, as **ARC 0761B**. These amendments are identical to those published under Notice.

NURSING BOARD[655](cont'd)

These amendments will become effective November 21, 2001.

These amendments are intended to implement Iowa Code section 509.3 and Iowa Code chapters 514, 514B, and 514F.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 12] is being omitted. These amendments are identical to those published under Notice as **ARC 0761B**, IAB 6/27/01.

[Filed 9/28/01, effective 11/21/01]
[Published 10/17/01]

[For replacement pages for IAC, see IAC Supplement 10/17/01.]

ARC 1027B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners hereby amends Chapter 44, "Discipline for Chiropractors," Iowa Administrative Code.

This rule making amends the subrule pertaining to advertising of physical therapy services.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 13, 2001, as **ARC 0740B**. A public hearing was held on July 9, 2001, from 1:30 to 3:30 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Comments were received from the Iowa Medical Society, Iowa Chiropractic Society, the American Physical Therapy Association, the Iowa Physical Therapy Association and an individual physical therapist. Written comments were received from the Iowa Osteopathic Medical Association, Iowa Nurses Association, Des Moines University Osteopathic Medical Center, Iowa Board of Physical and Occupational Therapy Examiners, licensees, and clients. Fifty-one comments were in support of the amendment and 632 opposed the amendment. Comments opposing the language included the following: The rule-making process is inappropriate while legislation is before the Iowa legislature; the term "physiotherapy" should not be used as a stand-alone term; concern that chiropractors may seek to perform nursing interventions with the use of the term "physical medicine"; and a request to add the term "chiropractic" before the term "physiotherapy."

One change from the Notice of Intended Action was adopted. The words "as long as treatment is appropriate as authorized in Iowa Code chapter 151" were added at the end of 44.1(7)"d."

This amendment was adopted by the Board of Chiropractic Examiners on September 26, 2001.

This amendment will become effective November 21, 2001.

This amendment is intended to implement Iowa Code section 147.76 and chapters 151 and 272C.

The following amendment is adopted.

Amend subrule 44.1(7) as follows:

44.1(7) Use of untruthful or improbable statements in advertisements that includes, but is not limited to, an action by a chiropractic physician in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

a. Inflated or unjustified expectations of favorable results;

b. ~~Self-laudatory claims~~ *Representations* that imply that the chiropractic physician is a skilled chiropractic physician engaged in a field or specialty of practice for which the chiropractic physician is not qualified;

c. ~~Representations that are likely to cause the average person to misunderstand; or~~ *Representations of practice in a profession other than that for which the chiropractic physician is licensed or use of procedures other than those described in Iowa Code chapter 151 or for which the chiropractic physician has not been trained in accordance with Iowa Code chapter 151;*

d. *Representations utilizing the term "physical therapy" when informing the public of the services offered by the chiropractic physician unless a licensed physical therapist is performing such services. Nothing herein shall be construed as prohibiting a chiropractic physician from making representations regarding physiotherapy that may be the same as, or similar to, physical therapy or physical medicine as long as treatment is appropriate as authorized in Iowa Code chapter 151; or*

e. Extravagant claims or proclamation of extraordinary skills not recognized by the chiropractic profession.

[Filed 9/27/01, effective 11/21/01]
[Published 10/17/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/01.

ARC 1004B

RACING AND GAMING COMMISSION[491]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby adopts amendments to Chapter 6, "Occupational and Vendor Licensing," and Chapter 9, "Harness Racing," Iowa Administrative Code.

Item 1 amends a rule to reflect current practice regarding sanctions for falsification.

Item 2 rescinds a provision that would be in conflict with the United States Trotting Association uniform rules.

These adopted amendments are identical to those published under Notice of Intended Action in the August 8, 2001, Iowa Administrative Bulletin as **ARC 0863B**.

A public hearing was held on August 28, 2001. No comments were received.

These amendments will become effective November 21, 2001.

These amendments are intended to implement Iowa Code chapter 99D.

The following amendments are adopted.

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

ITEM 1. Amend subrule **6.5(1)**, paragraph **"n,"** as follows:

n. A license shall be denied if the applicant falsifies the application form and would be ineligible for licensure under paragraphs "a" through "m" above. In other cases of falsification, a license may be issued and the applicant shall be subject to a *suspension,* fine, *or both.*

ITEM 2. Rescind and reserve subrule **9.4(5)**, paragraph **"m."**

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State of Iowa

Executive Department

*IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER TWENTY-TWO

WHEREAS, on September 11, 2001, international terrorists attacked the United States in an orchestrated plot to cause massive civilian casualties, destabilize this nation's economy and defense infrastructure, and destroy the very symbols that reflect the strength and ingenuity of this country; and

WHEREAS, terrorists commandeered four passenger aircraft, flying two of the aircraft into the World Trade Center Towers in New York City, flying the third aircraft into the ediface of the Pentagon in Washington, D.C., and crashing the fourth aircraft into a field in western Pennsylvania; and

WHEREAS, these attacks resulted in a catastrophic loss of life to airline passengers and crew, persons engaged in activities in and around the World Trade Center Towers and Pentagon, and the brave men and women who responded to emergency requests for assistance; and

WHEREAS, the property damage resulting from these attacks will reach tens of billions of dollars; and

WHEREAS, the airline industry has incurred devastating financial losses that will necessitate an immediate act of Congress to protect against bankruptcy; and

WHEREAS, federal officials are beginning to expose a network of organizations, with members operating in the United States and in other countries, dedicated to training and supporting terrorist activities worldwide; and

WHEREAS, President Bush has declared a world-wide war against terrorism, by seeking the cooperation and support of other nations, federal agencies, and state governments to assist in the detection and apprehension of terrorist operatives, and to increase the level of security around potential terrorist targets; and

*Reproduced as submitted

WHEREAS, Bush Administration officials warn that more terrorist attacks could occur in the United States in light of information gathered by national security and law enforcement personnel; and

WHEREAS, on September 27th, President Bush asked each governor across the country to deploy National Guard personnel for the purpose of enhancing security at the nation's commercial airports; and

WHEREAS, *Iowa Const. Article 4, section 7* and *Iowa Code § 29A.7* grant the governor the authority to employ the military forces of the state for the defense or relief of the state, the enforcement of its laws, the protection of life and property, and for emergencies resulting from disasters or public disorders.

NOW, THEREFORE, I, THOMAS J. VILSACK, Governor of the State of Iowa, by the power vested in me by the laws and the Constitution of the State of Iowa do hereby order the Adjutant General of the Iowa National Guard to call sufficient National Guard personnel, pursuant to 32 U.S.C. section 502(f), to staff designated airport checkpoints for security enhancement measures.

Pursuant to this Order, the Adjutant General shall order National Guard personnel to assume the following duties at designated airport security checkpoints:

1. monitor and reinforce security checkpoints by assessing the effectiveness of checkpoint structures and operations, and ensuring that corrective actions are taken as necessary to correct deficiencies and supplement existing security measures; and
2. assist screeners, supervisors, and law enforcement personnel in security checkpoint activities and operations.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 3rd day of October, in the year of our Lord two thousand one.

GOVERNOR

THE GREAT SEAL OF THE STATE OF IOWA

SECRETARY OF STATE

IOWA ADMINISTRATIVE BULLETIN
Customer Service Center
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