



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

KATHLEEN K. WEST, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Deputy Editor		(515)281-8157
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CITATION of Administrative Rules

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

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

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

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

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2010

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. 23 '09	Jan. 13 '10	Feb. 2 '10	Feb. 17 '10	Feb. 19 '10	Mar. 10 '10	Apr. 14 '10	July 12 '10
Jan. 8	Jan. 27	Feb. 16	Mar. 3	Mar. 5	Mar. 24	Apr. 28	July 26
Jan. 22	Feb. 10	Mar. 2	Mar. 17	Mar. 19	Apr. 7	May 12	Aug. 9
Feb. 5	Feb. 24	Mar. 16	Mar. 31	Apr. 2	Apr. 21	May 26	Aug. 23
Feb. 19	Mar. 10	Mar. 30	Apr. 14	Apr. 16	May 5	June 9	Sep. 6
Mar. 5	Mar. 24	Apr. 13	Apr. 28	Apr. 30	May 19	June 23	Sep. 20
Mar. 19	Apr. 7	Apr. 27	May 12	May 14	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	***May 26***	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	***June 23***	July 14	Aug. 18	Nov. 15
May 14	June 2	June 22	July 7	July 9	July 28	Sep. 1	Nov. 29
May 26	June 16	July 6	July 21	July 23	Aug. 11	Sep. 15	Dec. 13
June 11	June 30	July 20	Aug. 4	Aug. 6	Aug. 25	Sep. 29	Dec. 27
June 23	July 14	Aug. 3	Aug. 18	Aug. 20	Sep. 8	Oct. 13	Jan. 10 '11
July 9	July 28	Aug. 17	Sep. 1	***Sep. 1***	Sep. 22	Oct. 27	Jan. 24 '11
July 23	Aug. 11	Aug. 31	Sep. 15	Sep. 17	Oct. 6	Nov. 10	Feb. 7 '11
Aug. 6	Aug. 25	Sep. 14	Sep. 29	Oct. 1	Oct. 20	Nov. 24	Feb. 21 '11
Aug. 20	Sep. 8	Sep. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 7 '11
Sep. 1	Sep. 22	Oct. 12	Oct. 27	***Oct. 27***	Nov. 17	Dec. 22	Mar. 21 '11
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Oct. 1	Oct. 20	Nov. 9	Nov. 24	***Nov. 24***	Dec. 15	Jan. 19 '11	Apr. 18 '11
Oct. 15	Nov. 3	Nov. 23	Dec. 8	***Dec. 8***	Dec. 29	Feb. 2 '11	May 2 '11
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PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
23	Friday, April 16, 2010	May 5, 2010
24	Friday, April 30, 2010	May 19, 2010
25	Friday, May 14, 2010	June 2, 2010

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*****

COMMUNITY ACTION AGENCIES DIVISION[427]

Family development and self-sufficiency program, ch 15 IAB 4/7/10 ARC 8637B	Room 208, Second Floor Lucas State Office Bldg. Des Moines, Iowa	April 27, 2010 1 p.m.
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EDUCATIONAL EXAMINERS BOARD[282]

Class A license requirements, 13.10(5) IAB 4/7/10 ARC 8686B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	April 28, 2010 1 p.m.
Administrator licenses for applicants with standard and professional service licenses, 18.4 IAB 4/7/10 ARC 8687B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	April 28, 2010 1 p.m.
Specific requirements for Class B license, 27.6 IAB 4/7/10 ARC 8689B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	April 28, 2010 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Water quality standards—surface water classification, 61.3(5) IAB 3/10/10 ARC 8599B	Community Meeting Room 15 N. 6th St. Clear Lake, Iowa	April 7, 2010 1 p.m.
	Fifth Floor Conference Rooms Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	April 9, 2010 1 p.m.
Underground storage tanks—technical standards and corrective actions, amendments to ch 135 IAB 4/7/10 ARC 8676B	Community Meeting Room City Hall Clerk's Office 111 N. Main St. Denison, Iowa	April 28, 2010 1 to 3 p.m.
	Schwab Auditorium Public Library 1401 5th St. Coralville, Iowa	April 29, 2010 1 to 3 p.m.
	Fifth Floor Conference Rooms Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	April 30, 2010 1 to 3 p.m.

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Elevator safety board—installation of hoistway door safety retainers, 72.1(3)“a” IAB 3/24/10 ARC 8622B	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	April 14, 2010 10 a.m. (If requested)
Elevator safety board—safe access to speed governors, 73.14(9) IAB 3/24/10 ARC 8623B	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	April 14, 2010 10:30 a.m. (If requested)

NATURAL RESOURCE COMMISSION[571]

Wildlife habitat funding, 23.1, 23.5 to 23.7, 23.14 IAB 4/7/10 ARC 8680B (ICN Network)	Contact (515)281-5034 or visit the Department's Web site at www.iowadnr.com for a list of ICN hearing locations	April 27, 2010 6 to 9 p.m.
Controlled hunting program on Lake Odessa, 53.3 IAB 4/7/10 ARC 8681B (ICN Network)	Contact (515)281-5034 or visit the Department's Web site at www.iowadnr.com for a list of ICN hearing locations	April 27, 2010 6 to 9 p.m.
Waterfowl and coot hunting seasons, 91.1, 91.3, 91.6 IAB 4/7/10 ARC 8682B (ICN Network)	Contact (515)281-5034 or visit the Department's Web site at www.iowadnr.com for a list of ICN hearing locations	April 27, 2010 6 to 9 p.m.
Nonresident deer hunting, 94.7(5), 94.8(3), 94.8(4) IAB 4/7/10 ARC 8683B (ICN Network)	Contact (515)281-5034 or visit the Department's Web site at www.iowadnr.com for a list of ICN hearing locations	April 27, 2010 6 to 9 p.m.
Antlerless-deer-only licenses, 106.1(5), 106.6(6) IAB 4/7/10 ARC 8684B (ICN Network)	Contact (515)281-5034 or visit the Department's Web site at www.iowadnr.com for a list of ICN hearing locations	April 27, 2010 6 to 9 p.m.
Areas open for taking bobcat; quotas, 108.7 IAB 4/7/10 ARC 8685B (ICN Network)	Contact (515)281-5034 or visit the Department's Web site at www.iowadnr.com for a list of ICN hearing locations	April 27, 2010 6 to 9 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Speech pathology and audiology, amendments to chs 300, 303, 304 IAB 4/7/10 ARC 8639B	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	April 27, 2010 8 to 8:30 a.m.
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PUBLIC HEALTH DEPARTMENT[641]

Volunteer health care provider program, ch 88 IAB 3/24/10 ARC 8627B	GoToMeeting online at: https://www1.gotomeeting.com/join/272492433 Toll-free: 1-877-739-5902 Access Code: 272-492-433	April 15, 2010 9 to 10 a.m.
Substance abuse and problem gambling treatment programs, amend ch 155; rescind ch 162 IAB 3/24/10 ARC 8628B	Room 518 Lucas State Office Bldg. Des Moines, Iowa	April 13, 2010 11 a.m. to 12 noon
Substance abuse treatment records—release of client/patient information, 157.7 IAB 3/24/10 ARC 8629B	Room 518 Lucas State Office Bldg. Des Moines, Iowa	April 13, 2010 11 a.m. to 12 noon

TRANSPORTATION DEPARTMENT[761]

Update of reference to federal motor carrier safety regulations, 529.1 IAB 4/7/10 ARC 8668B	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	April 29, 2010 10 a.m. (If requested)
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The following list will be updated as changes occur.

“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 are included alphabetically in SMALL CAPITALS at the left-hand margin.

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ARC 8637B**COMMUNITY ACTION AGENCIES DIVISION[427]****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 216A.92B, the Commission on Community Action Agencies hereby gives Notice of Intended Action to adopt Chapter 15, “Family Development and Self-Sufficiency Program,” Iowa Administrative Code.

This new chapter conforms to 2008 legislative changes to modify and replace rules at 441—Chapter 165. These rules define and structure the Family Development and Self-Sufficiency Council within the Department of Human Rights and the Family Development and Self-Sufficiency Grant Program administered by the Division of Community Action Agencies of the Department of Human Rights.

Any interested persons may make written comments on the proposed rules by 4:30 p.m. on April 27, 2010. Written comments should be addressed to the Division of Community Action Agencies, Iowa Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319. Comments may also be submitted by fax to (515)242-6119 or by E-mail to bill.brand@iowa.gov.

A public hearing will be held in Room 208, Second Floor, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa, at 1 p.m. on April 27, 2010. At that time, persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Division and advise of specific needs.

The proposed rules are subject to the general waiver provisions of the Department of Human Rights found at 421—Chapter 7.

These rules are intended to implement 2009 Iowa Code Supplement section 216A.107.

The following amendment is proposed.

Adopt the following **new** 427—Chapter 15:

CHAPTER 15

FAMILY DEVELOPMENT AND SELF-SUFFICIENCY PROGRAM

PREAMBLE

These rules define and structure the family development and self-sufficiency council within the department of human rights and the family development and self-sufficiency grant program administered by the division of community action agencies of the department of human rights. The purpose of the program is to fund, evaluate, and provide recommendations on programs that provide services to assist families at risk of instability or dependency on the family investment program to move toward self-sufficiency.

These rules establish council membership and duties, provisions for the grant proposal process and the awarding of grants, grant contract provisions, criteria and conditions for at-risk families, provisions for referral of families, grantee responsibilities, and the requirement for program evaluation.

427—15.1(216A) Definitions.

“*Applicant*” means a public or private organization that applies for a family development and self-sufficiency grant through the request for proposal process.

“*Council*” means the family development and self-sufficiency council.

“*Department*” means the department of human rights.

COMMUNITY ACTION AGENCIES DIVISION[427](cont'd)

“Division” means the division of community action agencies of the department of human rights.

“Grant” means an award approved by the council to fund a family development and self-sufficiency project.

“Grantee” means an applicant whose proposal is selected by the council and who enters into a grant agreement with the council.

“Program” means the family development and self-sufficiency (FaDSS) program.

“Proposal” means an application for grant funds to fund specific projects.

427—15.2(216A) Council membership and duties. Council membership, powers and duties are established in 2009 Iowa Code Supplement section 216A.107. In general, the council’s powers and duties are to serve in a policymaking and advisory role with respect to the family development and self-sufficiency program and to award grants administered by the division as described in 2009 Iowa Code Supplement section 216A.107(3).

427—15.3(216A) Council terms and procedures.

15.3(1) Terms of office.

a. The term of office for the members of the council selected by the other members of the council pursuant to 2009 Iowa Code Supplement section 216A.107(1) “f” to “h” and “l” shall be three years. Such members whose terms expire may be reappointed and shall receive actual expenses incurred while serving in their official capacity, subject to statutory limits. The members as specified under 2009 Iowa Code Supplement section 216A.107(1) “f” and “g” shall also receive per diem compensation as provided in Iowa Code section 7E.6.

b. The term of office of a legislative member of the council shall end if the legislative member ceases to be a member of the general assembly.

c. Vacancies in membership of the council shall be filled in the same manner as the original appointment.

15.3(2) Meetings and procedures.

a. The council shall meet at least four times per year. The council will establish the schedule of meetings for the upcoming year at the council meeting held in June of each year. This schedule may be changed as necessary. Special meetings may be called by the chairperson or upon the written request of a majority of council members.

b. Members of the council shall elect a chairperson, vice chairperson and such other officers as the council deems necessary to two-year terms at the first council meeting held after July 1 in even-numbered years. Officers shall assume office at the first meeting following the election. A vacancy in any elective office shall be filled by council action.

c. A quorum shall consist of two-thirds of the members eligible to vote. When a quorum is present, a position is carried by a majority of the members, or members’ designees, eligible to vote.

d. Copies of the minutes of council meetings shall be filed in the office of the administrator of the Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319-0114.

e. The council is a governmental body subject to the provisions of Iowa Code chapters 21 and 22. Procedural matters of the council not addressed by these rules shall be determined according Robert’s Rules of Order, consistent with Iowa law.

f. The provisions of Iowa Code section 69.15 regarding nonattendance and vacancies shall apply to the council except that, with respect to Iowa Code section 69.15(3), the council chairperson shall accept or reject resignations and notify the member of such decision. Vacancies shall be filled as provided in subrule 15.3(1).

427—15.4(216A) Identification of conditions and criteria for families at risk. The council has identified the following conditions and criteria which may place families at risk of instability or of dependency on the family investment program:

15.4(1) Educational level of head of household.

COMMUNITY ACTION AGENCIES DIVISION[427](cont'd)

- a. Head of household has less than a high school education.
- b. Head of household lacks basic literacy skills.

15.4(2) Work experience of head of household.

- a. Head of household has never been employed.
- b. Head of household has multiple episodes of employment lasting less than one year.
- c. Head of household is currently unemployed.

15.4(3) Household composition.

- a. Members are homeless or nearly homeless.
- b. Members outside the nuclear family are in residence.
- c. One or more children in the household were born while the parent was on public assistance.
- d. One or more children in the household are identified as having special needs.
- e. Household includes an alcohol or substance abuser.
- f. Household includes a past or current perpetrator of child abuse or domestic violence.
- g. Household includes a member with a record of incarceration.

15.4(4) Background of head of household.

- a. Head of household was a teenager at birth of first child.
- b. Head of household has a disability or chronic illness (mental or physical).
- c. Head of household is a past or current victim of child abuse or domestic violence.
- d. Head of household grew up in a household with alcohol or substance abuse.

15.4(5) Public assistance history.

- a. Head of household grew up in a household that received public assistance.
- b. Household has experienced multiple episodes of receipt of public assistance.
- c. Household has been on public assistance for three or more years.

15.4(6) Other conditions. The council has also identified the following conditions that may contribute to instability or long-term dependency:

- a. Geographic location.
- b. Lack of employment opportunity.
- c. Lack of available services.
- d. Lack of transportation.

427—15.5(216A) Referral of families. Families who meet one or more of the conditions and criteria identified in 427—15.4(216A) may be referred to the program by the department of human services, the department of workforce development, family self-referral, or other sources. The department of human services shall provide to the division on a monthly basis a list of families who are identified as receiving family investment program benefits and who are not currently participating in the family development and self-sufficiency program.

427—15.6(216A) Funding of grants.

15.6(1) Availability of funds. The council shall develop requests for proposals for the award of grants, subject to availability of funds. Grants shall not exceed 36 months; however, the division shall approve grantee budgets on an annual basis, based upon and subject to available funds.

15.6(2) Grant application process. Applications for family development and self-sufficiency grants shall be distributed by the division through a request for proposals. Applicants shall submit proposals to the division in accordance with instructions. Applications shall be submitted by mail or hand delivery to the Bureau of Community Services, Division of Community Action Agencies, Department of Human Rights, Second Floor, Lucas State Office Building, Des Moines, Iowa 50319, by the date and time indicated in the request for proposals.

15.6(3) Grant proposals. Grant proposals for the program shall include the following elements:

- a. Designation of the families to be served that meet one or more criteria for being at risk of family instability or of dependency on the family investment program, and agreement to serve families who are referred by the department of human services from the family investment program and who meet the criteria.

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b. Designation of the services to be provided for the families served, including assistance regarding job-seeking skills, family budgeting, nutrition, self-esteem, methamphetamine education, health and hygiene, parenting and child education preparation, and goal setting. Proposals shall indicate the support groups and support systems to be developed for the families during the transition between the need for assistance and self-sufficiency.

c. Designation of the manner in which other needs of the families will be provided for, including but not limited to child care assistance, transportation, substance abuse treatment, support group counseling, food, clothing, and housing.

d. Designation of the process for training of staff which provides services and the appropriateness of training for the purposes of meeting family development and self-sufficiency goals of the families served.

e. Designation of the support available within the community for the program and for meeting subsequent needs of families and the manner in which community resources will be made available to the families served.

f. Designation of the manner in which the program will be subject to audit and evaluation.

g. Designation of agreement provisions for tracking and reporting performance measures developed pursuant to rule 427—15.2(216A).

h. Description of project budget. Budgets must conform to all applicable state and federal requirements regarding allowable costs.

i. Description of overall organizational capacity to successfully meet program goals, including personnel and fiscal management capacity.

15.6(4) Selection of grantees. Criteria for selection of grantee proposals include, but are not limited to, the elements identified in subrule 15.6(3). All applications timely received shall be reviewed by the division, which shall make recommendations to the council. The council shall review the projects recommended by the division and make the final decision with respect to grant awards.

15.6(5) Notification of applicants. Applicants shall be notified of grant award decisions within 60 days after the due date for receipt of proposals.

427—15.7(216A) Grants not renewed and grants terminated or reduced. If the council determines that a grantee's project funding will not be renewed or if the council terminates or reduces a grantee's funding, the balance of funds not renewed or terminated or reduced shall be awarded by the council to other grantees for which funding is approved, based on criteria approved by the council. In the event no previously approved grantees have been selected, the council shall fund new grantees selected by the council as a result of a competitive grant application process.

427—15.8(216A) Appeal. Applicants dissatisfied with the council's actions regarding grant proposals for funds and grantees dissatisfied with termination of a contract may appeal the council's decision. The letter appealing the decision shall be submitted to the division within 10 business days of the date of the notice of decision. The appeal must be based on a contention that the process violated state or federal law, policy, or rule; did not provide adequate public notice or was altered without adequate public notice; or involved conflict of interest or was biased or unfair. The appeal must specify the basis for the appeal and must include supporting evidence. Within 15 working days of the receipt of the appeal, the director of the department shall issue a final decision.

In the case of a grant award, no disbursements will be made to a grantee for a period of 10 calendar days following issuance of the notice of decision to award. If an appeal is filed within the 10 days, all disbursements will be held pending a final decision on the appeal. All applicants will be notified if an appeal is filed.

427—15.9(216A) Contract with grantee. Funds for grants approved by the council shall be awarded pursuant to a contract entered into by the division and the grantee.

15.9(1) Negotiation. The division shall conduct contract negotiations with the selected applicant, including negotiations regarding possible modifications to a grant proposal.

COMMUNITY ACTION AGENCIES DIVISION[427](cont'd)

15.9(2) *Withdrawal of contract offer.* If the applicant and the division are unable to successfully negotiate a contract, the council may withdraw the award offer and award the grant to the next-highest-scoring applicant.

15.9(3) *Contract revisions.* The division and the grantee may negotiate revisions to the contract to allow for nonmaterial expansion or modification of services so long as such revisions do not increase the total amount of the grant. The division shall have the right to approve an amendment to the contract budget moving grant funds between budget line items if the funds represent less than 10 percent of the budget line item.

427—15.10(216A) Grantee responsibilities.

15.10(1) *Marketing.* The grantee shall be responsible for marketing its services to referral sources and to families who have been referred to the program. All marketing plans, procedures, and material used by the grantee must be approved in writing by the division prior to use.

15.10(2) *Selection of families.* Grantees shall serve referred families who meet one or more of the risk criteria, subject to capacity limitations. For the families who voluntarily agree to participate in the program, the grantee is responsible to timely notify the division of the enrollment through the FaDSS data system. This notification shall identify the families in the department's database who are receiving grantee services.

15.10(3) *Record management.* The grantees shall maintain records which include, but are not limited to:

- a. Specific family information.
- b. Specific services provided.
- c. Fiscal records of expenditures.
- d. Any other specific records as may be determined necessary by the division.

15.10(4) *Reports.* Grantees shall provide to the division the following reports:

- a. Monthly Funding Request and Expenditure Report that includes, but is not limited to, grant dollars expended as they relate to each line item in the budget.
- b. Annual Report that includes a summary of the activities by the grantee during the contract period.
- c. Other reports as deemed necessary by the division.

427—15.11(216A) Evaluation. The grantee shall be evaluated by the division at least once prior to the end of each 12-month period of the contract. The purpose of the evaluation is to evaluate the progress of the grantee toward the stated goals and objectives of the project, as well as other matters relating to contractual obligations. The grantee shall receive a written report of the evaluation from the division.

These rules are intended to implement 2009 Iowa Code Supplement section 216A.107.

ARC 8686B**EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Issuance of Teacher Licenses and Endorsements,” Iowa Administrative Code.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Applicants for the Class A license who are employed by an Iowa educational unit and who hold an expired license because they do not meet the renewal requirements will be required to have the signature of their superintendent before the license will be issued. This amendment will address individuals who have not completed the required credits for licensure renewal. This change would help to notify employers that an employee has not been taking renewal credits as required.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, April 28, 2010, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, April 30, 2010. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule 13.10(5) as follows:

13.10(5) *Based on an expired Iowa certificate or license, exclusive of a Class A or Class B license.*

a. The holder of an expired license, exclusive of a Class A or Class B license, shall be eligible to receive a Class A license upon application. This license shall be endorsed for the type of service authorized by the expired license on which it is based.

b. The holder of an expired license who is currently under contract with an Iowa educational unit (area education agency/local education agency/local school district) and who does not meet the renewal requirements for the license held shall be required to secure the signature of the superintendent or designee before the license will be issued.

ARC 8687B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 18, “Issuance of Administrator Licenses and Endorsements,” Iowa Administrative Code.

The proposed amendment allows a person who has completed a non-teaching program, such as a school guidance counseling program or a social work program, to become an administrator. An applicant would be required to complete the administrative coursework and the additional coursework proposed in rule 282—18.4(272), including the professional education core requirements that are the foundation of a teacher preparation program. This amendment ensures the same quality of preparation for an applicant

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

who has completed the requirements for the professional service license to become an administrator as for the person who has completed a teacher preparation program.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, April 28, 2010, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, April 30, 2010. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend rule 282—18.4(272) as follows:

282—18.4(272) General requirements for an administrator license.

18.4(1) *Eligibility for applicants who have completed a teacher preparation program.* Applicants for the administrator license must first comply with the requirements for all Iowa practitioners set out in 282—Chapter 13. Additionally, the requirements of rules 282—13.2(272) and 282—13.3(272) and the license-specific requirements set forth under each license must be met before an applicant is eligible for an administrator license.

18.4(2) *Specific requirements for an initial administrator license for applicants who have completed a teacher preparation program.* An initial administrator license valid for one year may be issued to an applicant who:

- a. Is the holder of or is eligible for a standard license; and
- b. Has three years of teaching experience; and
- c. Has completed a state-approved PK-12 principal and PK-12 supervisor of special education program (see subrule 18.9(1)); and
- d. Is assuming a position as a PK-12 principal and PK-12 supervisor of special education (see subrule 18.9(1)) for the first time or has ~~two years~~ one year of out-of-state or nonpublic administrative experience; and
- e. Has completed an approved human relations component; and
- f. Has completed an exceptional learner component; and
- g. Has completed an evaluator approval program.

18.4(3) *Eligibility for applicants who have completed a professional service endorsement program.* Applicants for the administrator license must first comply with the requirements set out in 282—Chapter 27.

18.4(4) *Specific requirements for an initial administrator license for applicants who have completed a professional service endorsement.* An initial administrator license valid for one year may be issued to an applicant who:

- a. Is the holder of an Iowa professional service license; and
- b. Has three years of experience in an educational setting in the professional service endorsement area; and
- c. Has completed a state-approved PK-12 principal and PK-12 supervisor of special education program (see subrule 18.9(1)); and

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- d. Is assuming a position as a PK-12 principal and PK-12 supervisor of special education (see subrule 18.9(1)) for the first time or has one year of out-of-state or nonpublic administrative experience; and
- e. Has completed an approved human relations component; and
- f. Has completed an exceptional learner component; and
- g. Has completed the professional education core in 282—paragraphs 13.18(4) “a” through “j”; and
- h. Has completed an evaluator approval program.

ARC 8689B**EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 27, “Issuance of Professional Service Licenses,” Iowa Administrative Code.

This amendment allows an individual who has a Professional Service license to apply for a Class B license. This license would allow the individual to practice in an additional professional service area while completing the necessary coursework requirements to add the new endorsement to the individual’s Professional Service license.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, April 28, 2010, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, April 30, 2010. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Adopt the following **new** rule 282—27.6(272):

282—27.6(272) Specific requirements for a Class B license. A Class B license, which is valid for two years and which is nonrenewable, may be issued to an individual under the following conditions:

27.6(1) Endorsement in progress. The individual has a valid professional service license and one or more professional service endorsements, but is seeking to obtain some other professional service endorsement. A Class B license may be issued if requested by an employer and if the individual

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

seeking to obtain some other professional service endorsement has completed at least two-thirds of the requirements, or one-half of the content requirements in a state-designated shortage area, leading to completion of all requirements for the endorsement.

27.6(2) Request for exception. A school district administrator may file a written request with the board for an exception to the minimum content requirements on the basis of documented need and benefit to the instructional program. The board will review the request and provide a written decision either approving or denying the request.

27.6(3) Expiration. This license will expire on June 30 of the fiscal year in which it was issued plus one year.

ARC 8641B**EDUCATION DEPARTMENT[281]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 56, “Iowa Vocational Rehabilitation Services,” Iowa Administrative Code.

Many of the proposed amendments are nonsubstantive clean-up items that primarily reflect actual practice and that will not alter the services provided to clients of the Division of Vocational Rehabilitation Services. The proposed amendments of consequence do the following:

- Item 1 adds a definition of “menu of services” (and Items 6 and 8 through 10 reflect the addition of this term) because this term is used by the Division in client materials; adding the term to the rules makes the menu of services more generally accessible to the public and to clients.

- Items 3 and 4 clarify eligibility for Division services of recipients of social security disability payments or Supplemental Security Income payments, not because of any new laws or regulations, but because current language is not clear.

- Items 7 and 8 change postsecondary education assistance in order to assist the greatest practical number of eligible clients. The amount of assistance to an eligible client in the first or second year of college will be based on the tuition charged by the least expensive Iowa community college, even if the client is enrolled in a four-year postsecondary institution. The amendments also add paragraphs about various graduate schools, non-credit courses, and distance learning. A copy of these proposed changes was sent to the financial aid administrator of every postsecondary institution in Iowa. Two pre-Notice comments were received. One financial aid administrator merely asked for a timeline of when the rates will be published. The other financial aid administrator (from a community college) noted that these changes may encourage more students to take their first two years of postsecondary work at a community college, but also noted that the reality of serving more students with fewer dollars to each student served may mean that some students discontinue their postsecondary education. The commenter added that students who qualify for other financial aid will retain the potential to have full coverage of the students’ postsecondary costs.

- Item 13 adds a factor to those considered by the Division when purchasing items for a client and provides for repossession of the item by the Division.

- Item 14 makes the process of appealing a denial of services easier for a client or would-be client of the Division.

- Items 15 through 20 pertain to the Iowa self-employment program, reducing from three to two the number of document requirements scored by business development specialists and adding provisions consistent with federal law regarding types of business ventures that may not be funded by the program.

EDUCATION DEPARTMENT[281](cont'd)

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before April 27, 2010. Comments on the proposed amendments should be directed to Kenda Jochimsen, Chief, Rehabilitation Services Bureau, 510 East 12th Street, Des Moines, Iowa 50319; telephone (515)281-4154; E-mail kenda.jochimsen@iowa.gov; or fax (515)281-4703.

These amendments are intended to implement Iowa Code chapter 259.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of “Menu of services” in rule **281—56.3(259)**:

“*Menu of services*” means the services provided by community partners to assist an individual with a disability in achieving an employment outcome. The services are selected and jointly agreed to by the counselor and client of the division. Payments for services are made based on a fee structure that is published and updated annually and include the following:

1. Referral to the community provider completed by the counselor and client for a desired outcome;

2. Assessment through a community work-site assessment, comprehensive vocational evaluation, facility work-site assessment, career exploration, or job shadowing assessment to identify a realistic vocational goal that is compatible with the individual’s needs, preferences, abilities, disability, and informed choice;

3. Enhanced planning requested by the counselor and coordinated with community partners when conflicting and multiple issues are preventing the client from moving forward with employment, so that a comprehensive plan is developed to achieve the employment outcome;

4. Placement services selected by the counselor, client and interested partners to prepare for and obtain employment. Placement services include the following:

- Vocational preparation that enhances and improves the client’s ability to perform specific work, learn the necessary skills to do a specific job, minimize negative work habits and behaviors that have impeded job retention, develop skills in finding a job, and learn how to navigate transportation systems to and from work;

- Work adjustment training that remedies negative work habits and behaviors, improves work tolerance, and develops strategies to improve a client’s ability to maintain employment;

- Job-seeking skills training that teaches the client strategies necessary to find employment with or without assistance and at the level required by the client’s needs;

- Job development and job follow-up that places the client on a job in the community working for a business, maintains contact with the employer on the client’s progress, is jointly funded through the Medicaid waiver program when appropriate, and is purchased only when used in conjunction with another required service;

- Employer development that, through a job analysis, identifies for businesses the job tasks and customized training plan for the job for which the client will be trained, is authorized only as a stand-alone service when the Medicaid waiver funds the job development and is purchased only when used in conjunction with another required service;

- Supported job coaching that assists the client in learning job-specific skills and work habits and behaviors while employed on the job and that continues as needed after the division file is closed;

- Selected job coaching that assists the client in learning job-specific skills and work habits and behaviors while employed on the job and that is purchased only when approved by the area office supervisor.

ITEM 2. Amend rule **281—56.3(259)**, definition of “Supported employment services,” as follows:

“*Supported employment services*” means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the division and documented through the employment readiness analysis and placement plan:

EDUCATION DEPARTMENT[281](cont'd)

1. For a period of time not to exceed 18 months unless, under special circumstances, the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE; and
2. Following successful case closure, as postemployment services that are unavailable from an extended service provider and that are necessary for the individual to maintain or regain the job placement or to advance in employment.

ITEM 3. Amend rule 281—56.4(259) as follows:

281—56.4(259) Individuals who are recipients of SSD/SSI. Recipients of social security disability payments or supplemental security income payments are ~~automatically eligible for vocational rehabilitation services and are~~ determined automatically as being significantly disabled and are eligible for vocational rehabilitation services if such recipients demonstrate eligibility under rules 281—56.8(259) and 281—56.13(259). Recipients who demonstrate eligibility under rules 281—56.8(259) and 281—56.13(259) must also demonstrate need in the employment plan under rule 281—56.14(259). Nothing in this rule automatically entitles a recipient of social security disability payments or supplemental security income payments to any good or service provided by the division.

ITEM 4. Amend rule 281—56.11(259) as follows:

281—56.11(259) Establishment of financial need. The division establishes the client's financial need prior to providing physical restoration, including prostheses; transportation (for other than diagnostic, guidance or placement purposes); maintenance; and occupational licenses, tools and equipment. Recipients of SSD/SSI are not subject to a financial needs test for any services but must demonstrate eligibility under rules 281—56.8(259) and 281—56.13(259), as well as demonstrate need in the employment plan under rule 281—56.14(259).

In determining financial need, the clients or, in the case of minors, the minors' parents or guardians are required to make a specific declaration regarding all family income from any source that may be applied toward the cost of rehabilitation services, except those of diagnosis, counseling, training and placement, which are provided without regard to financial need; however, the division shall not pay for more than the balance of the cost of the service minus comparable services and benefits. The income should be available to the client; that is, actually on hand, free from prior obligations and ready when needed.

The division shall observe the following policies in making a determination of financial need based upon the findings:

56.11(1) to 56.11(7) No change.

ITEM 5. Amend rule 281—56.15(259) as follows:

281—56.15(259) Scope of services. All necessary vocational rehabilitation services, including counseling, physical restoration, training, and placement, are made available to eligible individuals to the extent necessary to achieve their vocational rehabilitation and must be included in the employment plan and agreed to by the eligible individual's counselor before the service is delivered. The division cooperates with federal and other state agencies providing vocational rehabilitation or similar services, and written agreements providing for interagency cooperation may be entered into as required by the Act at the discretion of the division. In selected instances, the division assumes responsibility for providing short periods of medical care for acute conditions arising in the course of the client's rehabilitation, which if not cared for would constitute a hazard to the achievement of the rehabilitation objective because of the client's limited funds and the unavailability of free medical services.

ITEM 6. Amend subrule 56.16(2) as follows:

56.16(2) Types of training. The types of training programs available are as follows:

- a. No change.
- b. Vocational training, which includes any organized form of instruction that provides the knowledge and skills essential for performing in a vocational-technical area. Such knowledge and skills

EDUCATION DEPARTMENT[281](cont'd)

may be acquired through training in an institution, on the job, by correspondence, by tutors, through a selection from the menu of services, or through a combination of any or all of these methods.

c. Prevocational training, which includes any form of basic training given for the acquisition of background knowledge or skills prerequisite or preparatory to vocational training or to employment where the primary occupational knowledge and skills are learned on the job or through a selection from the menu of services.

d. to g. No change.

ITEM 7. Amend subrule 56.16(4), introductory paragraph, as follows:

56.16(4) Financial assistance for postsecondary training. Calculations of financial assistance for postsecondary training are ~~based on tuition and fee amounts~~ determined annually. In order for the division to continue to assist the greatest practical number of eligible clients, assistance shall be no less than 40 percent and no more than 60 percent of the cost of attending the least expensive in-state public institution for a course of instruction leading to an undergraduate degree. In all cases, the postsecondary institution in which the student is enrolled must be accredited by an entity recognized by the federal Department of Education as having authority to accredit postsecondary institutions.

ITEM 8. Rescind paragraph **56.16(4)“a”** and adopt the following **new** paragraph in lieu thereof:

a. *Tuition and fee-based general assistance.*

(1) Second year or less status. A student is considered to be in second year or less status when the student has earned fewer than 60 semester or 90 quarter credit hours in the student's present area of study or discipline; when the student is enrolled in a community college or other two-year postsecondary institution; or when the student is enrolled in a program whose terminal degree is an associate degree but the student has not yet attained the associate degree. For an eligible student in second year or less status, the division shall pay no less than 40 percent and no more than 60 percent of the least expensive per-credit-hour tuition charged by an Iowa community college.

(2) Third or fourth year status. A student is considered to be in third or fourth year status if the student has earned at least 60 semester or 90 quarter credit hours or has achieved an associate degree in the student's present area of study or discipline but has not yet earned a postsecondary baccalaureate degree. For an eligible student in third or fourth year status, the division shall pay no less than 40 percent and no more than 60 percent of the tuition charged by the college or university, limited to the amount charged by the least expensive Iowa regents institution. Students in third or fourth year status who take graduate courses are only eligible to receive the established assistance rate for third or fourth year status.

(3) Medical school. Only a student enrolled full-time in a graduate school pursuing a course of studies that will lead to a medical doctor (MD) or doctor of osteopathy (DO) degree is eligible for assistance under this paragraph. For a student who is an MD or DO candidate, the division shall pay no less than 40 percent and no more than 60 percent of the tuition charged by the college of medicine of the University of Iowa. Students pursuing any other graduate degree in a medical arts program may be eligible for assistance under subparagraph 56.16(4)“a”(5).

(4) Law school. Only a student enrolled full-time in a graduate school pursuing a course of studies that will lead to a doctor of jurisprudence (JD) degree is eligible for assistance under this paragraph. For a student who is a JD candidate, the division shall pay no less than 40 percent and no more than 60 percent of the tuition charged by the college of law of the University of Iowa. Students pursuing any other graduate degree from a law school may be eligible for assistance under subparagraph 56.16(4)“a”(5).

(5) Graduate or postgraduate school. Notwithstanding subparagraphs 56.16(4)“a”(3) and (4), for a student enrolled in a graduate or postgraduate school, the division shall pay no less than 40 percent and no more than 60 percent of the tuition charged by the college or university, limited to the amount charged by the least expensive comparable graduate school at an Iowa regents institution.

(6) Distance learning (on-line courses). For a student enrolled in a distance learning course, the division shall pay the lesser of one of the following:

1. No less than 40 percent and no more than 60 percent of the actual cost of the course, or
2. The rate established for a student in second year or less status.

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(7) Continuing education courses. For a student taking a noncredit continuing education course, the division shall pay the lesser of one of the following:

1. No less than 40 percent and no more than 60 percent of the actual cost of the course, or
2. The rate established for a student in second year or less status.

(8) Out-of-state postsecondary institutions. For an eligible student who attends a postsecondary institution located outside Iowa, the division shall pay at the same rates set in this subrule.

ITEM 9. Amend rule 281—56.21(259) as follows:

281—56.21(259) Placement. The division not only prepares individuals with disabilities for jobs and trains them in techniques in securing their own jobs, but also accomplishes the actual placement, directly or indirectly through a service from the menu of services, of all eligible individuals with disabilities who receive rehabilitation services. Placement activities are based upon adequate evaluation and preparation of the client and ordinarily include some combination of the following: evaluation of the client's job readiness; development and execution of a plan for job-seeking activities; instruction in making job applications and in conduct and appearance during interviews; employer contacts; registration with the state workforce development center administration division; job analysis and modification; job coaching; employer or supervisor consultation, advisement and training; time-limited job coaching; postplacement follow-up; and relocation costs. Satisfactory employment is the objective of all division services of preparation, and placement services are an important, integral part of the overall vocational rehabilitation program. As such, in addition to the services listed herein, placement services may include the need for transportation and subsistence allowances and the purchase and acquisition of appropriate clothing, tools, equipment, and occupational licenses.

ITEM 10. Amend rule 281—56.22(259) as follows:

281—56.22(259) Supported employment and transitional employment. As defined herein, supported employment is provided to clients with the most significant disabilities for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities. Supported employment also includes transitional employment as defined herein for clients with mental illnesses. Supported employment is provided either directly by division staff or through the selection of an item from the menu of services.

ITEM 11. Amend rule 281—56.24(259) as follows:

281—56.24(259) Facilities.

56.24(1) Types of facilities. It is the policy of the division to utilize any type of public or private facility that is equipped to render the required services from the menu of services of diagnosis, physical restoration, training, and placement. Facilities include public and private schools; colleges and universities; correspondence schools; agencies for personal adjustment training; business and industrial establishments for employment training; psychometric service agencies; physicians' and dentists' offices; hospitals; sanatoria and clinics; audiometric service centers; rehabilitation centers; the offices of occupational, physical and work therapists or agencies providing these services; convalescent homes; prosthetic appliance dealerships; and other similar facilities that are adequately equipped to contribute to the rehabilitation of individuals with disabilities.

56.24(2) Standards for facilities providing specialized training or other services. The division selects its training agencies on the basis of their ability to supply the quality of training desired. The general practice of the division is to utilize the facilities of accredited or approved colleges, universities, and trade and commercial schools for residence and correspondence training. The general practice of the division is to utilize community partners to deliver items from the menu of services based on the partners' ability to supply the quality of training desired and to achieve expected outcomes resulting in job placements for clients of the division.

56.24(3) Facilities providing customized training. Facilities selected as locations for employment training must have personnel qualified with respect to personality, knowledge and skills in the technique

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of instruction, have adequate equipment and instructional materials and be willing to make definite provisions for a plan of graduated progress in the job to be learned according to an efficiently organized and supervised instructional schedule.

56.24(4) No change.

ITEM 12. Amend rule 281—56.26(259) as follows:

281—56.26(259) Exceptions to duration of services. As required by the Act and 34 CFR 361.50(d), the division shall have a method of allowing for exceptions to its rules regarding the duration of services. In order to exceed the duration of service as defined in the employment plan, a client must follow through on the agreed-upon employment plan and related activities and keep the division informed of the client's progress.

56.26(1) Reasons for exceptions. Major reasons that will be considered in determining if an exception should be granted in favor of an applicant include, but are not limited to, the following:

a. The need is disability-related.
b. Academic performance is poor, but could reasonably be expected to return to or above the required threshold in one semester.

c. The service is necessary and required in order for the client to attain employment.

56.26(2) and **56.26(3)** No change.

ITEM 13. Amend rule 281—56.28(259) as follows:

281—56.28(259) Purchasing.

56.28(1) General purchasing principles.

a. to *d.* No change.

e. Items purchased for a client become the property of the client but may be repossessed by the division, subject to reimbursement to the client for the client's share of the purchase price, if the client does not attain employment prior to case closure.

56.28(2) Client-specific purchasing principles. When considering what item/model to purchase for a specific client, the division shall in all cases consider the following factors:

a. and *b.* No change.

c. Whether other parties or entities may be responsible for providing or contributing to the costs of an item.

ITEM 14. Amend rule 281—56.29(259) as follows:

281—56.29(259) Review process. At the time of making application for rehabilitation services, and at other times throughout the rehabilitation process, all applicants and clients shall be informed of the right to appeal and the procedures by which to file an appeal. If an applicant or client is dissatisfied with any agency decision that directly affects the applicant or client, the applicant, client, or designated representative may appeal that decision or request mediation. The term "appellant" shall be used to indicate the applicant, client, or designated representative who initiates an appeal. The appellant ~~initiates~~ may initiate the appeal process either by calling a counselor or supervisor or by filing the appropriate division appeal form, available from any counselor or supervisor of the division, ~~or by calling a counselor or supervisor.~~ If the appeal process is initiated by telephone, the counselor or supervisor who received the call must complete the appeal form to the best of that person's ability with information from the appellant. The division shall accept as an appeal a written letter, facsimile, or electronic mail that indicates that the applicant or client desires to appeal. An appeal must be filed within 90 days of notification of the disputed decision. Once the appeal form has been filed with the division administrator, a hearing shall be held before an impartial hearing officer (IHO) within the next 60 days unless an extension of time is mutually agreed upon or one of the parties shows good cause for an extension. The appellant may request that the appeal go directly to impartial hearing, but the appellant shall be offered the opportunity for a supervisor review or mediation. The appellant may request assistance with an appeal or mediation from the Iowa client assistance program (ICAP).

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ITEM 15. Amend rule 281—56.37(82GA,SF2101) as follows:

281—56.37(82GA,SF2101 259) Purpose. The division of vocational rehabilitation services works in collaboration with the Iowa department for the blind to administer the Iowa self-employment (ISE) program, which is also known as the entrepreneurs with disabilities (EWD) program. The purpose of the program is to provide business development ~~grants~~ funds in the form of technical assistance, ~~monetary business development grants~~ (up to \$10,000), and financial assistance ~~grants~~ (up to \$10,000) to qualified Iowans with disabilities who start, ~~or~~ expand, or acquire a business within the state of Iowa.

ITEM 16. Amend rule 281—56.38(82GA,SF2101) as follows:

281—56.38(82GA,SF2101 259) Eligibility requirements. Clients of the division or the department for the blind may apply for the program. All of the following conditions are also applicable:

1. to 3. No change.
4. Recommendation for and approval of financial assistance is based upon acceptance of a business plan feasibility study and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested.
4. 5. In order to receive financial support from the ISE program, the applicant's business plan feasibility study must result in self-sufficiency for the applicant as measured by earnings that equal or exceed 80 percent of substantial gainful activity.
6. The division cannot support the purchase of real estate or improvements to real estate.
7. The division cannot provide funding to be used as a cash infusion, for personal or business loan repayments, or for personal or business credit card debt.
8. The division may deny ISE assistance to an applicant who desires to start, expand, or acquire any of the following types of businesses:
 - A hobby or similar activity that does not produce income at the level required for self-sufficiency;
 - A business venture that is speculative in nature or considered high risk by the Better Business Bureau or similar organization;
 - A business registered with the federal Internal Revenue Service as a Section 501(c)(3) entity or other entity set up deliberately to be not-for-profit;
 - A business that is not fully compliant with all local, state, and federal zoning requirements and all other applicable local, state, and federal requirements.

ITEM 17. Amend rule 281—56.39(82GA,SF2101) as follows:

281—56.39(82GA,SF2101 259) Application procedure.

56.39(1) and 56.39(2) No change.

56.39(3) Review. Applications will be forwarded to a business development specialist employed by the division for review. Applicants whose applications receive a minimum score of 60 points out of a total of 100 points ~~and are accompanied by a letter of support from the division or the department for the blind~~ are eligible to pursue a technical assistance ~~grant~~ funding. Approval of a technical assistance ~~grant~~ funding is based upon the results of a business plan feasibility study. If the application is for financial assistance only, a business plan feasibility study will be required at the time of submission of the application. Applicants whose business plans receive a minimum score of 75 points out of a total of 100 points and a minimum of 15 points per section are eligible to pursue a financial assistance ~~grant~~ funding. Approval of a financial assistance ~~grant~~ funding is based upon acceptance of a business plan feasibility study and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested. A decision on all applications and forms will generally be issued within 30 days of submission with notification by letter to the applicant.

56.39(4) No change.

56.39(5) Applications for financial assistance—evaluation factors for business plans. Applications for financial assistance from the program will be reviewed and evaluated using a 100-point system, based upon the following criteria:

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a.—Feasibility: 0–25 points. Feasibility will be considered based upon the overall business plan. Rating factors for this criterion include, but are not limited to: market analysis, financial projections, initial capitalization, management, and historic data relative to similar businesses. A minimum of 15 points is required for this rating factor.

b.—Market plan: 0–25 points. Does the business plan contain sufficient information to demonstrate that the applicant fully understands who the applicant's customers will be and how to reach them? Is there adequate information about competition, market need, location, sales/marketing methods, and a product/service description? Is a promotional plan included in the business plan? A minimum of 15 points is required for this rating factor.

c.—Financial plan: 0–25 points. Does the business plan contain a two-year cash flow projection and profit and loss projection? Is there an itemized listing of fixed assets, working capital, and other start-up, expansion and acquisition needs, including detailed descriptions of equipment to be purchased? Is there a clear statement regarding the composition of the anticipated financial package? Has the applicant provided a personal financial statement along with a detailed personal monthly budget form? A minimum of 15 points is required for this rating factor.

d.—Organizational information: 0–25 points. Does the business plan document sufficient education and work experience relevant to the proposed business? Does the business plan demonstrate adequate management experience by the principal party(ies)? A minimum of 15 points is required for this rating factor.

56.39(6) 56.39(5) Appeal of application evaluation. If an application is denied based upon the assignment of an inadequate evaluation score, an applicant may appeal the decision to the division or the department for the blind. An appeal shall be consistent with the appeal processes of the division or the department for the blind.

ITEM 18. Amend rule 281—56.40(82GA,SF2101) as follows:

281—56.40(82GA,SF2101 259) Award of technical assistance grants funds.

56.40(1) Awards. Technical assistance grants funds may be used for specialized consulting services as determined necessary by the counselor, the business development specialist, and the client. Technical assistance grants funds may be awarded up to a maximum of \$10,000 per applicant. Specialized technical assistance may include, but is not limited to, market analysis; marketing plans; engineering, legal, accounting, and computer services; preliminary business plan feasibility study development; financial packaging; and other consulting services that require specialized education and training.

56.40(2) Award process. Upon approval of the application by the counselor and the business development specialist, generally within 30 days, an applicant will receive notification of eligibility to pursue technical or financial assistance funding. The applicant must demonstrate the ability to contribute at least 50 percent of the start-up costs and the ability to cover any technical assistance costs beyond \$10,000 if necessary. The business development specialist will identify if whether specialized services are needed and will provide recommendation for approval by the division or departmental staff.

56.40(3) Approval of business plan feasibility study. A business plan feasibility study indicating that the proposed business has a likelihood of success based upon the scoring will accompany notification letters. The business plan feasibility study will require an applicant to identify specific steps in the business planning process as well as who will be involved in each step of the process, address budgetary guidelines, and provide a timeline. The business plan feasibility study must be signed by the applicant and the business development specialist. Applicants receiving a score of 100 out of 125 points on the feasibility study will be recommended for technical or financial assistance or both.

56.40(4) 56.40(3) Technical assistance grant contracts. The division shall negotiate contracts with qualified consultants for delivery of services to an applicant if specialized services are deemed necessary. The contracts shall state hourly fees for services, the type of service to be provided, and a timeline for delivery of services. Authorization of payment will be made by a counselor employed by the division or the department for the blind based upon the negotiated rate as noted in the business plan contract. A copy of each contract shall be filed with the division.

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~~56.40(5)~~ **56.40(4)** *Consultants.* Applicants will be provided a list of qualified business consultants by the business development specialist if specialized consultation services are necessary. The selection of the consultant(s) shall be the responsibility of the applicant.

~~56.40(6)~~ **56.40(5)** *Case management.* The business development specialist or counselor will commit a specific number of hours of be available as needed for direct consultation to each applicant to ensure that quality services for business planning are provided in a timely manner.

ITEM 19. Rescind rule 281—56.41(82GA,SF2101) and adopt the following **new** rule in lieu thereof:

281—56.41(259) Business plan feasibility study procedure. Information and materials are available from the division and the department for the blind.

56.41(1) Submittal. The client shall submit the client's business plan feasibility study to the client's counselor if the study is completed at the time application is made or to the business development specialist if the business plan feasibility study is completed after application approval.

56.41(2) Review. The business plan feasibility study will be reviewed, evaluated, and scored by the business development specialist using a 100-point system. A business plan feasibility study receiving a minimum score of 75 points, with at least 15 points per section, will be recommended for financial assistance funding. Generally, the business development specialist will review the client's business plan feasibility study within 30 days of submission and will make recommendation for next steps to all parties involved.

56.41(3) Evaluation factors.

a. Personal sense: 0-20 points. Is the personal credit report sufficient to be considered for financial support or loans? If the credit report documents serious delinquencies or derogatory indicators or remarks, or includes adverse data from public or collection information sources, how have these issues been addressed or resolved? Are there other outstanding debt obligations which have been self-reported? Is there evidence that consideration and solutions/accommodations were given to possible barriers that might result due to disability?

b. Business sense: 0-20 points. Does the business plan feasibility study contain a well-written executive summary, business description, and operation and management plan?

c. Market sense: 0-20 points. Does the business plan feasibility study include details about market research and analysis as well as a market plan?

d. Financial sense: 0-20 points. Does the business plan feasibility study include details of capital requests, projected financials, and, where applicable, historical financials?

e. Other content area: 0-20 points. Does the business plan have a title page, table of contents, and appendix containing supporting documents?

56.41(4) Appeal of denial. If funding is denied based upon a low evaluation score, an applicant may appeal the decision to the division or department for the blind, consistent with the appeal processes of the agencies.

ITEM 20. Adopt the following **new** rule 281—56.42(259):

281—56.42(259) Award of financial assistance funds.

56.42(1) Awards. Following the business development specialist's evaluation and scoring of the business plan feasibility study, the business development specialist will issue a recommendation to support or not to support the proposed business venture. The counselor shall make a decision regarding approval or denial of the recommendation. If approved, the client and counselor will review conditions of the financial assistance award and sign the appropriate forms of acknowledgment.

a. Financial assistance funds may be awarded up to \$10,000 based upon an approved business plan feasibility study and evidence of business need or evidence of business progression. Before receiving financial assistance, the client must demonstrate a dollar-for-dollar match based on the amount of funding needed. The match may be provided through approved existing business assets, cash, conventional financing or other approved sources.

EDUCATION DEPARTMENT[281](cont'd)

b. Financial assistance funds may be approved for, but are not limited to: equipment, tools, printing of marketing materials, advertising, rent (up to six months), direct-mail postage, raw materials, inventory, insurance (up to six months), and other approved start-up, expansion, or acquisition costs.

56.42(2) Award process. The amount that may be recommended by the business development specialist and approved by the counselor shall be provided in three phases of business operations, when each phase meets specified business results and when the need for additional financial assistance funding is indicated.

a. The timing of each phase and the amount of funds for each phase should be established in the approved business plan feasibility study, as recommended by the business development specialist and approved by the counselor.

b. Recipients of financial assistance must demonstrate ongoing cooperation by providing the business development specialist with financial information needed to assess business progress before additional funds are expended.

56.42(3) Financial assistance contracts. Contracts for financial assistance funds shall be the responsibility of the division and will be consistent with the authorized use of Title I vocational rehabilitation funds and policy.

56.42(4) Vendors. Procurement of goods or services shall follow procedures established by the department of administrative services. The type of goods or services to be obtained, as well as a timeline for delivery of such, shall be stated by the vendor and agreed upon by the division. Authorization for goods or services shall be made by a counselor employed by the division or the department for the blind based upon the negotiated rate and terms as noted in the contract. A copy of each contract shall be filed with the division. Approval for payment of authorized goods or services shall be made by authorized division personnel.

ARC 8677B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission terminates rule making initiated by the Notice of Intended Action published in the Iowa Administrative Bulletin on December 16, 2009, as **ARC 8397B**, amending Chapter 61, "Water Quality Standards," Iowa Administrative Code.

After public hearings and consultation with stakeholder groups, the Department has decided that substantive changes need to be made to the rule. The revisions planned will change the character of the rule enough to justify a new Notice of Intended Action. However, the changes will also require some additional research by the Department, so amending the current Notice would not be practical.

ARC 8676B**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 hereby proposes to amend Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

These amendments propose to: (1) revise the risk-based evaluation process for water lines, adding in gasketed drinking water lines and different action levels based on material composition and usage; (2) allow consideration of “no action required” status if the contaminant plumes at low risk leaking underground storage tank (LUST) sites are demonstrated to be stable and when an institutional control is implemented; and (3) expand the Department’s authority to require confirmation sampling prior to acceptance of a no action required classification or to waive “exit monitoring” criteria when a groundwater professional can justify a no action required classification for the site. Existing policy regarding confirmation soil sampling has been added to update the rules with the current practice.

Iowa State University (ISU) and the American Water Works Association Research Foundation (AWWARF) released the results of their laboratory study titled “Impact of Hydrocarbons on PE/PVC Pipes and Pipe Gaskets.” The research suggested that polyvinyl chloride (PVC) pipe material was more resistant than previously believed, that polyethylene (PE) and polybutylene (PB) pipes were extremely susceptible to petroleum contamination, and that gaskets were potentially the weak link for exposure to petroleum in a water distribution system. Subsequent to the ISU study, the Department convened a technical advisory group to study these results and other technical literature. The group found that PVC was more resistant than previously believed when the Department’s initial plastic water line rules were generated, but that PVC water lines were still deemed at risk in gross contamination. Additional research confirmed the findings related to PE/PB pipe and gaskets. Literature also reports that synergistic effects of mixed chemicals can magnify the potential for contaminant permeation. Amendments to Chapter 135 are proposed to incorporate these new findings in the evaluation process for potable water distribution lines near LUST sites.

Any interested person may submit written comments on the proposed amendments on or before May 7, 2010. Written comments should be sent to the Iowa Department of Natural Resources, Attn: Rochelle Cardinale, 502 East 9th Street, Des Moines, Iowa 50319; fax (515)281-8895; or E-mail: rochelle.cardinale@dnr.iowa.gov.

Also, three public hearings will be held as follows:

April 28, 2010	1 to 3 p.m.	Community Meeting Room Denison City Hall Clerk’s Office 111 North Main Street Denison, Iowa
April 29, 2010	1 to 3 p.m.	Coralville Public Library Schwab Auditorium 1401 Fifth Street Coralville, Iowa
April 30, 2010	1 to 3 p.m.	Wallace State Office Building Fifth Floor Conference Rooms 502 East Ninth Street Des Moines, Iowa

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

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

These amendments are intended to implement Iowa Code section 455B.474.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **567—135.2(455B)**:

“*Asbestos-cement pipe*” (AC refers to asbestos-cement) means a pipe or conduit constructed of asbestos fiber, Portland cement, and water, which can be used to transport water.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

“Backflow preventer” means a check valve used to ensure water flows in one direction and designed to prevent contamination from an end user, such as a home, from getting into the general water supply. An approved backflow preventer shall be a reduced-pressure backflow preventer or an antisiphon device which complies with the standards of the American Water Works Association and has been approved by the Foundation for Cross-Connection Control and Hydraulic Research.

“Cast iron pipe” means a pipe or conduit used as a pressure pipe for transmission of water, gas, or sewage or as a water drainage pipe. It comprises predominantly a gray cast iron tube historically used uncoated, with newer types having various coatings and linings to reduce corrosion and improve hydraulics.

“Ductile iron pipe” means a pipe or conduit commonly used for potable water distribution and for the pumping of sewage. The predominant wall material is ductile iron, a spheroidized graphite cast iron, and commonly has an internal cement mortar lining to inhibit corrosion from the carried water and various types of external coatings to inhibit corrosion from the environment.

“Gasket” means any type of pipe seals made of a variety of rubbers including but not necessarily limited to styrene-butadiene rubber (SBR), nitrile-butadiene rubber (NBR or nitrile), ethylene propylene diene monomer (EPDM), neoprene (CR), and fluoroelastomer rubber (FKM), which are used to seal pipe connections.

“Polybutylene pipe” (PB refers to polybutylene) means a water supply pipe comprised of a form of plastic resin that was used extensively from 1978 until 1995. The piping systems were used for underground water mains and as interior water distribution piping. Polybutylene mains are usually blue in color, but may be gray, black, or white. The pipe is usually ½ inch or 1 inch in diameter, and it may be found entering a residence through the basement wall or floor, concrete slab or through the crawlspace; frequently it enters the residence near the water heater.

“Polyethylene pipe” (PE refers to polyethylene) means a water supply pipe comprised of thermoplastic material produced from the polymerization of ethylene. PE pipe is manufactured by extrusion in sizes ranging from ½ inch to 63 inches. PE pipe is available in rolled coils of various lengths or in straight lengths of up to 40 feet. PE pipe is available in many forms and colors, including single-extrusion colored or black pipe, black pipe with co-extruded color striping, and black or natural pipe with a co-extruded colored layer. PE pipe has been demonstrated to be very permeable to petroleum while still retaining its flexible structure.

“Polyvinyl chloride pipe” (PVC refers to polyvinyl chloride) means a pipe made from a plastic and vinyl combination material. The pipes are durable, hard to damage, and long-lasting. A PVC pipe is very resistant and does not rust, nor is it likely to rot or wear over time. PVC piping is most commonly used in water systems, underground wiring, and sewer lines.

“Portland cement” means hydraulic cement (cement that not only hardens by reacting with water but also forms a water-resistant product) and is produced by pulverizing clinkers consisting essentially of hydraulic calcium silicates, usually containing one or more forms of calcium sulfate as an inter ground addition.

“Service line” means a pipe connected to a business or residence from a water main, typically of a size not exceeding 6 inches in diameter, and including its gaskets and other appurtenances. For purposes of this chapter, service lines refer to pipes specifically used for drinking water transmission.

“Water line” means a hollow cylinder or tubular conduit that routinely contains and conveys potable water and is constructed of nonearthen materials, including but not limited to asbestos-cement, copper, high-density polyethylene (HDPE), polybutylene, polyethylene, and wood. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures, as well as the gaskets, which contain and convey potable water.

“Water main pipe” means a main line to the water distribution system with feeder lines or service lines connected to it and which typically is 6 inches or greater in diameter, and includes its gaskets and other appurtenances.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 2. Amend rule **567—135.2(455B)**, definitions of “Groundwater to plastic water line pathway” and “Soil to plastic water line pathway,” as follows:

“Groundwater to ~~plastic~~ water line pathway” means a pathway through groundwater which leads to a ~~plastic~~ water line.

“Soil to ~~plastic~~ water line pathway” means a pathway which leads from soil to a ~~plastic~~ water line.

ITEM 3. Amend paragraph **135.9(1)“a”** as follows:

a. *Pathway assessment.* The pathways to be evaluated at Tier 1 are the groundwater ingestion pathway, soil leaching to groundwater pathway, groundwater vapor to enclosed space pathway, soil vapor to enclosed space pathway, soil to ~~plastic~~ water line pathway, groundwater to ~~plastic~~ water line pathway and the surface water pathway. Assessment requires a determination of whether a pathway is complete, an evaluation of actual and potential receptors, and a determination of whether conditions are satisfied for obtaining no further action clearance for individual pathways; or for obtaining a complete site classification of “no action required.” A pathway is considered complete if a chemical of concern has a route which could be followed to reach an actual or potential receptor.

ITEM 4. Amend subrule **135.9(1)**, Iowa Tier 1 Look-Up Table, as follows:

Iowa Tier 1 Look-Up Table

Media	Exposure Pathway	Receptor	Group 1				Group 2: TEH			
			Benzene	Toluene	Ethylbenzene	Xylenes	Diesel*	Waste Oil		
Groundwater (ug/L)(ug/L)	Groundwater Ingestion	Actual	5	1,000	700	10,000	1,200	400		
		Potential	290	7,300	3,700	73,000	75,000	40,000		
	Groundwater Vapor to Enclosed Space	All	1,540	20,190	46,000	NA	2,200,000	NA		
	Groundwater to Plastic Water Line	All	290	7,300	3,700	73,000	75,000	40,000		
	Groundwater to Water Line	PVC or Gasketed Mains		7,500	6,250	40,000	48,000	75,000	40,000	
			PVC or Gasketed Service Lines		3,750	3,120	20,000	24,000	75,000	40,000
				PE/PB/AC Mains or Service Lines	200	3,120	3,400	19,000	75,000	40,000
Surface Water	All	290	1,000	3,700	73,000	75,000	40,000			
Soil (mg/kg)	Soil Leaching to Groundwater	All	0.54	42	15	NA	3,800	NA		
	Soil Vapor to Enclosed Space	All	1.16	48	79	NA	47,500	NA		
	Soil to Plastic Water Line	All	1.8	120	43	NA	40,500	NA		
	Soil to Water Line	All	2.0	3.2	45	52	10,500	NA		

NA: Not applicable. There are no limits for the chemical for the pathway, because for groundwater pathways the concentration for the designated risk would be greater than the solubility of the pure chemical in water, and for soil pathways the concentration for the designated risk would be greater than the soil concentration if pure chemical were present in the soil.

TEH: Total Extractable Hydrocarbons. The TEH value is based on risks from naphthalene, benzo(a)pyrene, benz(a)anthracene, and chrysene. Refer to Appendix B for further details.

Diesel*: Standards in the Diesel column apply to all low volatile petroleum hydrocarbons except waste oil.

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ITEM 5. Amend paragraph **135.9(3)“g”** as follows:

g. A receptor survey including but not limited to the following: existing buildings, enclosed spaces (basements, crawl spaces, utility vaults, etc.), conduits (gravity drain lines, sanitary and storm sewer mains and service lines), ~~plastic~~ water lines and other utilities within 500 feet of the source. For conduits and enclosed spaces, there must be a description of construction material, conduit backfill material, slope of conduit and trenches (include flow direction of sewers), burial depth of utilities or subsurface enclosed spaces, and the relationship to groundwater elevations.

ITEM 6. Amend subrule 135.9(8), introductory paragraph, as follows:

135.9(8) *Groundwater to ~~plastic~~ water line pathway assessment.* This pathway addresses the potential for creating a drinking water ingestion risk due to contact with ~~plastic~~ water lines and causing infusion to the drinking water.

ITEM 7. Amend paragraphs **135.9(8)“a,” “c” and “d”** as follows:

a. *Pathway completeness and receptor evaluation.*

(1) Actual receptors. This pathway is considered complete for an actual receptor if there is an existing ~~plastic~~ water line within 200 feet of the source and the first encountered groundwater is less than 20 feet below ground surface.

(2) No change.

c. *Utility company notification.* The utility company which supplies water service to the area must be notified of all actual and potential ~~plastic~~ water line impacts as soon as knowledge of a potential risk is determined. ~~Notification of potential plastic water line impacts may be postponed until completion of Tier 2 if a Tier 2 assessment is required.~~

d. *Corrective action response.*

(1) For actual receptors, if the Tier 1 levels are exceeded for this pathway, all ~~plastic~~ water lines within 200 feet must be replaced with nonplastic lines water line materials and gasket materials of appropriate construction in accordance with current department standards with no less than nitrile or FKM gaskets or as otherwise approved by the department, or the ~~plastic~~ water lines must be relocated beyond the 200-foot distance from the source. A Tier 2 assessment must be conducted for this pathway if lines are not replaced or relocated.

(2) No change.

ITEM 8. Amend subrule 135.9(9), introductory paragraph, as follows:

135.9(9) *Soil to ~~plastic~~ water line pathway assessment.* This pathway addresses the potential for creating a drinking water ingestion risk due to contact with ~~plastic~~ water lines and infusion into the drinking water.

ITEM 9. Amend paragraphs **135.9(9)“a,” “c” and “d”** as follows:

a. *Pathway completeness and receptor evaluation.*

(1) Actual receptors. This pathway is considered complete for an actual receptor if a ~~plastic~~ water line exists within 200 feet of the source.

(2) No change.

c. *Utility company notification.* The utility company which supplies water service to the area must be notified of all actual and potential ~~plastic~~ water line impacts as soon as knowledge of a potential risk is determined. ~~Notification of potential plastic water line impacts may be postponed until completion of Tier 2 if a Tier 2 assessment is required.~~

d. *Corrective action response.* For actual receptors, if the Tier 1 levels are exceeded for this pathway, ~~the plastic water lines may be replaced with nonplastic lines or the plastic lines must be relocated to a distance beyond 200 feet of the source~~ all water lines within 200 feet must be replaced with water line materials and gasket materials of appropriate construction in accordance with current department standards and with no less than nitrile or FKM gaskets or as otherwise approved by the department, or the water lines must be relocated beyond the 200-foot distance from the source. Excavation of soils to below Tier 1 levels may be undertaken in accordance with 135.9(7) “h.” If none of these options is implemented, a Tier 2 assessment must be conducted for this pathway.

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ITEM 10. Amend paragraphs **135.10(3)**“i” and “k” as follows:

i. Special procedure for the groundwater to ~~plastic~~ water line pathway.

(1) Target level. The applicable target level is the Tier 1 level for ~~plastic~~ the specific type of water lines line.

(2) High risk classification. A site designated as granular or nongranular bedrock shall be classified high risk for this pathway if the highest groundwater elevation is higher than three feet below the bottom of a ~~plastic~~ water line as provided in 135.10(8)“a”(1), risk classification cannot be determined as provided in ~~567—~~135.12(455B) due to limitations on placement of monitoring wells, and ~~plastic~~ water lines exist within 200 feet of a monitoring well which exceeds the Tier 1 level.

k. High risk corrective action response. Owners and operators have the option to conduct a Tier 3 assessment in accordance with ~~567—~~135.11(455B).

(1) and (2) No change.

(3) For water line pathways. For high risk sites, active remediation must be conducted to reduce concentrations below the applicable target levels, or water lines and gaskets must be replaced or relocated including the use of institutional and technological controls. If lines are polybutylene, polyethylene, or asbestos-cement, the lines must be removed or relocated. All water lines that are replaced must be replaced with water line materials and gasket materials of appropriate construction in accordance with current department standards and with no less than nitrile or FKM gaskets or as otherwise approved by the department.

~~(3)~~ (4) Other pathways. For high risk sites other than groundwater ingestion and water lines, active remediation must be conducted to reduce concentrations below the applicable target levels including the use of institutional and technological controls.

ITEM 11. Amend paragraph **135.10(5)**“a” as follows:

a. General. The soil leaching to groundwater pathway is evaluated using a one-dimensional model which predicts vertical movement of contamination through soil to groundwater and transported by the groundwater to a receptor. The model is used to predict the maximum concentrations of chemicals of concern that would be present in groundwater beneath a source which is representative of residual soil contamination and maximum soil concentrations. The predicted groundwater concentrations then must be used as a groundwater source concentration to evaluate its impact on other groundwater transport pathways, including the groundwater ingestion pathway, the groundwater vapor pathway, the groundwater ~~plastic~~ water line pathway and the surface water pathway.

ITEM 12. Amend subrule 135.10(8) as follows:

135.10(8) *Groundwater to ~~plastic~~ water line pathway assessment.*

a. Pathway completeness and receptor evaluation.

(1) Actual receptors include all ~~plastic~~ water lines where the highest groundwater elevation is higher than three feet below the bottom of the ~~plastic~~ water line at the measured or predicted points of exposure. The highest groundwater elevation is the estimated average of the highest measured groundwater elevations for each year. All ~~plastic~~ water lines must be evaluated for this pathway regardless of distance from the source and regardless of the Tier 1 evaluation, if the lines are in areas with actual data above the applicable Tier 1 level and modeled data above the SSTL line. If actual data exceeds modeled data, then all ~~plastic~~ water lines are considered actual receptors if they are within a distance extending 10 percent beyond the edge of the contaminant plume defined by the actual data.

(2) No change.

(3) The point(s) of exposure is the ~~plastic~~ water line, and the points of compliance are monitoring wells between the source and the ~~plastic~~ water line which would be effective in monitoring whether the line has been or may be impacted by chemicals of concern.

b. Plume definition. If this pathway is complete for an actual receptor, the groundwater plume must be defined to the Tier 1 levels, with an emphasis between the source and any actual ~~plastic~~ water lines. The water inside the ~~plastic~~ water lines shall be analyzed for all chemicals of concern.

c. No change.

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d. Pathway classification. Upon completion of analysis of field data and modeled data, the pathway must be classified high risk, low risk or no further action as provided in 567—135.12(455B). The water quality inside the ~~plastic~~ water lines is not a ~~criteria~~ criteria criterion for clearance of this pathway.

e. Utility company notification. The utility company which supplies water service to the area must be notified of all actual and potential ~~plastic~~ water line impacts as soon as knowledge of a potential risk is determined. If the extent of contamination has been defined, this information must be included in utility company notification, and any previous notification made at Tier 1 must be amended to include this information.

f. Corrective action response.

(1) For actual receptors, unless the pathway is classified as no further action, corrective action for this pathway must be conducted as provided in 567—135.12(455B). If the concentrations of chemicals of concern in a water line exceed the Tier 1 levels for actual receptors for the groundwater ingestion pathway, immediate corrective action must be conducted to eliminate exposure to the water, including but not limited to replacement of the line with an approved ~~nonplastic~~ material.

(2) No change.

ITEM 13. Amend subrule 135.10(9), catchwords, as follows:

135.10(9) *Soil to ~~plastic~~ water line pathway assessment.*

ITEM 14. Amend paragraphs **135.10(9)**“a,” “c,” “d” and “e” as follows:

a. Pathway completeness and receptor evaluation.

(1) Actual receptors include all ~~plastic~~ water lines within ten feet of the soil plume defined to the Tier 1 level. All ~~plastic~~ water lines must be evaluated for this pathway regardless of distance from the source; if the lines are in areas where Tier 1 levels are exceeded.

(2) No change.

c. Target level. The point(s) of exposure ~~include~~ includes all areas within ten feet of the ~~plastic~~ water line. The target level at the point(s) of exposure is the Tier 1 level.

d. Pathway classification. Upon completion of analysis of field data ~~and modeled data~~, the pathway must be classified high risk, low risk or no further action as provided in 567—135.12(455B). Measurements of water quality inside the ~~plastic~~ water lines may be required, but are not allowed as criteria to clear this pathway.

e. Utility company notification. The utility company which supplies water service to the area must be notified of all actual and potential ~~plastic~~ water line impacts as soon as knowledge of the potential risk is determined. If the extent of contamination has been defined, this information must be included in utility company notification, and any previous notification made at Tier 1 must be amended to include this information.

ITEM 15. Amend subrule **135.12(1)**, first unnumbered paragraph, as follows:

For the soil vapor to enclosed pathway and soil to ~~plastic~~ water line pathways, there are no horizontal transport models to use predicting future impacts. Therefore, for these pathways, sites are classified as high risk, low risk or no action based on specified criteria below and in 567—135.10(455B).

ITEM 16. Amend paragraph **135.12(2)**“a” as follows:

a. For the soil vapor to enclosed space and soil to ~~plastic~~ water line pathways, sites shall be classified as high risk if the target levels for actual receptors are exceeded as provided in 135.10(7) and 135.10(9).

ITEM 17. Reletter paragraphs **135.12(3)**“b” to “h” as **135.12(3)**“c” to “i.”

ITEM 18. Adopt the following new paragraph **135.12(3)**“b”:

b. For the groundwater to water line and soil to water line receptors, these objectives are achieved by active remediation, replacement or relocation of water line receptors from areas within the actual plume plus some added site-specific distance to provide a safety factor to areas outside the site-specific target level line. In areas of free product, all water lines regardless of construction material must be relocated unless there is no other option and the department has approved an alternate plan of construction. If water lines and gaskets are replaced in an area of contamination, they must be replaced

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with water line materials and gasket materials of appropriate construction in accordance with current department standards and with no less than nitrile or FKM gaskets or as otherwise approved by the department. If a service line is replaced and remains in a contaminated area, a backflow preventer shall be installed to prevent impacts to the larger water distribution system.

ITEM 19. Amend relettered paragraphs **135.12(3)“c”** and **“i”** as follows:

c. For the soil vapor ~~and soil to plastic water line pathway~~, these objectives are achieved by active remediation of soil contamination below the target level at the point(s) of exposure or other designated point(s) of compliance using the same measurement methods for receptor evaluation under 135.10(7) and 135.10(9).

i. Following completion of corrective action, the site must meet exit monitoring criteria to be reclassified as no action required as specified in 135.12(6)~~“b.”~~“*c.*” At any point where an institutional or technological control is implemented and approved by the department, the site may be reclassified as no action required consistent with 135.12(6).

ITEM 20. Amend paragraphs **135.12(5)“a”** and **“d”** as follows:

a. Purpose. For sites or pathways classified as low risk, the purpose of monitoring is to determine if concentrations are decreasing such that reclassification to no action required may be appropriate or if the contaminant plume is stable such that reclassification to no action required can be achieved with implementation of an institutional control in accordance with 135.12(8), or if concentrations are increasing above the site-specific target level line such that reclassification to high risk is appropriate. Monitoring is necessary to evaluate impacts to actual receptors and assess the continued status of potential receptor conditions. Low risk monitoring shall be conducted and reported by a certified groundwater professional.

d. Soil monitoring.

(1) No change.

(2) For the soil leaching to groundwater pathway potential receptors, annual groundwater monitoring is required for a minimum of three years as provided in “*c*” above. If groundwater concentrations are below the applicable SSTL line for all three years ~~and a final soil sample taken from the source shows no significant vertical movement~~, no further action is required. If groundwater concentrations exceed the applicable SSTL line in any of the three years, corrective action is required to reduce soil concentrations to below the Tier 1 levels for soil leaching to groundwater. Therefore, annual monitoring of soil is not applicable.

(3) For the soil to ~~plastic~~ water line pathway potential receptors, notification of the utility company is required. Notification will result in reclassification to no action required. Therefore, annual monitoring of soil is not applicable.

ITEM 21. Amend paragraphs **135.12(6)“b”** and **“c”** as follows:

b. For initial classification, groundwater pathways shall be classified as no action required if the field data is below the site-specific target level line and all field data is at or less than the simulation line, and confirmation monitoring has been completed successfully. Confirmation sampling for groundwater ~~and soil~~ is a second sample which confirms the no action required criteria.

c. For reclassification from high or low risk, a pathway shall be classified as no action required if all field data is below the site-specific target level line and if exit monitoring criteria have been met, except as provided in 135.12(6)“g.” Exit To satisfy exit monitoring criteria, means the three most recent consecutive groundwater samples from all monitoring wells must show a steady or declining trend and the most recent samples are must be below the site-specific target level line. Other criteria include the following: The first of the three samples for the source well and transition well must be more than detection limits; concentrations cannot increase more than 20 percent from the first of the three samples to the third sample; concentrations cannot increase more than 20 percent of the previous sample; and samples must be separated by at least six months.

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ITEM 22. Adopt the following **new** paragraphs **135.12(6)“f”** and **“g”**:

f. Prior to acceptance of a request to classify the site as no action required, and in the event there is a question of validity of the data or sampling methods, laboratory analysis procedures, indication of plume movement, or the department obtains information about new conditions at the site, the department may conduct or require the owner to conduct confirmation sampling of the soil, groundwater, soil gas, or indoor vapor to confirm that the no action required criteria have been met.

g. The department may waive, at its discretion, the exit monitoring criteria based on a certified groundwater professional’s written justification to support a no action required classification for the site based on a reasoned assessment of data, trends, receptor status, and corrective actions performed. One example is when steady and declining criteria have not been met due solely to variations among laboratory’s lowest achievable detection limits.

ITEM 23. Amend rule 567—135.14(455B) as follows:

567—135.14(455B) Action levels. The following corrective action levels apply to petroleum regulated substances as regulated by this chapter. These action levels shall be used to determine if further corrective action under 567—135.6(455B) through 567—135.12(455B) or 567—135.15(455B) is required as the result of tank closure sampling under 135.15(3) or other analytical results submitted to the department. The contaminant concentrations must be determined by laboratory analysis as stated in 567—135.16(455B). Final cleanup determination is not limited to these contaminants. The contamination corrective action levels are:

	Soil (mg/kg)	Groundwater (ug/L)
Benzene	0.54	5
Toluene	42 <u>3.2</u>	1,000
Ethylbenzene	15	700
Xylenes	No limit <u>52</u>	10,000
Total Extractable Hydrocarbons	3,800	1,200

ITEM 24. Amend **567—Chapter 135, Appendix A**, Iowa Tier 1 Look-Up Table, as follows:

Iowa Tier 1 Look-Up Table

Media	Exposure Pathway	Receptor	Group 1				Group 2: TEH	
			Benzene	Toluene	Ethylbenzene	Xylenes	Diesel*	Waste Oil
Groundwater (ug/L)(ug/L)	Groundwater Ingestion	Actual	5	1,000	700	10,000	1,200	400
		Potential	290	7,300	3,700	73,000	75,000	40,000
	Groundwater Vapor to Enclosed Space	All	1,540	20,190	46,000	NA	2,200,000	NA
	Groundwater to Plastic Water Line	All	290	7,300	3,700	73,000	75,000	40,000
	Groundwater to Water Line	PVC or Gasketed Mains	<u>7,500</u>	<u>6,250</u>	<u>40,000</u>	<u>48,000</u>	<u>75,000</u>	<u>40,000</u>
		PVC or Gasketed Service Lines	<u>3,750</u>	<u>3,120</u>	<u>20,000</u>	<u>24,000</u>	<u>75,000</u>	<u>40,000</u>
		PE/PB/AC Mains or Service Lines	<u>200</u>	<u>3,120</u>	<u>3,400</u>	<u>19,000</u>	<u>75,000</u>	<u>40,000</u>
Surface Water	All	290	1,000	3,700	73,000	75,000	40,000	
Soil (mg/kg)	Soil Leaching to Groundwater	All	0.54	42	15	NA	3,800	NA

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Media	Exposure Pathway	Receptor	Group 1				Group 2: TEH	
			Benzene	Toluene	Ethylbenzene	Xylenes	Diesel*	Waste Oil
	Soil Vapor to Enclosed Space	All	1.16	48	79	NA	47,500	NA
	Soil to Plastic Water Line	All	1.8	120	43	NA	10,500	NA
	Soil to Water Line	All	2.0	3.2	45	52	10,500	NA

NA: Not applicable. There are no limits for the chemical for the pathway, because for groundwater pathways the concentration for the designated risk would be greater than the solubility of the pure chemical in water, and for soil pathways the concentration for the designated risk would be greater than the soil concentration if pure chemical were present in the soil.

TEH: Total Extractable Hydrocarbons. The TEH value is based on risks from naphthalene, benzo(a)pyrene, benz(a)anthracene, and chrysene. Refer to Appendix B for further details.

Diesel*: Standards in the Diesel column apply to all low volatile petroleum hydrocarbons except waste oil.

Assumptions Used for Iowa Tier 1 Look-Up Table Generation

1. Groundwater ingestion pathway. The maximum contaminant levels (MCLs) were used for Group 1 chemicals. The target risk for carcinogens for actual receptors is 10^{-6} and for potential receptors is 10^{-4} . A hazard quotient of one, and residential exposure and building parameters are assumed.

2. Groundwater vapor to enclosed space pathway. Residential exposure and residential building parameters are assumed; no inhalation reference dose is used for benzene; the capillary fringe is assumed to be the source of groundwater vapor; and the hazard quotient is 1 and target risk for carcinogens is 1×10^{-4} .

3. Groundwater to plastic water line. This pathway uses the same assumptions as the groundwater ingestion pathway for potential receptors, including a target risk for carcinogens of 10^{-4} .

4. Surface water. This pathway uses the same assumptions as the groundwater ingestion pathway for potential receptors, including a target risk for carcinogens of 10^{-4} , except for toluene which has a chronic level for aquatic life of 1,000 as in the definition for surface water criteria in 567—135.2(455B).

5. Soil leaching to groundwater. This pathway assumes the groundwater will be protected to the same levels as the groundwater ingestion pathway for potential receptors, using residential exposure and a target risk for carcinogens of 10^{-4} .

6. Soil vapor to enclosed space pathway. The target risk for carcinogens is 1×10^{-4} ; the hazard quotient is 1; no inhalation reference dose is used for benzene; residential exposure factors are assumed; and the average of the residential and nonresidential building parameters are assumed.

7. Soil to plastic water line pathway. This pathway uses the soil leaching to groundwater model with nonresidential exposure and a target risk for carcinogens of 10^{-4} .

In addition to these assumptions, the equations and parameter values used to generate the Iowa Tier 1 Look-Up Table are described below.

ITEM 25. Amend 567—Chapter 135, Appendix B, Diesel and Waste Oil section, first, second and third tables, by striking the word “Plastic” in the phrases “Groundwater to Plastic Water Line” and “Soil to Plastic Water Line.”

ITEM 26. Amend 567—Chapter 135, Appendix B, by adopting the following new paragraphs at the end thereof:

Water Line Calculations

Explanation of Target Levels for Petroleum Fuel-Derived BTEX Compounds in Groundwater and Soil

GROUNDWATER

PVC or Gasketed Mains

Benzene: 7,500 µg/L

Gasoline-saturated groundwater was considered to be an extreme condition of environmental contamination, and it was considered unacceptable to leave water lines, regardless of material, in contact with this level of benzene contamination. While Ong et al. (2008) showed that gasoline-saturated

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groundwater would not pose a significant risk of permeation exceeding the 5 µg/L MCL for benzene of gasketed DI or PVC water mains, a safety factor of 1/8th was applied to the level of benzene in premium gasoline-saturated water determined by Ong et al. (2008). A 1/2 safety factor was compounded for each of four potential safety risks: material defects in the pipe (= 1/2), presence of service line taps (= 1/4), stagnation of water (= 1/6), and water line breaks (= 1/8). This was an average of 67.5 mg/L ± 4.9 mg/L for multiple preparations of gasoline-saturated water and was rounded to 60.0 mg/L to conservatively account for the statistical uncertainty. Hence,

$$\text{Target Level} = \frac{1}{8} \times 60,000 \mu\text{g/L} = 7,500 \mu\text{g/L benzene}$$

Toluene: 6,250 µg/L

The target level for toluene was determined similarly to that for benzene. The level of benzene in premium gasoline-saturated water determined by Ong et al. (2008) to be 56.2 mg/L ± 4.9 mg/L and conservatively rounded to 50.0 mg/L. Hence,

$$\text{Target Level} = \frac{1}{8} \times 50,000 \mu\text{g/L} = 6,250 \mu\text{g/L toluene}$$

Ethylbenzene: 40,000 ug/L

The target level was set to be double that for PVC or Gasketed Service Lines (20,000 µg/L – see below).

Total Xylenes: 48,000 ug/L

The target level was set to be double that for PVC or Gasketed Service Lines (24,000 µg/L – see below).

PVC or Gasketed Service Lines

Benzene: 3,750 µg/L

The target level was set to be one-half of that for PVC or Gasketed Mains (7,500 µg/L as above) since service lines tend to be of higher risk than mains owing to their smaller diameter and greater potential for stagnation.

Toluene: 3,120 µg/L

Similar to benzene, the target level was set to be one-half of that for PVC or Gasketed Mains (6,250 µg/L as above) since service lines tend to be of higher risk than mains owing to their smaller diameter and greater potential for stagnation. Odd-even rounding to 3 significant figures was applied.

Ethylbenzene: 20,000 µg/L

The target level was based on two observations by Ong et al. (2008): (1) premium gasoline-saturated water has an average concentration of 3.4 mg/L ethylbenzene and (2) ethylene permeates high density polyethylene 46 times slower than does benzene (presumably, this is reasonably representative of other materials such as rubber gaskets). The 1/8 safety factor was also applied, as above. Odd-even rounding to 2 significant figures was applied. Hence:

$$\text{Target Level} = 3,400 \mu\text{g/L} \times 46 \times \frac{1}{8} = 19,550 \mu\text{g/L} = 20,000 \mu\text{g/L}$$

Total Xylenes: 24,000 µg/L

Similar to ethylbenzene, the target level was based on (1) premium gasoline-saturated water has an average concentration of 19 mg/L total xylenes and (2) total xylenes permeate high density polyethylene

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10 times slower than does benzene. The 1/8 safety factor was also applied, as above. Odd-even rounding to 2 significant figures was applied. Hence:

$$\text{Target Level} = 19,000 \mu\text{g/L} \times 10 \times \frac{1}{8} = 23,750 \mu\text{g/L} = 24,000 \mu\text{g/L}$$

PE/PB/AC

Benzene: 200 $\mu\text{g/L}$

The target level was set at the concentration of benzene in groundwater surrounding a 1" HDPE service line (SIDR 9 IPS) that would result in a concentration of 2 $\mu\text{g/L}$ benzene in the service line after a 24 hr stagnation period. This level was chosen because 2 $\mu\text{g/L}$ is generally the minimum reportable concentration of benzene in laboratory reports received by the department.

The permeation rate is a function of the concentration of benzene in the groundwater as described by Ong et al. (2008), equation 3.4a:

$$P_m = 0.0079 C_{\text{bulk}}^{1.1323}$$

where P_m is the benzene permeation rate in $\mu\text{g/cm}^2/\text{day}$ through the pipe described above (cm^2 refers to the inner surface of the pipe) and C_{bulk} is the concentration of benzene in the groundwater (mg/L).

For any length of exposed 1" SIDR 9 IPS pipe, l (cm), the concentration in the pipe after 24 hr stagnation, $C_{24\text{hr}}$ ($\mu\text{g/L}$), can be computed from P_m and the ratio of the inner surface of the pipe to the internal volume:

$$C_{24\text{hr}} = P_m \times \left(\frac{2\pi r l}{\pi r^2 l / 1000} \right) = 0.0079 C_{\text{bulk}}^{1.1323} \times \frac{2000}{r}$$

where r is the inside radius of the pipe (cm), l is the length of exposed pipe (cm), and dividing by 1000 converts from cm^3 to liters (and, therefore, $2000/r$ converts $\mu\text{g/cm}^2/\text{day}$ to $\mu\text{g/L/day}$).

Solving for C_{bulk} (mg/L) with $C_{24\text{hr}} = 2 \mu\text{g/L}$ and $r = 1.28$ cm (per manufacturer's specifications):

$$C_{\text{bulk}}^{1.1323} = \frac{2 \times 1.28}{0.0079 \times 2000}$$

and

$$C_{\text{bulk}} = \sqrt[1.1323]{0.162} = 0.200 \text{ mg/L} = 200 \mu\text{g/L}$$

While the target level is expressed as 200 $\mu\text{g/L}$ for clarity, the underlying data support only two significant figures. In a stricter treatment of the data, this would be expressed as $20 \times 10^1 \mu\text{g/L}$.

Toluene: 3,120 $\mu\text{g/L}$

The target level was set to be equal to that for PVC or Gasketed Service Lines. Calculations similar to those used above for benzene (Ong et al. (2008), equation 3.4b) indicate that 3,120 $\mu\text{g/L}$ toluene in groundwater would result in 50 $\mu\text{g/L}$ inside a 1" SIDR 9 IPS HDPE pipe after 24 hours of stagnation, which is 1/20th of the 1,000 $\mu\text{g/L}$ MCL for toluene.

Ethylbenzene: 3,400 $\mu\text{g/L}$

The target level was set to be equal to the concentration of ethylbenzene in premium gasoline-saturated water (see discussion above for PVC or Gasketed Mains/Benzene). Unlike other target levels based on contaminant concentrations in gasoline-saturated water, the 1/8th safety factor was not applied because of the very low permeation rate of ethylbenzene through HDPE, the relatively low solubility of

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ethylbenzene in water, and the relatively high MCL (700 µg/L). Ong et al. (2008) found that permeation of HDPE by aqueous ethylbenzene was minimal and of no consequence for public health.

Total Xylenes: 19,000 µg/L

The target level was set to be equal to the concentration of ethylbenzene in premium gasoline-saturated water following the same reasoning for ethylbenzene (above). The permeation rate and water solubility are also very low, and the MCL is 10,000 µg/L. Ong et al. (2008) found that permeation of HDPE by aqueous xylenes was minimal and of no consequence for public health.

SOIL

Target levels for soil were set to be the same for mains and service lines of any material discussed above under "Groundwater." The underlying data support two significant figures for target levels in soil. Odd-even rounding was applied where appropriate.

Benzene: 2.0 mg/Kg

The target level was derived from the concentration of benzene (mg/Kg) that would result if soil that was 10% moisture and 1% organic matter was equilibrated with premium gasoline-saturated water (60 mg/L benzene – as per discussion of PVC or Gasketed Mains/Benzene above). The equilibrium concentration in soil was calculated using the approach of Chiou et al. (1983). The 1/8th safety factor discussed previously for groundwater was applied. Accordingly:

$$C_T = C_W K_d + C_W \theta$$

where C_T is the total concentration of benzene in soil (mg/Kg), θ is the fraction of moisture in the soil (Kg/Kg), and K_d is the partition coefficient from water to soil (L/Kg). Further:

$$K_d = K_{om} f_{om}$$

where K_{om} is the partition coefficient from water to organic matter in the soil, which is 16.8 L/Kg for benzene in soils with naturally occurring organic matter (Chiou et al. (1983)), and f_{om} is the fraction of organic matter in the dry soil (Kg/Kg).

For soil containing 1% naturally occurring organic matter and 10% moisture, the total concentration of benzene upon exposure to premium gasoline-saturated groundwater (60 mg/L benzene, as per above discussion of PVC or Gasketed Mains) would be:

$$C_T = \left(\frac{60 \text{ mg}}{\text{L}} \times \left(\frac{16.8 \text{ L}}{\text{Kg}} \times \frac{0.01 \text{ Kg}}{\text{Kg}} \right) \right) + \left(\frac{60 \text{ mg}}{\text{L}} \times \frac{0.1 \text{ Kg}}{\text{Kg}} \right) = \frac{16 \text{ mg}}{\text{Kg}}$$

Applying the 1/8th safety factor:

$$\text{Target Level} = \frac{1}{8} \times \frac{16 \text{ mg}}{\text{Kg}} = \frac{2.0 \text{ mg}}{\text{Kg}}$$

Toluene: 3.2 mg/Kg

The target level was derived in the same manner as for benzene except that the concentration of toluene in premium gasoline-saturated water is 50 mg/Kg and K_{om} is 42 L/Kg. Accordingly:

$$C_T = \left(\frac{50 \text{ mg}}{\text{L}} \times \left(\frac{42 \text{ L}}{\text{Kg}} \times \frac{0.01 \text{ Kg}}{\text{Kg}} \right) \right) + \left(\frac{50 \text{ mg}}{\text{L}} \times \frac{0.1 \text{ Kg}}{\text{Kg}} \right) = \frac{26 \text{ mg}}{\text{Kg}}$$

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

and

$$\text{Target Level} = \frac{1}{8} \times \frac{26 \text{ mg}}{\text{Kg}} = \frac{3.2 \text{ mg}}{\text{Kg}}$$

Ethylbenzene: 45 mg/Kg

The target level was based on the target level set for Groundwater/PVC or Gasketed Mains (40,000 µg/L, rounded from 39,100 µg/L, or 39.1 mg/L) and the principles of Chiou et al. (1983) discussed above. In a manner similar to that for benzene in soil, C_W was 3.4 mg/L, K_d was 0.106 L/Kg, and C_T was calculated to be 3.9 mg/Kg. The target level for soil that is equivalent to the target level set for groundwater was calculated as follows:

$$\text{Target Level mg/Kg} = 39.1 \text{ mg/L} \times \frac{3.9 \text{ mg/Kg}}{3.4 \text{ mg/L}} = 45 \text{ mg/Kg}$$

Total Xylenes: 52 mg/Kg

The target level was set in the same manner as for ethylbenzene (above), based on the groundwater target level of 48,000 µg/L (rounded from 47.5 mg/L). C_W was 19 mg/L, K_d was 1.001 L/Kg (assuming a mixture of m-, o-, and p-xylenes which is 60%, 20%, and 20%, respectively, which is typical of xylenes derived from petroleum), and C_T was calculated to be 21 mg/Kg. Hence:

$$\text{Target Level mg/Kg} = 47.5 \text{ mg/L} \times \frac{21 \text{ mg/Kg}}{19 \text{ mg/L}} = 52 \text{ mg/Kg}$$

NOTE: The 1/8th safety factor was applied above to the target levels for ethylbenzene and total xylenes for Groundwater/PVC or Gasketed Service Lines, from which the target levels for PVC or Gasketed Mains were derived. Consequently, the 1/8th safety factor has also been applied to the target levels for both ethylbenzene and total xylenes in soil.

REFERENCES

- Chiou, C. T., P. E. Porter and D. W. Schmedding. 1983. Partition equilibria of nonionic organic compounds between soil organic matter and water. *Environ. Sci. Technol.*, 17(4)227-231.
- Ong, S. K., J. A. Gaunt, F. Mao, C. L. Cheng, L. Esteve-Agelet, and C. R. Hurburgh. 2008. Impact of hydrocarbons on PE/PVC pipes and pipe gaskets, Publication 91204. Awwa Research Foundation (presently Water Research Foundation), Denver, CO.

ARC 8648B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment increases the reimbursement rate for family planning clinics. 2009 Iowa Acts, chapter 182, section 32(1)(o), directed the Department to increase reimbursement for these services effective July 1, 2009, by 5 percent over the rates in effect on June 30, 2009. This change was not implemented. These amendments are intended to rectify that omission by applying the 5 percent increase to the last five months of state fiscal year 2010, for services rendered from February to June 2010.

Had this 5 percent increase been implemented effective July 1, 2009, it would have been eliminated effective December 1, 2009, pursuant to Executive Order Number 19, after having been in effect for five months. (See amendments Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on December 2, 2009, as **ARC 8344B**.) Therefore, making the increase effective for the last five months of the fiscal year provides an equivalent benefit to the family planning clinics. An adjustment to the amendments as Adopted and Filed Emergency in **ARC 8344B** is contained in a rule making published herein as **ARC 8643B**.

This amendment does not provide for waivers in specified situations since higher reimbursement for services benefits family planning clinics and the benefit is set by statute.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 8647B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before April 27, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 249A.4 and 2009 Iowa Acts, chapter 182, section 32(1)(o).

ARC 8655B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to rescind Chapter 165, “Family Development and Self-Sufficiency Program,” Iowa Administrative Code.

Authority to administer the Family Development and Self-Sufficiency Program has been transferred to the Division of Community Action Agencies of the Department of Human Rights. As directed by 2008 Iowa Acts, chapter 1072, section 7, the Division of Community Action Agencies has been administering the program under the rules at 441—Chapter 165 while it develops rules to implement Iowa Code chapter 216A.

This amendment is a companion to the Notice of Intended Action published herein as **ARC 8637B**. When those rules are adopted, 441—Chapter 165 will be rescinded. The Division of Community Action Agencies is holding a public hearing on **ARC 8637B** at 1 p.m. on April 27, 2010, in Room 208, Second Floor, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa.

This amendment does not provide for waivers in specified situations because the Department has no statutory authority to make decisions about the program.

Any interested person may make written comments on the proposed amendment on or before April 27, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement 2008 Iowa Acts, chapter 1072.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The following amendment is proposed.

Rescind and reserve **441—Chapter 165**.

ARC 8657B

INSPECTIONS AND APPEALS DEPARTMENT[481]

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 135H.10, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 41, “Psychiatric Medical Institutions for Children (PMIC),” Iowa Administrative Code.

Chapter 41 is being amended to make restraint standards in PMICs consistent between the Department of Inspections and Appeals (DIA) and the Department of Education. DIA received this request from a citizen concerned about the use of prone restraints. DIA has met with the trade association and PMICs and has received no opposition to the prohibition of prone restraints.

Any interested person may make written suggestions or comments on this proposed amendment on or before April 27, 2010. Such written materials should be sent to Steven Mandernach, Administrative Rules Coordinator, Department of Inspections and Appeals, 321 E. 12th Street, Third Floor, Lucas State Office Building, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-6863 or by E-mail to steven.mandernach@dia.iowa.gov.

This amendment is intended to implement Iowa Code sections 135H.4 and 135H.5.

The following amendment is proposed.

Adopt the following **new** rule 481—41.17(135H):

481—41.17(135H) Additional provisions concerning physical restraint. If a PMIC uses a physical restraint, the following provisions shall apply:

41.17(1) No employee shall use any prone restraints. For the purposes of this rule, “prone restraints” means those in which an individual is held face down on the floor. Employees who find themselves involved in the use of a prone restraint as the result of responding to an emergency must take immediate steps to end the prone restraint.

41.17(2) No employee shall use any restraint that obstructs the airway of any resident.

41.17(3) If an employee physically restrains a resident who uses sign language or an augmentative mode of communication as the resident’s primary mode of communication, the resident shall be permitted to have the resident’s hands free of restraint for brief periods, unless an employee determines that such freedom appears likely to result in harm to self or others.

This rule is intended to implement Iowa Code sections 135H.4 and 135H.5.

ARC 8680B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 23, “Wildlife Habitat Promotion with Local Entities Program,” Iowa Administrative Code.

The proposed amendments clarify the types of projects that are eligible to be cost-shared, when applications are due, how the applications are evaluated, and how the applications are scored.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 27, 2010. Written comments may be directed to the Wildlife Bureau’s Web site at www.iowadnr.com or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing held via the Iowa Communications Network on April 27, 2010, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for a list of hearing locations or go to the Department’s Web site at www.iowadnr.com. At the hearings, persons may present their views either orally or in writing. Participants 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 needs, such as those related to 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 483A.3.

The following amendments are proposed.

ITEM 1. Adopt the following new definition of “Waiver of retroactivity” in rule **571—23.1(483A)**:
“*Waiver of retroactivity*” means approval by the department for an applicant to purchase land prior to the next round of wildlife habitat fund application reviews. The waiver allows the applicant to remain eligible for the next round of wildlife habitat funds when extenuating circumstances exist that require an immediate purchase of the subject property by the applicant or a third party that will hold the property until funds become available to the applicant.

ITEM 2. Amend rule 571—23.5(483A) as follows:

571—23.5(483A) Eligibility for cost-sharing assistance. No project shall be eligible for cost sharing unless it is specifically approved by the commission, or the applicant has received a written waiver of retroactivity from the director, prior to its initiation. A project shall not be eligible for cost sharing unless public hunting and trapping will be allowed; however, the review and selection committee may recommend for commission approval projects with restrictions on hunting and trapping under exceptional circumstances, such as waterfowl refuges. Fees charged for recreational purposes will not be allowed on land purchased or developed with wildlife habitat funds. Wildlife habitat promotion funds shall not be used to fund mitigation lands or banks, or other lands, to satisfy mitigation requirements. Only the following types of project expenditures will be eligible for cost-sharing assistance.

23.5(1) Acquisition projects. Lands or rights thereto to be acquired in fee or by any other instrument shall be appraised by a competent appraiser and the appraisal approved by the department

NATURAL RESOURCE COMMISSION[571](cont'd)

staff. Applicants whose applications have been approved for funding must submit an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisitions. The appraisal ~~requirement~~ requirements may be waived when the staff determines that ~~it is~~ they are impractical for a specific project. Cost sharing will not be approved for more than 75 percent of the approved appraised value. Acquisition projects are eligible for either cost sharing by direct payments as described in subrule 23.12(7) or by reimbursement to local entities.

When a county receives or will receive financial income directly or indirectly from sources that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action, 75 percent of that income will be transferred to the department unless the grantee has demonstrated and committed to habitat development projects or additional acquisitions on the project site to be funded from the income received. The project review and selection committee must recommend, and the director and commission must approve, plans for the expenditure of income. In the absence of acceptable wildlife habitat development or acquisition plans, the county will transfer 75 percent of income received to the department as it is received. The department will credit that income to the county apportionment of the wildlife habitat stamp fund as described in subrule 23.2(1). The schedule of those reimbursements from a county to the state will be included in the project agreement.

23.5(2) Development projects. Eligible expenditures for development projects shall include, ~~but not be limited to, contracts, the purchase of materials and supplies, rentals and extra labor hired only for the specific project seeding and planting of habitat to support or enhance the wildlife area.~~ Requests to purchase equipment will not be approved. Donated labor, materials and equipment use, and force account labor and equipment use shall not be eligible for cost-sharing assistance. (Force account means the agency's own labor and equipment use.) Development projects are limited to lands legally controlled by the grantee for the expected life of the project. Development projects are eligible only for reimbursement of reasonable costs actually incurred and paid by the public agency.

23.5(3) Enhancement projects. For purposes of this rule, "enhancement" shall be considered to be synonymous with "development."

This rule is intended to implement the provisions of Iowa Code section 483A.3.

ITEM 3. Amend subrules 23.6(2) and 23.6(3) as follows:

23.6(2) Time of submission. Applications for funds shall be reviewed and selected for funding during January and July of each year. Applications must be received in acceptable form by the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319, by the close of business on the last business day of May for consideration at the summer review and the last business day of November for the winter review. Changes to grant applications must be submitted to the department no later than 4 p.m. the day prior to the committee review date. Upon timely notice to eligible recipients, additional selection periods may be scheduled if necessary to expedite the distribution of these funds. In emergencies, local entities can obtain a waiver so that acquisition projects may be approved for retroactive payments, provided that funds are available and the project meets all other criteria.

23.6(3) Local funding. By signing the application, the applicant agency is certifying that all required match has been identified and is committed and available for the project. An applicant shall certify ~~that it has committed its share of project costs, that these funds are available,~~ in writing that it has the 25 percent match committed and available, by signing on the signature block provided on the form, and shall state the means of providing for the local share. All necessary approvals for acquisition and financing shall be included with the application. All financial income received directly or indirectly from sources that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action will be completely documented in the application.

ITEM 4. Amend subrule 23.7(1) as follows:

23.7(1) Review and selection committee. A review and selection committee, hereinafter referred to as the committee, composed of ~~two persons~~ one person appointed by the director to represent the department, ~~one of whom shall be~~ and designated by the director as chairperson; and ~~three~~ four persons appointed by the director to represent county conservation boards shall determine which grant applications and amendment requests shall be selected for funding.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 5. Amend subrule 23.7(3) as follows:

23.7(3) Application rating system. The committee will apply a numerical rating system to each grant application which is considered for fund assistance. The following criteria, with a weight factor for each, will be considered:

Wildlife habitat needs	2
Existing or potential habitat quality	3
Cost-effectiveness	1 if at least 35 percent less than appraised amount 2 if at least 45 percent less than appraised amount
Species diversity	1

Each criterion will be given a score of from 0 to 10 which is then multiplied by the weight factor. Three additional criteria will be considered in the rating system:

a. *Prior assistance.* Any applicant who has never received a prior grant for acquisition of land will be given a bonus of 5 points.

b. *Active projects.* Any applicant who has one or more active projects at the time of application rating will be assessed 5 penalty points for each one that has not been completed by the date specified in the project agreement. ~~An active project shall cease to be active when all acquisition or development or both have been satisfactorily completed and an acceptable final reimbursement billing has been submitted to the department.~~ A project is deemed closed after the project has had a final inspection, all funds have been paid and, in the case of acquisition, the title has been transferred from the seller.

c. *Urgency.* Projects may be given 1 or 2 bonus points if there is a strong urgency to acquire lands which might otherwise be lost.

All points will be totaled for each application, and those applications receiving the highest scores will be selected for fund assistance to the extent of the allotment for each semiannual period, except that any project scoring a total of not more than 45 points will not be funded.

ITEM 6. Adopt the following **new** subrule 23.7(6):

23.7(6) Rating of scores for tie breakers. If two or more projects receive the same score, the committee shall use the points awarded to existing or potential habitat quality to determine which project has a higher rank. If after considering the existing or potential habitat quality points the project scores remain tied, the committee will then consider the points awarded for species diversity. If after considering the species diversity points the project scores remain tied, the committee will then consider the points awarded for wildlife habitat needs.

ITEM 7. Rescind subrule **23.14(3)**.

ITEM 8. Renumber subrule **23.14(4)** as **23.14(3)**.

ARC 8681B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 53, “Controlled Hunting Areas,” Iowa Administrative Code.

NATURAL RESOURCE COMMISSION[571](cont'd)

This amendment rescinds the rule requiring a controlled hunting program on Lake Odessa, Louisa County, Iowa.

Any interested person may make written suggestions or comments on the proposed amendment on or before April 27, 2010. Written comments may be directed to the Wildlife Bureau's Web site at www.iowadnr.com or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing held via the Iowa Communications Network on April 27, 2010, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for a list of hearing locations or go to the Department's Web site at www.iowadnr.com. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is intended to implement Iowa Code sections 481A.5, 481A.6, 481A.8 and 481A.39. The following amendment is proposed.

Rescind and reserve rule **571—53.3(481A)**.

ARC 8682B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 91, “Waterfowl and Coot Hunting Seasons,” Iowa Administrative Code.

These rules give the regulations for hunting waterfowl and coot and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting. The proposed amendments make annual adjustments to season dates to comply with federal regulations and to ensure the seasons open on weekends.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 27, 2010. Written comments may be directed to the Wildlife Bureau's Web site at www.iowadnr.com or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing held via the Iowa Communications Network on April 27, 2010, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for a list of hearing locations or go to the Department's Web site at www.iowadnr.com. At the public hearing, persons may present their views either orally or in writing. Participants 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 hearings and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and request specific accommodations.

NATURAL RESOURCE COMMISSION[571](cont'd)

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

The following amendments are proposed.

ITEM 1. Amend subrules 91.1(2) and 91.1(3) as follows:

91.1(2) *Season dates - north zone.* For all ducks: September ~~19~~ 18 through September ~~23~~ 22 and October ~~10~~ 16 through December ~~3~~ 9.

91.1(3) *Season dates - south zone.* For all ducks: September ~~19~~ 18 through September ~~23~~ 22 and October ~~17~~ 16 through December ~~10~~ 9.

ITEM 2. Amend subrules 91.3(2) and 91.3(3) as follows:

91.3(2) *Season dates - north zone.* Canada geese and brant: September ~~26~~ 25 through October ~~4~~ 10 and October ~~10~~ 16 through December ~~13~~ 12 and December ~~19~~ 18 through January ~~3, 2010~~ 2, 2011. White-fronted geese: September ~~26~~ 25 through December ~~6~~ 5. Light geese (white and blue-phase snow geese and Ross' geese): September ~~26~~ 25 through January ~~10, 2010~~ 9, 2011.

91.3(3) *Season dates - south zone.* Canada geese and brant: ~~September 26~~ October 2 through October ~~4~~ 10 and October ~~17~~ 16 through December ~~13~~ 12 and December ~~19~~ 18 through January ~~10, 2010~~ 9, 2011. White-fronted geese: ~~September 26~~ October 2 through December ~~6~~ 12. Light geese (white and blue-phase snow geese and Ross' geese): ~~September 26~~ October 2 through January ~~10, 2010~~ 9, 2011.

ITEM 3. Amend subrule 91.3(7) as follows:

91.3(7) *Light goose conservation order season.* Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service from January ~~11, 2010~~ 10, 2011, through April 15, ~~2010~~ 2011.

a. to e. No change.

ITEM 4. Amend rule 571—91.6(481A) as follows:

571—91.6(481A) Youth waterfowl hunt. A special youth waterfowl hunt will be held on October ~~3 and 4, 2009~~ 9 and 10, 2010, in the north duck hunting zone and October ~~3 and 4, 2009~~ 9 and 10, 2010, in the south duck hunting zone. Youth hunters must be residents of Iowa as defined in Iowa Code section 483A.1A and less than 16 years old. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks and coots. The adult may hunt for any other game birds for which the season is open. The daily bag and possession limits are the same as for the regular waterfowl season, as defined in rule 571—91.1(481A). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

ARC 8683B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 94, “Nonresident Deer Hunting,” Iowa Administrative Code.

NATURAL RESOURCE COMMISSION[571](cont'd)

Chapter 94 gives the regulations for nonresident deer hunting and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation and reporting requirements. The proposed amendment to subrule 94.7(5) makes the regulation on shooting from a roadway for residents and nonresidents consistent. The amendments to subrules 94.8(3) and 94.8(4) provide that a person who was unsuccessful in the drawing for an any-deer license and then purchases a preference point will receive a refund for the cost of the preference point.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 27, 2010. Written comments may be directed to the Wildlife Bureau's Web site at www.iowadnr.com or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

A public hearing will be held via the Iowa Communications Network on April 27, 2010, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for a list of hearing locations or go to the Department's Web site at www.iowadnr.com. At the hearing, persons may present their views either orally or in writing. Participants 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 those related to hearing or mobility impairments, should inform the Department of Natural Resources of specific needs.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1, 483A.8 and 483A.24.

The following amendments are proposed.

ITEM 1. Amend subrule 94.7(5) as follows:

94.7(5) *Discharge of firearms from ~~highway~~ roadway.* No person shall discharge a ~~shotgun shooting slugs or muzzleloader~~ rifle, including a muzzleloading rifle or musket, or a handgun from a highway during the regular gun seasons in all counties and parts of counties north of Highway 30 ~~and west of Highway 63~~. A "highway" means the way between property lines open to the public for vehicle traffic, including the road ditch, as defined in Iowa Code section 321.1(78).

ITEM 2. Amend subrules 94.8(3) and 94.8(4) as follows:

94.8(3) *Preference points.* Each individual applicant who is unsuccessful in the drawing for an any-deer license will be assigned one preference point for each year that the individual is unsuccessful. If a person who was unsuccessful in the drawing purchases a leftover license, the person will receive a refund for the cost of the preference point. Preference points will not accrue in a year in which an applicant fails to apply, but the applicant will retain any preference points previously earned. Preference points will apply only to obtaining any-deer licenses. Once an applicant receives an any-deer nonresident deer hunting license, all preference points will be removed until the applicant is again unsuccessful in a drawing or purchases a preference point as described in subrule 94.8(4). Preference points will apply to any zone or season for which a hunter applies. The first drawing for any-deer licenses each year will be made from the pool of applicants with the most preference points. If licenses are still available after the first drawing, subsequent drawings will be made from pools of applicants with successively fewer preference points and continue until the any-deer license quota is reached or all applicants have received licenses. Applicants who apply as a group will be included in a pool of applicants with the same number of preference points as that of the member of the group with the fewest preference points assigned.

94.8(4) *Purchasing preference points.* A nonresident who does not want to hunt in the current year may purchase one preference point per calendar year. The preference point will apply to the next year's drawing for any-deer licenses. The preference point will be treated in the same manner as preference points obtained by hunters who are unsuccessful in the any-deer license drawing. A nonresident may not purchase a preference point and apply for an any-deer license in the same calendar year. Preference points may be purchased only during the application period for any-deer licenses. ~~Preference points will~~

NATURAL RESOURCE COMMISSION[571](cont'd)

cost \$10 to offset administrative costs in addition to the usual writing fee, convenience fee and other fees charged by the ELSI system.

ARC 8684B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 106, “Deer Hunting by Residents,” Iowa Administrative Code.

The proposed amendments specify changes in quota numbers by county for antlerless deer licenses in order to meet the Department’s management objective for deer. The proposed amendments increase the antlerless-only license quotas by 1,400 in 3 counties and reduce the quotas by 13,800 in 27 counties. The county antlerless-only license quotas will need to be adjusted further after deer population surveys are completed in April. The amendments also clarify that landowner antlerless-only licenses will be issued only in those counties where paid licenses are available for the November antlerless-only season.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 27, 2010. Written comments may be directed to the Wildlife Bureau’s Web site at www.iowadnr.com or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing held via the Iowa Communications Network on April 27, 2010, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for a list of hearing locations or go to the Department’s Web site at www.iowadnr.com. At the public hearing, persons may present their views either orally or in writing. Participants 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 hearings and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and request specific accommodations.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.24, 483A.24B, and 483A.24C.

The following amendments are proposed.

ITEM 1. Amend subrule 106.1(5) as follows:

106.1(5) November antlerless-deer-only licenses. Only antlerless-deer-only licenses, paid or free, will be issued for the November antlerless-deer-only season. Free antlerless-deer-only licenses shall be available only for the portion of the farm unit located in a county where paid antlerless-deer-only licenses are available during that season.

ITEM 2. Amend subrule 106.6(6) as follows:

106.6(6) Antlerless-deer-only licenses. Paid antlerless-deer-only licenses will be available by county as follows:

NATURAL RESOURCE COMMISSION[571](cont'd)

County	Quota	County	Quota	County	Quota
Adair	2400	Floyd	150	Monona	1900
Adams	1950	Franklin	100	Monroe	3000
Allamakee	4500	Fremont	1500	Montgomery	1300
Appanoose	3300	Greene	150	Muscatine	1700 <u>1400</u>
Audubon	100	Grundy	0	O'Brien	0
Benton	1000 <u>600</u>	Guthrie	3300	Osceola	0
Black Hawk	0	Hamilton	100	Page	1800
Boone	650	Hancock	0	Palo Alto	0
Bremer	700	Hardin	400	Plymouth	100
Buchanan	400 <u>150</u>	Harrison	1900	Pocahontas	0
Buena Vista	0	Henry	2000 <u>1650</u>	Polk	1500
Butler	150	Howard	800 <u>250</u>	Pottawattamie	2100
Calhoun	0	Humboldt	0	Poweshiek	750 <u>550</u>
Carroll	100	Ida	0	Ringgold	2600
Cass	1300	Iowa	1200 <u>800</u>	Sac	0
Cedar	1300 <u>1000</u>	Jackson	1800 <u>800</u>	Scott	800 <u>300</u>
Cerro Gordo	0	Jasper	1700	Shelby	300
Cherokee	0	Jefferson	2150	Sioux	0
Chickasaw	600 <u>300</u>	Johnson	2000 <u>1200</u>	Story	500
Clarke	2200 <u>2500</u>	Jones	1500 <u>800</u>	Tama	800 <u>450</u>
Clay	0	Keokuk	1900 <u>1400</u>	Taylor	2650
Clayton	5800 <u>5000</u>	Kossuth	0	Union	2100
Clinton	1200 <u>500</u>	Lee	2500 <u>1950</u>	Van Buren	5400
Crawford	200	Linn	1900 <u>1200</u>	Wapello	2150
Dallas	2700	Louisa	1500 <u>1400</u>	Warren	3200 <u>4000</u>
Davis	3600	Lucas	2200 <u>2500</u>	Washington	2250 <u>1400</u>
Decatur	2800	Lyon	0	Wayne	3000

NATURAL RESOURCE COMMISSION[571](cont'd)

County	Quota	County	Quota	County	Quota
Delaware	1700 <u>1200</u>	Madison	4000	Webster	100
Des Moines	2000 <u>1500</u>	Mahaska	1350	Winnebago	0
Dickinson	0	Marion	2250	Winneshiek	3500 <u>3000</u>
Dubuque	2000 <u>1000</u>	Marshall	650 <u>450</u>	Woodbury	1900
Emmet	0	Mills	1350	Worth	50
Fayette	3000 <u>2500</u>	Mitchell	150	Wright	0

ARC 8685B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 108, "Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, River Otter, Bobcat, Gray (Timber) Wolf and Spotted Skunk Seasons," Iowa Administrative Code.

Chapter 108 sets the season dates, bag limits, possession limits and areas open to hunting or trapping furbearers.

The amendments add Adair, Cass, Guthrie, Keokuk, Louisa, Madison, Mahaska, Marion, Warren and Washington Counties to the open area for taking bobcats and increase the quota from 200 to 250.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 27, 2010. Written comments may be directed to the Wildlife Bureau's Web site at www.iowadnr.com or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing held via the Iowa Communications Network on April 27, 2010, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for a list of hearing locations or go to the Department's Web site at www.iowadnr.com.

At the public hearing, persons may present their views either orally or in writing. Participants 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 those related to 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 481A.6, 481A.38, 481A.39, 481A.87, and 481A.90.

The following amendments are proposed.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 1. Amend subrule 108.7(2) as follows:

108.7(2) *Open area.* River otters may be taken statewide. Bobcats may be taken in the following counties: Adair, Adams, Appanoose, Cass, Clarke, Davis, Decatur, Des Moines, Fremont, Guthrie, Harrison, Henry, Jefferson, Keokuk, Lee, Louisa, Lucas, Madison, Mahaska, Marion, Mills, Monona, Monroe, Montgomery, Page, Pottawattamie, Ringgold, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, and Woodbury.

ITEM 2. Amend paragraph **108.7(3)“b”** as follows:

b. Quotas. The quota for the number of river otters that may be taken is 500 statewide. The quota for the number of bobcats that may be taken is ~~200~~ 250 in the open area. The season shall end for river otters when the number of river otters trapped, as determined by the harvest reporting system, reaches 500. The season shall end for bobcats when the number of bobcats taken, as determined by the harvest reporting system, reaches ~~200~~ 250. Trappers shall be allowed a 48-hour grace period after the quota is reached to clear their traps of river otters or bobcats. River otters or bobcats found in traps during the grace period may be kept even though the quota is exceeded provided that the trapper has not reached the trapper’s personal bag limit. River otters or bobcats trapped after the grace period or in excess of the seasonal bag limit must be turned over to the department; the trapper shall not be penalized.

ARC 8675B

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.

The proposed amendments make the requirements for license by examination of foreign-educated nurses the same for both RNs and LPNs. The amendments will also require foreign-educated nurses who are applying for licensure by endorsement to have the Commission on Graduates of Foreign Nursing Schools submit a credentials evaluation prior to issuance of a nursing license.

Any interested person may make written comments or suggestions on or before April 27, 2010. 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 wish to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at 400 S.W. 8th Street, by appointment.

These amendments are intended to implement Iowa Code chapters 147, 152 and 272C.

The following amendments are proposed.

ITEM 1. Amend subparagraph **3.4(4)“a”(2)** as follows:

(2) Determine eligibility of each applicant upon receipt of:

1. to 4. No change.

5. Official nursing transcript denoting date of entry and date of graduation validated by the Commission on Graduates of Foreign Nursing Schools (CGFNS) ~~or submitted by the program if the original transcript is in English.~~

6. No change.

7. ~~Official certification submitted by CGFNS for registered nurse applicants~~ Full education course-by-course report submitted by CGFNS for licensed practical nurse and registered nurse applicants.

NURSING BOARD[655](cont'd)

~~8. Nursing and science course report submitted by CGFNS for licensed practical nurse applicants.~~

9. 8. Verification of ability to read, write, speak and understand the English language as determined by the results of the Test of English as a Foreign Language (TOEFL) or the International English Language Testing System (IELTS) for licensed practical nurse and registered nurse applicants. ~~The board shall determine the TOEFL passing standard.~~ Applicants shall be exempt from the TOEFL or IELTS examination when the native language is English; nursing education was completed in a college, university or professional school located in Australia, Canada (except Quebec), Ireland, New Zealand or the United Kingdom; language of instruction in the nursing program was English; and language of the textbooks in the nursing program was English.

ITEM 2. Amend subparagraphs ~~3.4(4)“b”(4), (6), (7) and (8)~~ as follows:

(4) Direct CGFNS to validate the official nursing transcript ~~or direct the nursing education program to submit to the board an official nursing transcript in English denoting the date of entry, date of graduation, and diploma or degree conferred.~~

(6) Complete ~~CGFNS certification requirements for registered nurse applicants~~ the full education course-by-course report application of the CGFNS Credentials Evaluation Service (CES) for licensed practical nurse and registered nurse applicants.

~~(7) Complete nursing and science course report requirements of the CGFNS Credentials Evaluation Service for practical nurse applicants.~~

~~(8)~~ (7) Complete TOEFL or IELTS requirements for licensed practical nurse and registered nurse applicants.

ITEM 3. Renumber subparagraphs ~~3.4(4)“b”(9) to (12)~~ as ~~3.4(4)“b”(8) to (11).~~

ITEM 4. Renumber subrules ~~3.5(3) and 3.5(4)~~ as ~~3.5(4) and 3.5(5).~~

ITEM 5. Adopt the following new subrule 3.5(3):

3.5(3) Application—individuals educated and licensed in another country.

a. The board shall:

(1) Provide application forms and instructions to applicants upon request.

(2) Determine eligibility of each applicant upon receipt of an application, fingerprint packet, fees, official nursing transcript denoting date of entry and date of graduation validated by the Commission on Graduates of Foreign Nursing Schools (CGFNS), validation of licensure/registration in the original country by CGFNS, full education course-by-course report from CGFNS, and verification of license submitted by state of original license or the National Council of State Boards of Nursing, Inc.

b. The applicant shall:

(1) Submit completed application for licensure by endorsement, including two sets of the completed fingerprint packet.

(2) Submit fee for application for licensure by endorsement plus the fee for evaluation of the fingerprint packet and the criminal history background checks as identified in the definition of “fees” in rule 655—3.1(17A,147,152,272C). All fees are nonrefundable.

(3) Direct CGFNS to validate the official nursing transcript.

(4) Direct CGFNS to validate licensure/registration in the original country.

(5) Apply for the full education course-by-course report application of the CGFNS Credentials Evaluation Service (CES) for licensed practical nurse and registered nurse applicants, or direct CGFNS to verify that a certificate letter was issued, or send the completed CES report to the board.

(6) Inform the board of primary state of residence and current mailing address.

(7) Submit a copy of a sentencing order(s) with the license application if an applicant has a criminal conviction history.

ITEM 6. Adopt the following new paragraph ~~3.5(4)“e”~~:

e. A temporary license shall not be issued to an applicant educated and licensed in another country until the full education course-by-course report application of the CGFNS Credentials Evaluation Service (CES) has been received by the board, CGFNS has verified that a certificate letter was issued, or a completed CES report has been sent to the board.

ARC 8674B**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 are proposed to change rules to meet current office procedures.

Any interested person may make written comments or suggestions on or before April 27, 2010. 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 wish to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at 400 S.W. 8th Street, by appointment.

These amendments are intended to implement Iowa Code chapters 147, 152 and 272C.

The following amendments are proposed.

ITEM 1. Amend rule 655—4.11(17A,147,152,272C), introductory paragraph, as follows:

655—4.11(17A,147,152,272C) Application for reinstatement. Any person whose license to practice nursing has been suspended or revoked by order of the board or has been voluntarily surrendered 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. ~~The reinstatement request must be submitted with two sets of the fingerprint packet to facilitate a national criminal history background check, plus the fee identified in the definition of “fees” in 655—3.1(17A,147,152,272C). All fees are nonrefundable.~~

ITEM 2. Amend subrules 4.11(2) and 4.11(5) as follows:

4.11(2) The respondent shall initiate proceedings for licensure reinstatement by making application to 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(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. The applicant shall be provided a license reinstatement packet containing an application, a continuing education report form, fingerprint cards, and a statement of the fees as defined in rule 655—3.1(17A,147,152,272C).

ARC 8667B**PHARMACY BOARD[657]****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 2009 Iowa Code Supplement section 124.212B(8) and Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 10, “Controlled Substances,” Iowa Administrative Code.

The proposed amendments were approved at the March 9, 2010, regular meeting of the Board of Pharmacy.

These proposed amendments clarify the form of identification to be reviewed by a pharmacist prior to dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription and provide that purchase records be recorded in the real-time electronic repository established by the Governor’s Office of Drug Control Policy pursuant to 657—Chapter 100 (proposed herein as **ARC 8666B**). The amendments also establish the format and content of an alternate record to be maintained if the real-time electronic repository is temporarily unavailable for use and provide for a notice to purchasers warning of criminal penalties if a purchaser is found in violation of laws relating to the purchase of ephedrine, pseudoephedrine, or phenylpropanolamine.

Interested parties may submit written comments on the proposed amendments not later than 5 p.m. on April 27, 2010, to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Des Moines, Iowa 50309; by E-mail to terry.witkowski@iowa.gov; or via facsimile to (515)281-4609.

These proposed amendments are not subject to waiver.

These amendments are intended to implement 2009 Iowa Code Supplement sections 124.212, 124.212A, 124.212B and 124.213 and Iowa Code section 155A.13.

The following amendments are proposed.

ITEM 1. Amend subrule 10.32(5) as follows:

10.32(5) Identification. The pharmacist shall require every purchaser under this rule to present a current, valid government-issued photo identification, including proof of age when appropriate. The pharmacist shall be responsible for verifying that the name on the identification matches the name provided by the purchaser and that the photo image depicts the purchaser.

ITEM 2. Amend subrule 10.32(6) as follows:

10.32(6) Record. ~~A legible dispensing record shall be created and maintained for the dispensing of ephedrine, pseudoephedrine, and phenylpropanolamine products pursuant to this rule.~~ Purchase records shall be recorded in the real-time electronic pseudoephedrine tracking system (PTS) established and administered by the governor’s office of drug control policy pursuant to 657—Chapter 100. If the real-time electronic repository is unavailable for use, the purchase record shall be recorded in an alternate format and submitted to the PTS as provided in 657—subrule 100.3(4).

~~a. Record~~ Alternate record contents. The alternate record shall contain the following:

- (1) The name, address, and signature of the purchaser.
- (2) The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.
- (3) The date and time of the purchase.
- (4) The name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the product.

~~b. Record~~ Alternate record format. The record shall be maintained using one of the following options:

PHARMACY BOARD[657](cont'd)

- (1) A hard-copy record ~~maintained in a bound logbook (i.e., with pages sewn or glued to the spine).~~
- (2) A record in the pharmacy's electronic prescription dispensing record-keeping system that is capable of producing a hard-copy printout of a record.
- (3) A record in an electronic data collection system that captures each of the data elements required by this subrule. ~~The electronic data collection system shall be~~ and that is capable of producing a hard-copy printout of a record.

c. PTS records retrieval. Pursuant to 657—subrule 100.4(6), the pharmacy shall be able to produce a hard-copy printout of transactions recorded in the PTS by the pharmacy for one or more specific products for a specified period of time upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.

ITEM 3. Amend subrule 10.32(7) as follows:

10.32(7) Notice required. The pharmacy shall ensure that the following notice shall be included in the logbook required pursuant to subrule 10.32(6) or shall be is provided to purchasers of ephedrine, pseudoephedrine, or phenylpropanolamine products and that the notice is displayed with or on the electronic signature device or is displayed in the dispensing area and be visible to the public:

“WARNING: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than \$250,000 if an individual or \$500,000 if an organization, imprisoned not more than five years, or both.”

ARC 8666B

PHARMACY BOARD[657]

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 2009 Iowa Code Supplement section 124.212B(8), the Board of Pharmacy and the Governor's Office of Drug Control Policy hereby jointly give Notice of Intended Action to adopt new Chapter 100, “Iowa Real-Time Electronic Pseudoephedrine Tracking System,” Iowa Administrative Code.

The proposed rules were approved by the Governor's Office of Drug Control Policy on March 1, 2010. The proposed rules were approved by the Board of Pharmacy at the March 9, 2010, regular meeting of the Board.

These proposed rules establish a real-time electronic repository to monitor and control the sale of Schedule V products that are not listed in another controlled substance schedule and that contain any detectible amount of pseudoephedrine, its salts, or optical isomers, or salts of optical isomers; ephedrine; or phenylpropanolamine. In addition, the proposed rules identify the responsibilities of the parties involved. A pharmacy dispensing such products shall electronically report all such sales to a central repository under the control and administration of the Office of Drug Control Policy. These proposed rules are in addition to the Board of Pharmacy rules amended in 657—Chapter 10 regarding the dispensing of these products by pharmacies. (See **ARC 8667B** herein.)

Interested parties may submit written comments on the proposed rules not later than 5 p.m. on April 27, 2010, to Susie Sher, Program Analyst, 401 SW 7th, Suite N, Des Moines, Iowa 50309; by E-mail to susie.sher@iowa.gov; or via facsimile to (515)242-6390; and to Terry Witkowski,

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Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Des Moines, Iowa 50309; by E-mail to terry.witkowski@iowa.gov; or via facsimile to (515)281-4609.

These proposed rules are not subject to waiver.

These rules are intended to implement 2009 Iowa Code Supplement sections 124.212, 124.212A, 124.212B, and 124.213.

The following amendment is proposed.

Adopt the following **new** 657—Chapter 100:

CHAPTER 100
IOWA REAL-TIME ELECTRONIC PSEUDOEPHEDRINE
TRACKING SYSTEM

657—100.1(124) Purpose and Scope. 2009 Iowa Code Supplement section 124.212B directs the governor's office of drug control policy to establish a real-time electronic repository to monitor and control the sale of Schedule V products that are not listed in another controlled substance schedule and that contain any detectible amount of pseudoephedrine, its salts, or optical isomers, or salts of optical isomers; ephedrine; or phenylpropanolamine. All pharmacies dispensing such products without a prescription shall electronically report all such sales to the repository. The real-time electronic repository shall be under the control of and administered by the governor's office of drug control policy. If a pharmacy cannot access the system via the Internet, the pharmacy must submit a written request for an exemption to the governor's office of drug control policy. Both the governor's office of drug control policy and the board of pharmacy are directed to adopt rules relating to the real-time electronic repository and have jointly adopted these rules. These rules establish the pseudoephedrine tracking system (PTS).

657—100.2(124) Definitions. As used in this chapter:

"Attempted purchase" means a proposed transaction for the dispensing of a product that is entered by a dispenser into the electronic pseudoephedrine tracking system, which transaction is not completed because the system recommends that the transaction be denied pursuant to the quantity limits established in 2009 Iowa Code Supplement section 124.213.

"Board" means the board of pharmacy.

"Council" means the pseudoephedrine advisory council established pursuant to Iowa Code section 124.212C.

"Dispenser" means a licensed Iowa pharmacist or a registered pharmacist-intern under the direct supervision of a pharmacist preceptor.

"Law enforcement officer" means all of the following:

1. State police officer.
2. City or county police officer.
3. Sheriff or deputy sheriff.
4. State or public university safety and security officer.
5. Department of natural resources officer.
6. Certified or full-time peace officer of this or another state.
7. Federal peace officer.
8. Criminal analyst assigned to a law enforcement agency.

"Office" means the governor's office of drug control policy.

"Product" means a Schedule V drug product that is not listed in another controlled substance schedule and that contains any detectible amount of pseudoephedrine, its salts, or optical isomers, or salts of optical isomers; ephedrine; or phenylpropanolamine.

"Pseudoephedrine tracking system" or *"PTS"* means the real-time electronic repository established to monitor and control the sale of products and administered by the governor's office of drug control policy.

PHARMACY BOARD[657](cont'd)

“*Purchaser*” means an individual 18 years of age or older who purchases or attempts to purchase a product.

657—100.3(124) Electronic pseudoephedrine tracking system (PTS). Unless granted an exemption by the office pursuant to these rules, all pharmacies dispensing products as defined in rule 657—100.2(124) are required to participate in the PTS pursuant to 2009 Iowa Code Supplement section 124.212B. The office has established a council to provide input and advise the office regarding the implementation, maintenance, and administration of the PTS. The council also assists the office in developing guidelines to ensure patient confidentiality and the integrity of the relationship established by the patient and the patient’s health care provider.

100.3(1) Reporting elements. The record of a completed purchase or attempted purchase of a product shall contain the following:

- a. The name and address of the purchaser.
- b. A current government-issued photo identification number.
- c. The electronic signature of the purchaser. If a pharmacy is not able to secure or record an electronic signature, a hard-copy signature logbook shall be utilized and maintained by the pharmacy. Each record in the logbook shall include the purchaser’s signature and shall identify the purchase by transaction number.
- d. Date and time of purchase.
- e. The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.
- f. The name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the product.

100.3(2) Frequency and quantity. Dispensing at retail to the same purchaser within any 30-day period shall be limited to products collectively containing no more than 7,500 mg of ephedrine, pseudoephedrine, or phenylpropanolamine; dispensing at retail to the same purchaser within a single calendar day shall not exceed 3,600 mg.

100.3(3) Denial of transactions and overrides.

- a. If an individual attempts to purchase a product in violation of these rules, the PTS shall:
 - (1) Notify the dispenser at the time of sale; and
 - (2) Recommend that the dispenser deny the transaction.
- b. The PTS shall provide an override feature for use by a dispenser to allow completion of the sale. For security purposes and to ensure the integrity of the PTS, use of the override feature shall be restricted to authorized dispensers and may not be delegated to a pharmacy technician or a pharmacy support person.

100.3(4) Availability of electronic PTS. If the electronic PTS is unavailable for use:

- a. A written record of each purchase shall be maintained pursuant to 657—subrule 10.32(6).
- b. The information shall be provided to the office for inclusion in the PTS within 72 hours after the PTS becomes operational.
- c. A PTS administrator shall enter the information from the written record into the PTS within 72 hours of receipt.

657—100.4(124) Access to database information and confidentiality. Information collected in the PTS is confidential unless otherwise ordered by a court or released by the office pursuant to state or federal law. Information may not be released except as provided by this rule.

100.4(1) PTS administrators. PTS administrators shall be provided access to the PTS for the purpose of searching and retrieving reports only by articulating reasonable suspicion or providing a case number or reference number for an ongoing investigation. PTS administrators shall also be provided information on purchasers directly from the PTS. This information may be sent directly to law enforcement officers for purposes of investigation. Data collected on purchases in excess of limits pursuant to the federal Combat Methamphetamine Epidemic Act may be released to law enforcement officers by PTS administrators without a court order or articulating reasonable suspicion.

PHARMACY BOARD[657](cont'd)

100.4(2) Law enforcement release. PTS reports may be provided to a law enforcement officer whose duty is to enforce the drug laws of this state, another state, or the United States.

a. A law enforcement officer shall register with the PTS prior to requesting reports. To ensure the identity of the officer and to maintain confidentiality of PTS information, the officer's identity shall be verified and registration shall be approved by the office.

b. A law enforcement officer may request information or data from the PTS by providing to a PTS administrator a case or reference number for an ongoing investigation and by articulating reasonable suspicion.

c. At the discretion of the office, law enforcement officers may be given direct access to data from the PTS pursuant to the federal Combat Methamphetamine Epidemic Act.

d. If a law enforcement officer requests PTS information on purchases or attempted purchases in excess of the monthly limit established in 657—subrule 10.32(3) or 657—subrule 100.3(2), a subpoena or other court order is required.

100.4(3) Statistical data. The PTS administrator, following establishment of confidentiality, may provide summary, statistical, or aggregate data to public or private entities for statistical, research, or educational purposes. Prior to release of any such data, the administrator shall remove any information that could be used to identify an individual patient, dispenser, or other person who is the subject of or identified in the PTS information or data.

100.4(4) Patients. A patient may request and receive information regarding products reported to have been purchased by the patient.

a. A patient may submit a signed, written request for records of the patient's purchases and attempted purchases during a specified period of time. The request shall identify the patient by name, including any aliases used by the patient, and shall include the patient's date of birth and gender. The request shall also include any address where the patient resided during the time period of the request and the patient's current address and daytime telephone number. A patient may personally deliver the request to the PTS administrator or authorized staff member of the office located at 603 East 12th Street, Fourth Floor, Des Moines, Iowa 50319. The patient shall be required to present current government-issued photo identification at the time of delivery of the request. A copy of the patient's identification shall be maintained in the records of the PTS.

b. A patient who is unable to personally deliver the request to the office may submit a request via mail or commercial delivery service. The request shall comply with all provisions of paragraph "a" above, and the signature of the requesting patient shall be witnessed and the patient's identity shall be attested to by a currently registered notary public. In addition to the notary's signature and assurance of the patient's identity, the notary shall certify a copy of the patient's current government-issued photo identification, and that certified copy shall be submitted with the written request. The request shall be submitted to the governor's office of drug control policy at the address identified in paragraph "a."

100.4(5) Regulatory officers. Regulatory agencies that supervise or regulate a health care practitioner shall be able to access information from the PTS only pursuant to an order, subpoena, or other means of legal compulsion relating to a specific investigation of a specific individual and supported by a determination of probable cause. A director of a regulatory agency with jurisdiction over a practitioner, or the director's designee, who seeks access to PTS information for an investigation shall submit to the PTS administrator in a format established by the office a written request via mail, facsimile, or personal delivery. The request shall be signed by the director or the director's designee and shall be accompanied by an order, subpoena, or other form of legal compulsion establishing that the request is supported by a determination of probable cause.

100.4(6) Pharmacy administrators. A pharmacy, an authorized employee of a pharmacy, or a licensed pharmacist shall be provided access to the stored PTS information only for the limited purpose of determining the sales made by the pharmacy. A pharmacy shall be able to print the pharmacy's sales records for any product during any specified period of time upon the request of the board or an agent of the board.

PHARMACY BOARD[657](cont'd)

100.4(7) Court orders and subpoenas. The PTS administrator shall provide database information in response to a court order or a county attorney subpoena or other subpoena issued by a court upon a determination of probable cause.

657—100.5(124) Violations. Violations of provisions of these rules or 2009 Iowa Code Supplement section 124.212A, 124.212B, or 124.213 may subject the violator to criminal prosecution. A health professions licensee may be subject to administrative action by the professional's licensing board.

These rules are intended to implement 2009 Iowa Code Supplement sections 124.212, 124.212A, 124.212B, and 124.213.

ARC 8639B**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology hereby gives Notice of Intended Action to amend Chapter 300, “Licensure of Speech Pathologists and Audiologists,” Chapter 303, “Continuing Education for Speech Pathologists and Audiologists,” and Chapter 304, “Discipline for Speech Pathologists and Audiologists,” Iowa Administrative Code.

These proposed amendments update requirements for applicants applying for temporary licensure as a speech pathologist or temporary licensure as an audiologist; remove language in the licensure and continuing education chapters that has been added to the common chapters for the Professional Licensure Division; and amend language in the discipline chapter to be consistent with the Iowa Code.

Any interested person may make written comments on the proposed amendments no later than April 27, 2010, addressed to Judy Manning, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail jmanning@idph.state.ia.us.

A public hearing will be held on April 27, 2010, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room 526, Lucas 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 proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154F and 272C.

The following amendments are proposed.

ITEM 1. Amend subrule 300.6(3) as follows:

300.6(3) The plan for supervised clinical experience must be approved by the board before the applicant starts practice and shall:

- a. Include at least nine months of full-time clinical experience, or equivalent;
- b. Include supervision by an Iowa-licensed speech pathologist or audiologist, as appropriate. If the applicant is being supervised by more than one individual, each supervisor must submit a supervised clinical experience plan for approval. If there is a change in the supervised clinical experience plan at any time during the supervised clinical experience, the licensee must contact the board for approval within 30 days of the change;
- c. Be kept by the supervisor for two years from the last date of the clinical experience; and
- d. Include a completed supervised clinical experience report form that shall be submitted to the board of speech pathology and audiology upon the applicant's successful completion of the nine months of full-time clinical experience. If the applicant was supervised by more than one individual,

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

each supervisor must submit a supervised clinical experience report. The applicant may then apply for licensure.

ITEM 2. Rescind and reserve rule **645—300.10(147)**.

ITEM 3. Rescind and reserve rules **645—300.14(147)** to **645—300.16(17A,147,272C)**.

ITEM 4. Rescind and reserve rules **645—303.4(147,272C)** to **645—303.7(147,272C)**.

ITEM 5. Amend subrule 304.2(11) as follows:

304.2(11) Conviction of a ~~felony~~ crime related to the profession or occupation of the licensee or the conviction of any ~~felony~~ crime that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

ARC 8668B

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 529, "For-Hire Interstate Motor Carrier Authority," Iowa Administrative Code.

Because the Code of Federal Regulations (CFR) was updated in October 2009, the Department must cite the current version in these rules. The amendments to the Federal Motor Carrier Safety Regulations (FMCSR) that have become final and effective since the 2008 edition of the CFR are listed in the information below. The affected parts are followed by the Federal Register (FR) citations.

Amendments to the FMCSR

Parts 356, 365 and 374 (FR Vol. 74, No. 50, Pages 11318-11319, 3-17-09)

This final rule eliminates the administrative requirement that applicants seeking for-hire authority to transport passengers over regular routes submit a detailed description and a map of the route(s) over which they propose to operate.

Part 373 (FR Vol. 74, No. 64, Pages 15388-15394, 4-6-09)

This final rule adopts Federal Motor Carrier Safety Administration (FMCSA) regulations that require all surface freight forwarders to issue a receipt or bill of lading on each shipment for which they arrange transportation of freight by commercial motor vehicle in interstate commerce. This regulatory change implements amendments enacted in the Interstate Commerce Commission Termination Act of 1995 (ICCTA) and applies to both household goods and non-household goods freight forwarders.

Any person or agency may submit written comments concerning this proposed amendment or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed amendment, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)817-6511; Internet E-mail address: steven.bowman@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than April 27, 2010.

TRANSPORTATION DEPARTMENT[761](cont'd)

A meeting to hear requested oral presentations is scheduled for Thursday, April 29, 2010, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

This amendment is intended to implement Iowa Code chapter 327B.

Proposed rule-making action:

Amend rule 761—529.1(327B) as follows:

761—529.1(327B) Motor carrier regulations. The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, ~~2008~~ 2009, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or through the Internet at <http://www.fmcsa.dot.gov>.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

April 1, 2009 — April 30, 2009	5.00%
May 1, 2009 — May 31, 2009	4.75%
June 1, 2009 — June 30, 2009	5.00%
July 1, 2009 — July 31, 2009	5.25%
August 1, 2009 — August 31, 2009	5.75%
September 1, 2009 — September 30, 2009	5.50%
October 1, 2009 — October 31, 2009	5.50%
November 1, 2009 — November 30, 2009	5.50%
December 1, 2009 — December 31, 2009	5.50%
January 1, 2010 — January 31, 2010	5.50%
February 1, 2010 — February 28, 2010	5.50%
March 1, 2010 — March 31, 2010	5.75%
April 1, 2010 — April 30, 2010	5.75%

ARC 8636B**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 162.16, the Department of Agriculture and Land Stewardship amends Chapter 67, “Animal Welfare,” Iowa Administrative Code.

The amendment maintains the current fee for greyhound breeders and farms.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and would result in needless delays.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Department further finds that the normal effective date of this rule, 35 days after publication, should be waived and the rule made effective upon filing with the Administrative Rules Coordinator on March 9, 2010. The rule confers a benefit to the public because it allows the program to continue without interruption.

This rule is intended to implement 2010 Iowa Acts, House File 2280.

This rule became effective March 9, 2010.

The following amendment is adopted.

Adopt the following new rule 21—67.13(162):

21—67.13(162) Greyhound breeder or farm fee. A person who owns, keeps, breeds, or transports a greyhound dog for pari-mutuel wagering at a racetrack as provided in Iowa Code chapter 99D shall pay a fee of \$40 for the issuance or renewal of a state license.

This rule is intended to implement 2010 Iowa Acts, House File 2280, section 5.

[Filed Emergency 3/9/10, effective 3/9/10]

[Published 4/7/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8643B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

These amendments rescind the amendments that were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on December 2, 2009, as **ARC 8344B**, and readopt them after a notice period to solicit public comments. The amendments reduce the reimbursement for most Medicaid services to achieve the savings required by Executive Order Number 19, which mandated a 10 percent across-the-board cut in expenditures. Specifically, these amendments:

- Reduce the rental allowance for durable medical equipment from 150 percent of the purchase price to 100 percent of the purchase price.
- Reduce the reimbursement for nonemergency medical transportation by private automobile from 34 cents per mile to 30 cents per mile.
- Limit the reimbursement for nonemergency medical transportation by public transportation to \$1.40 per mile.
- Reduce the reimbursement for generic and brand-name specialty drugs from the average wholesale price less 12 percent to the average wholesale price less 17 percent.
- Reduce the multiplier used to calculate the state maximum allowable cost for generic drugs (SMAC) from 1.4 to 1.2.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Reduce the pharmacy dispensing fee from \$4.57 to \$4.34 from December 2009 to June 2010.
- Reduce payments to the following providers by 5 percent for services rendered from December 2009 to June 2010: hospitals (not including critical access hospitals), nursing facilities, and psychiatric medical institutions for children; physicians, podiatrists, advanced registered nurse practitioners, audiologists, occupational and physical therapists, psychologists, optometrists, opticians, and chiropractors; dealers of medical equipment and supplies, hearing aids, orthopedic shoes, and prosthetic devices; remedial and behavioral health services, laboratory, X-ray, and ambulance providers; ambulatory surgical centers, maternal health centers, clinics, home health agencies, rehabilitation agencies, lead inspection agencies, and screening centers.
- Reduce payments to the following providers by 2.5 percent for services rendered from December 2009 to June 2010: dentists, community mental health centers, targeted case management providers, and home- and community-based waiver service providers.
- Provide that computation of administrative, environmental, and property expenses for nursing facilities shall be based on 90 percent of facility capacity, instead of 85 percent, unless the number of inpatient days is higher.
- Provide that nursing facilities shall be reimbursed for holding a bed for a hospitalized resident only if the facility's occupancy rate is at 95 percent or more. For those facilities whose occupancy rate meets that level, the payment will be made at 25 percent of the facility's daily rate, instead of 42 percent of the daily rate.

Notice of Intended Action to solicit comments on these amendments was published in the Iowa Administrative Bulletin on December 2, 2009, as **ARC 8345B**. The Department received comments on the Notice of Intended Action from eight people. Areas of concern included the effects of the reimbursement reductions on:

- Case management providers that already receive reimbursement with a retrospective cost settlement.
- Nursing facilities, especially those with a high percentage of Medicaid residents or low utilization.
- Providers under the home- and community-based intellectual disabilities waiver, whose nonfederal match is paid by county governments; therefore, the change in reimbursement rates generates no state savings.
- Specialty drugs, specifically Synagis®, which require repeated administration to be effective.

In response to these comments, the Department has made the following changes to the amendments as Adopted and Filed Emergency and published under Notice of Intended Action:

- Removed family planning clinics from the list of providers whose rates are reduced by 5 percent (previously adopted as paragraph 79.16(1)“j”) to redress the omission of the previously authorized rate increase. (See the amendment Adopted and Filed Emergency and published herein as **ARC 8647B** for more information.)
- Amended paragraph 79.16(2)“c” to restore the possibility of payment to home health agencies at 100 percent of allowable Medicaid cost instead of the previously adopted figure of 95 percent of allowable costs. Also, the phrase “less 5 percent” is removed from paragraph 79.16(2)“a,” relating to the maximum Medicare rate.
- Amended subrule 79.16(4) to provide that the 5 percent reduction for remedial services is applied to the established rate maximum instead of to the actual and allowable cost of the provider's operation.
- Amended subrule 79.16(6) to clarify that the 5 percent reduction for psychiatric medical institutions for children is applied to the upper limit for the payment rate instead of to the facility's cost for the service.
- Added paragraphs “a” to “c” to subrule 79.16(9) to clarify how the reimbursement reduction shall be applied to targeted case management services, depending on whether the provider's actual cost is more or less than the calculated interim rate.
- Added language to paragraph 79.16(10)“b” to clarify that the adjusted actual costs for home- and community-based waiver services shall not exceed the upper limits as specified in subrule 79.1(2) less 2.5 percent.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations. Needed savings will not be realized if waivers are granted. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on March 10, 2010.

The Department finds that these amendments confer a benefit on Medicaid providers by easing some of the effects of the reimbursement reductions. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Executive Order Number 19 and Iowa Code chapter 249A.

These amendments became effective on March 11, 2010, at which time the amendments Adopted and Filed Emergency were rescinded.

The following amendments are adopted.

ITEM 1. Rescind subparagraph **78.10(1)“f”(1)** and adopt the following **new** subparagraph in lieu thereof:

(1) The provider shall monitor rental payments up to 100 percent of the purchase price. At the point that total rent paid equals 100 percent of the purchase allowance, the member will be considered to own the item and no further rental payments will be made to the provider.

ITEM 2. Rescind paragraphs **78.13(5)“a”** and **“b”** and adopt the following **new** paragraphs in lieu thereof:

a. When transportation is by car, the maximum payment that may be made will be the actual charge made by the provider for transportation to and from the source of medical care, but not in excess of 30 cents per mile.

b. When public transportation is utilized, the basis of payment will be the actual charge made by the provider of transportation, not to exceed \$1.40 per mile.

ITEM 3. Rescind subrule 79.1(8) and adopt the following **new** subrule in lieu thereof:

79.1(8) Drugs. The amount of payment shall be based on several factors, subject to the upper limits in 42 CFR 447.500 to 447.520 as amended to October 7, 2008. The Medicaid program relies on information published by Medi-Span to classify drugs as brand-name or generic. Specialty drugs include biological drugs, blood-derived products, complex molecules, and select oral, injectable, and infused medications identified by the department and published on the specialty drug list.

a. Reimbursement for covered generic prescription drugs shall be the lowest of the following, as of the date of dispensing:

(1) The estimated acquisition cost, defined:

1. For covered nonspecialty generic prescription drugs, as the average wholesale price as published by Medi-Span less 12 percent, plus the professional dispensing fee specified in paragraph “g”; or

2. For covered specialty generic prescription drugs, as the average wholesale price as published by Medi-Span less 17 percent, plus the professional dispensing fee specified in paragraph “g.”

(2) The maximum allowable cost (MAC), defined as the upper limit for multiple source drugs established in accordance with the methodology of Centers for Medicare and Medicaid Services as described in 42 CFR 447.514, plus the professional dispensing fee specified in paragraph “g.”

(3) The state maximum allowable cost (SMAC), defined as the average wholesale acquisition cost for a generic drug (the average price pharmacies pay to obtain the generic drug as evidenced by purchase records) adjusted by a multiplier of 1.2, plus the professional dispensing fee specified in paragraph “g.”

(4) The submitted charge, representing the provider's usual and customary charge for the drug.

b. Reimbursement for covered brand-name prescription drugs shall be the lower of the following, as of the date of dispensing:

(1) The estimated acquisition cost, defined:

1. For covered nonspecialty brand-name prescription drugs, as the average wholesale price as published by Medi-Span less 12 percent, plus the professional dispensing fee specified in paragraph “g”; or

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. For covered specialty brand-name prescription drugs, as the average wholesale price as published by Medi-Span less 17 percent, plus the professional dispensing fee specified in paragraph "g."

(2) The submitted charge, representing the provider's usual and customary charge for the drug.

c. No payment shall be made for sales tax.

d. All hospitals that wish to administer vaccines which are available through the vaccines for children program to Medicaid members shall enroll in the vaccines for children program. In lieu of payment, vaccines available through the vaccines for children program shall be accessed from the department of public health for Medicaid members. Hospitals receive reimbursement for the administration of vaccines to Medicaid members through the DRG reimbursement for inpatients and APC reimbursement for outpatients.

e. The basis of payment for nonprescription drugs shall be the same as specified in paragraph "a" except that the department shall establish a maximum allowable reimbursable cost for these drugs using the average wholesale prices of the chemically equivalent products available. The department shall set the maximum allowable reimbursable cost at the median of those average wholesale prices. No exceptions for higher reimbursement will be approved.

f. An additional reimbursement amount of one cent per dose shall be added to the allowable ingredient cost of a prescription for an oral solid if the drug is dispensed to a patient in a nursing home in unit dose packaging prepared by the pharmacist.

g. The professional dispensing fee is \$4.57 or the pharmacy's usual and customary fee, whichever is lower, except for the period from December 1, 2009, to June 30, 2010, during which the professional dispensing fee shall be \$4.34.

h. For purposes of this subrule, "equivalent products" shall be those that meet therapeutic equivalent standards as published in the federal Food and Drug Administration document, "Approved Prescription Drug Products With Therapeutic Equivalence Evaluations."

i. Pharmacies and providers that are enrolled in the Iowa Medicaid program shall make available drug acquisition cost information, product availability information, and other information deemed necessary by the department to assist the department in monitoring and revising reimbursement rates subject to 79.1(8) "a"(3) and 79.1(8) "c" and for the efficient operation of the pharmacy benefit.

(1) Pharmacies and providers shall produce and submit the requested information in the manner and format requested by the department or its designee at no cost to the department or its designee.

(2) Pharmacies and providers shall submit information to the department or its designee within 30 days following receipt of a request for information unless the department or its designee grants an extension upon written request of the pharmacy or provider.

j. Savings in Medicaid reimbursements attributable to the SMAC shall be used to pay costs associated with determination of the SMAC, before reversion to Medicaid.

ITEM 4. Rescind rule 441—79.16(249A) and adopt the following new rule in lieu thereof:

441—79.16(249A) Payment reductions pursuant to executive order. The following payment provisions shall apply to services rendered during the period from December 1, 2009, to June 30, 2010, notwithstanding any contrary provision in this chapter.

79.16(1) Notwithstanding any provision of subrule 79.1(2), payment for covered services rendered by the following providers shall be reduced by 5 percent from the rates in effect November 30, 2009:

a. Ambulance services.

b. Ambulatory surgical centers.

c. Advanced registered nurse practitioners, including certified nurse-midwives.

d. Audiologists and hearing aid dealers.

e. Behavioral health providers.

f. Birth centers.

g. Chiropractors.

h. Clinics.

i. Durable medical equipment, medical supply, orthopedic shoe, and prosthetic device dealers.

HUMAN SERVICES DEPARTMENT[441](cont'd)

j. Hospitals, not including services rendered by critical access hospitals or services billed under the IowaCare program, but including:

- (1) Inpatient hospital care, including Medicaid-certified psychiatric and rehabilitation units.
- (2) Outpatient hospital care.
- (3) Indirect medical education payments.
- (4) Direct medical education payments.
- (5) Disproportionate-share payments (except for payments to the Iowa state-owned teaching hospital).

k. Independent laboratories and X-ray providers.

l. Independently practicing occupational therapists, physical therapists, and psychologists.

m. Lead inspection agencies.

n. Maternal health centers.

o. Optometrists and opticians.

p. Physicians, excluding services billed to the IowaCare program except for preventative examinations.

q. Podiatrists.

r. Rehabilitation agencies.

s. Screening centers.

79.16(2) Notwithstanding any provision of subrule 79.1(2), the basis of reimbursement for skilled nursing, physical therapy, occupational therapy, home health aide, and medical social services, and home health care for maternity patients and children provided by home health agencies shall be retrospective cost-related with cost settlement based on the lowest of the following:

- a.* The maximum Medicare rate in effect November 30, 2009,
- b.* The maximum Medicaid rate in effect November 30, 2009, less 5 percent, or
- c.* 100 percent of the reasonable and allowable Medicaid cost.

79.16(3) Notwithstanding any provision of subrule 79.1(2), the basis of reimbursement for private duty nursing and personal care for persons aged 20 or under provided by home health agencies shall be retrospective cost-related with cost settlement based on the lower of the following:

- a.* The maximum Medicaid rate in effect November 30, 2009, less 5 percent, or
- b.* 100 percent of the reasonable and allowable Medicaid cost.

79.16(4) Notwithstanding any provision of subrule 79.1(2) or 79.1(23), the basis of reimbursement for remedial services providers shall be consistent with the methodology described in subrule 79.1(23) except that the reasonable and proper cost of operation is equal to 100 percent of the actual and allowable cost subject to the established rate maximum less 5 percent.

79.16(5) Notwithstanding any provision of subrule 79.1(2) or rule 441—81.6(249A), the patient-day-weighted medians used in rate setting for nursing facilities shall be calculated and the rates adjusted to provide a 5 percent decrease in nursing facility rates (except for state-owned facilities).

79.16(6) Notwithstanding any provision of subrule 79.1(2) or rule 441—85.25(249A), the basis of reimbursement for non-state-owned psychiatric medical institutions for children shall be consistent with the methodology described in 441—subrule 85.25(1) except that the per diem rate shall be based on the facility's cost for the service, not to exceed the upper limit as provided in subrule 79.1(2) less 5 percent.

79.16(7) Notwithstanding any provision of subrule 79.1(2), payment for covered services rendered by dentists shall be reduced by 2.5 percent from the rates in effect November 30, 2009.

79.16(8) Notwithstanding any provision of subrule 79.1(2) or 79.1(25), the basis of reimbursement for community mental health centers shall be retrospective and cost-related with cost settlement limited to 97.5 percent of the provider's reasonable and allowable Medicaid cost.

79.16(9) Notwithstanding any provision of subrule 79.1(2), the basis of reimbursement for targeted case management services shall be as follows:

- a.* A provider-specific prospective cost-based interim rate shall be calculated based on the finalized state fiscal year 2009 cost report plus an inflation factor of 2.3 percent.

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. For a provider whose actual and allowable cost is less than the prospective cost-based interim rate calculated pursuant to paragraph “*a*,” the cost-settled amount paid to the provider shall be 100 percent of the provider’s actual and allowable cost.

c. For a provider whose actual and allowable cost is greater than the prospective cost-based interim rate calculated pursuant to paragraph “*a*,” the cost-settled amount paid to the provider shall be the actual cost less 2.5 percent, not to be reduced below the prospective cost-based interim rate.

79.16(10) Notwithstanding any provision of subrule 79.1(2), payment for covered services rendered by home- and community-based waiver service providers shall be reduced by 2.5 percent from the rates in effect November 30, 2009.

a. Rates based on a submitted financial and statistical report shall be consistent with the methodology described in subparagraph 79.1(15)“*d*”(1) except that the inflation adjustment applied to actual, historical costs and the prior period base cost shall be reduced by 2.5 percent.

b. The retrospective adjustment of prospective rates shall be made based on revenues exceeding 100 percent of adjusted actual costs. Adjusted actual costs shall not exceed the upper limits as specified in subrule 79.1(2) less 2.5 percent.

This rule is intended to implement Executive Order Number 19 and Iowa Code chapter 249A.

ITEM 5. Rescind subparagraph **81.6(16)“a”(1)** and adopt the following new subparagraph in lieu thereof:

(1) Non-state-owned nursing facilities. Patient days for purposes of the computation of administrative, environmental, and property expenses for non-state-owned facilities shall be inpatient days as determined in subrule 81.6(7) or 90 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).

ITEM 6. Rescind subparagraph **81.6(16)“h”(9)** and adopt the following new subparagraph in lieu thereof:

(9) Calculation of capital cost per diem instant relief add-on. The capital cost per diem instant relief add-on is calculated by dividing the annual estimated property costs for the complete replacement, new construction, or major renovation project for which the add-on is granted by the facility’s estimated annual total patient days.

1. Total patient days shall be determined using the most current submitted financial and statistical report or using the estimated total patient days as reported in the request for the add-on. For purposes of calculating the add-on, total patient days shall be the greater of the estimated annual total patient days or 90 percent of the facility’s estimated licensed capacity.

2. The annual estimated property costs for the project are calculated as the estimated annual depreciation expense for the cost of the project, plus estimated annual interest expense for the cost of the project, less the amount of depreciation expense for assets removed that is included in the current reimbursement rate and the amount of interest expense for debt service retired that is included in the current reimbursement rate.

3. A reconciliation between the estimated amounts and actual amounts shall be completed as described in subparagraph (12).

ITEM 7. Rescind subparagraph **81.6(16)“h”(12)** and adopt the following new subparagraph in lieu thereof:

(12) Reconciliation of capital cost per diem instant relief add-on. During the period in which the capital cost per diem instant relief add-on is granted, the Iowa Medicaid enterprise shall recalculate the amount of the add-on based on actual allowable costs and patient days reported on the facility’s submitted annual financial and statistical report. A separate reconciliation shall be performed for each cost report period in which the capital cost per diem instant relief add-on was paid. The facility shall submit with the annual financial and statistical report a separate schedule reporting total patient days per calendar quarter and a current depreciation schedule identifying the assets related to the add-on.

1. For purposes of recalculating the capital cost per diem instant relief add-on, total patient days shall be based on the greater of the number of actual patient days during the period in which the add-on

HUMAN SERVICES DEPARTMENT[441](cont'd)

was paid or 90 percent of the facility's actual licensed bed capacity during the period in which the add-on was paid.

2. The recalculated capital cost per diem instant relief add-on shall be added to the non-direct care component of the reimbursement rate for the relevant period, not to exceed the non-direct care rate component limit as determined in paragraph "f." The facility's quarterly rates for the relevant period shall be retroactively adjusted to reflect the recalculated non-direct care component of the reimbursement rate. All claims with dates of service during the period the capital cost per diem instant relief add-on is paid shall be repriced to reflect the recalculated capital cost per diem instant relief add-on.

ITEM 8. Rescind paragraph **81.10(4)"f"** and adopt the following new paragraph in lieu thereof:

f. Payment for periods when residents are absent for a visit shall be made at 42 percent of the nursing facility's rate. Payment for periods when residents are absent for hospitalization shall:

- (1) Be made at 25 percent of the nursing facility's rate if the facility occupancy percentage is 95 percent or greater.
- (2) Not be made if a facility's occupancy percentage is less than 95 percent.
- (3) Be made at 42 percent of the nursing facility's rate for special population facilities.

[Filed Emergency After Notice 3/11/10, effective 3/11/10]

[Published 4/7/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8647B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2009 Iowa Acts, chapter 182, section 32(13), the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment increases the reimbursement rate for family planning clinics. 2009 Iowa Acts, chapter 182, section 32(1)(o), directed the Department to increase reimbursement for these services effective July 1, 2009, by 5 percent over the rates in effect on June 30, 2009. This change was not implemented. This amendment is intended to rectify that omission by applying the 5 percent increase to the last five months of state fiscal year 2010, for services rendered from February to June 2010.

Had this 5 percent increase been implemented effective July 1, 2009, it would have been eliminated effective December 1, 2009, pursuant to Executive Order Number 19, after having been in effect for five months. (See amendments Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on December 2, 2009, as **ARC 8344B**.) Therefore, making the increase effective for the last five months of the fiscal year provides an equivalent benefit to the family planning clinics. An adjustment to the amendments as Adopted and Filed Emergency in **ARC 8344B** is contained in a rule making published herein as **ARC 8643B**.

This amendment does not provide for waivers in specified situations since higher reimbursement for services benefits family planning clinics and the benefit is set by statute.

The Council on Human Services adopted this amendment on March 10, 2010.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because this amendment implements 2009 Iowa Acts, chapter 182, section 32, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of this amendment should be waived, as authorized by 2009 Iowa Acts, chapter 182, section 32.

This amendment is also published herein under Notice of Intended Action as **ARC 8648B** to allow for public comment, as required by 2009 Iowa Acts, chapter 182, section 34.

This amendment is intended to implement Iowa Code section 249A.4 and 2009 Iowa Acts, chapter 182, section 32(1)(o).

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment became effective March 11, 2010.
The following amendment is adopted.

Amend subrule **79.1(2)**, provider category “Family planning clinics,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Family planning clinics	Fee schedule	Fee schedule in effect 6/30/08 plus 1% Beginning 2/1/10, fee schedule in effect 6/30/09 plus <u>5%</u> .

[Filed Emergency 3/11/10, effective 3/11/10]

[Published 4/7/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8649B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2009 Iowa Acts, chapter 121, section 2, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 85, “Services in Psychiatric Institutions,” Iowa Administrative Code.

These amendments change the basis of Medicaid reimbursement for psychiatric medical institutions for children for state fiscal year 2010 to conform to legislative provisions. Reimbursement rates will be retrospectively adjusted based on the facility’s actual costs. The upper limit for reimbursement of non-state-owned facilities is set at 103 percent of the patient-day-weighted state average costs for those facilities. There will be no upper limit for state-owned facilities.

These changes will result in higher reimbursement for most providers. The additional federal reimbursement for the state-owned facility at the Independence Mental Health Institute will help to offset the higher reimbursement rates for the private facilities. The higher rates will allow facilities within the state to provide additional staffing and resources to better serve children with intensive needs, thus reducing the need for placements at more expensive facilities outside the state. Reduced reliance on out-of-state providers will also allow Iowa children to receive treatment closer to families and support systems.

These amendments do not provide for waivers in specified situations since they mirror the language of the statute, which the Department has no authority to waive.

The Council on Human Services adopted these amendments March 10, 2010.

The Department finds that notice and public participation are unnecessary because these amendments merely conform administrative rules to legislative directives. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department finds that these amendments confer a benefit upon the facilities affected. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 249A.4 and 2009 Iowa Acts, chapter 121.

These amendments became effective March 11, 2010.

The following amendments are adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend subrule **79.1(2)**, provider category “Psychiatric medical institutions for children,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Psychiatric medical institutions for children		
1. Inpatient	<u>Prospective reimbursement</u> <u>Retrospective cost-related</u>	<u>Rate based on actual costs on 6/30/07, Effective July 1, 2009, actual cost not to exceed a maximum for non-state-owned providers of \$167.19 per day 103% of patient-day-weighted average costs of non-state-owned providers located within Iowa.</u>
2. Outpatient day treatment	Fee schedule	Fee schedule in effect 6/30/08 plus 1%.

ITEM 2. Amend subrule 85.25(1) as follows:

85.25(1) Computation of inpatient rate. Facilities are paid at a per diem rate based on the facility’s cost for the service not to exceed the upper limit as provided in 441—subrule 79.1(2).

a. Rates for new facilities are based on historical costs submitted on Form ~~SS-1703-0~~ 470-0664, Financial and Statistical Report for Purchase of Service Contracts, if the institution is established and has the historical data. If the institution is newly established, the rate shall be based on a proposed budget submitted on Form ~~SS-1703-0~~ 470-0664. A Form ~~SS-1703-0~~ 470-0664 with actual cost data shall be submitted after at least six months of participation in the program for a new rate adjustment.

b. After the initial cost report period, the institution shall submit Form ~~SS-1703-0~~ 470-0664 annually within three months of the close of the facility’s fiscal year. Failure to submit the report within this time shall reduce payment to 75 percent of the current rate. The reduced rate shall be paid for no longer than three months, after which time no further payments will be made.

c. For services rendered July 1, 2009, through June 30, 2010, rates paid shall be adjusted to 100 percent of the facility’s actual average costs per patient day, based on the cost information submitted pursuant to paragraphs 85.25(1) “a” and “b,” subject to the upper limit provided in 441—subrule 79.1(2) for non-state-owned facilities. Facilities may submit a projected cost report for purposes of determining the rates initially paid for services rendered July 1, 2009, through June 30, 2010, before rate adjustment based on actual costs.

[Filed Emergency 3/11/10, effective 3/11/10]

[Published 4/7/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8638B

ARCHITECTURAL EXAMINING BOARD[193B]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby amends Chapter 2, "Registration," Iowa Administrative Code.

The amendment to Chapter 2 reflects a change that resulted from a resolution adopted by the National Council of Architectural Registration Boards (NCARB) at the annual meeting in June 2009. NCARB writes and administers the national Architect Registration Examination and is adopting a five-year rolling clock. The practice of architecture continues to evolve. As a result, NCARB has determined that any examinations taken longer than five years ago no longer reflect current architecture practice. This amendment, with an effective date of January 2011, makes any examination scores older than five years invalid. Further, it purges old examination scores from an applicant's record for any examination passed prior to January 1, 2006, if the applicant does not pass all remaining divisions of the examination by July 1, 2014. Under prior rule, an applicant received credit permanently for an examination passed prior to January 1, 2006.

The amendment is subject to waiver or variance pursuant to 193—Chapter 5.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on December 16, 2009, as **ARC 8392B**. No written or oral comments were received. There are no changes to the amendment published under Notice of Intended Action.

The Board adopted this amendment on March 9, 2010.

This amendment is intended to implement Iowa Code chapter 544A.

This amendment will become effective May 12, 2010.

The following amendment is adopted.

Amend subrule 2.3(4) as follows:

~~2.3(4) Applicants who have previously passed any portion of formerly required NCARB examinations will be granted credit for those portions passed in accordance with procedures established by NCARB.~~ Applicants who have passed one or more but not all divisions of the ARE by January 1, 2006, shall have a rolling five years -year period to pass all each of the remaining divisions. A passing grade for any remaining division shall be valid for five years, after which time the division must be retaken if all remaining divisions have not been passed. The rolling five-year period shall commence after January 1, 2006, on the date when the first division that has been passed is administered. Applicants who have passed no divisions of the ARE by January 1, 2006, shall be governed by the above rolling five-year requirement. The rolling five-year period shall commence on the date when the first division that has been passed is administered. Any division passed prior to January 1, 2006, shall no longer remain valid if all remaining divisions have not been passed by July 1, 2014.

Effective January 1, 2011, and thereafter, the Authorization to Test of any applicant shall terminate unless the applicant has passed or failed a division of the ARE within a period of five years, which includes the five-year period prior to January 1, 2011. Any applicant whose authorization is so terminated must establish a new eligibility under the then-current procedures of the board.

[Filed 3/10/10, effective 5/12/10]

[Published 4/7/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8688B**EDUCATIONAL EXAMINERS BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

The amendment is in response to requests to extend the teacher intern license. Subrule 13.9(8) allows an applicant to extend the teacher intern license and provides the parameters for this option.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 13, 2010, as **ARC 8436B**. A public hearing on the amendment was held on Wednesday, February 3, 2010. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective May 12, 2010.

The following amendment is adopted.

Adopt the following **new** subrule 13.9(8):

13.9(8) *Requirements to extend the teacher intern license if the teacher intern does not complete all of the education coursework during the term of the teacher intern license.*

a. A one-year extension of the teacher intern license may be issued upon application provided that the teacher intern has met both of the following requirements:

- (1) Successful completion of 160 days of teaching experience during the teacher internship.
- (2) Verification by the recommending official at the approved teacher intern program that the teacher intern has not completed all of the coursework required for the initial license.

b. Only one year of teaching experience during the term of the teacher intern license or the extension of a teacher intern license may be used to convert the teacher intern license to a standard teaching license.

[Filed 3/18/10, effective 5/12/10]

[Published 4/7/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8646B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 21, "Community Colleges," Iowa Administrative Code.

Following the removal in 2006 of the accreditation rules from this chapter into then-new 281—Chapter 24, this chapter of rules has undergone a general comprehensive review involving the following stakeholder groups: Iowa Association of Community College Presidents (IACCP), Iowa Association of Community College Trustees (IACCT), Community College Chief Academic Officers, Iowa Arts and Sciences Administrators (IASA), Community College Career and Technical Deans/Directors, Iowa State Education Association (ISEA), Community College Continuing Education Deans/Directors, Community College Business Officers, Community College Human Resource Directors, Iowa Community College Student Services Administrators (ICSSA), Community College Faculty Advisory Committee, Community College Accreditation Advisory Committee, and Community College Professional Development Advisory Committee.

These amendments update language, provide greater detail for the various available degree requirements, and align the chapter with statutory changes made to licensure of community college staff and the new Senior Year Plus Program legislation in Iowa Code chapter 261E. The rules in Division

EDUCATION DEPARTMENT[281](cont'd)

VII (rules 281—21.57(260C) to 281—21.63(260C)) and Division VIII (rules 281—21.64(260C) to 281—21.71(260C)) are stricken because of statutory repeals. There are no substantive amendments adopted herein.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the December 16, 2009, Iowa Administrative Bulletin as **ARC 8390B**. A public hearing was held on January 12, 2010, and public comments were allowed until close of business on that same date. No one appeared at the public hearing. One written comment was received from a community college administrator critical of the statement in paragraphs “d” and “e” of subrule 21.2(9) that the technical specialty component of the AAS and AAA degrees must constitute no less than 50 percent of the course credits. The commenter believes that communication or humanities courses, rather than technical specialty component courses, should constitute the majority of the course credits. After discussing the issue, the Department has determined that the language proposed shall not be changed. The requirement that the technical specialty component of the AAS and AAA degrees must constitute no less than 50 percent of the course credits is a longstanding department policy about which no concerns have been communicated from the field.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 260C.

These amendments will become effective May 12, 2010.

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 21] is being omitted. These amendments are identical to those published under Notice as **ARC 8390B**, IAB 12/16/09.

[Filed 3/11/10, effective 5/12/10]

[Published 4/7/10]

[For replacement pages for IAC, see IAC Supplement 4/7/10.]

ARC 8645B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 23, “Adult Education,” Iowa Administrative Code.

The amendment in Item 1 is needed because the state advisory council no longer exists. It was initially required by federal law, but that requirement was removed by the passage of the Workforce Investment Act of 1998, P.L. 105-220. The change in Item 2 ensures that the rule conforms to actual practice.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the December 16, 2009, Iowa Administrative Bulletin as **ARC 8389B**. A public hearing was held on January 12, 2010, and public comments were allowed until 4:30 p.m. on January 12, 2010. No written or oral comments were received.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 260C.

These amendments will become effective on May 12, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 281—23.1(260C) as follows:

281—23.1(260C) Planning process.

23.1(1) No change.

~~**23.1(2)** *State advisory council.* A state advisory council shall be established for adult education as determined by the director of the department of education and shall be appointed by the director and composed of 15 members, one from each community college district representing a cross-section of the~~

EDUCATION DEPARTMENT[281](cont'd)

~~population of the state. The council shall meet at regularly scheduled times. The actual cost of meals and lodging for the advisory council shall be paid by the department of education. Expenses for travel will be reimbursed at the allowable state rate. Each meeting shall be open to the public.~~

~~23.1(3)~~ **23.1(2) Participatory planning committee.** The department of education shall involve a participatory planning committee in the development of the plan. The participatory planning committee shall include representatives of various agencies, groups, and organizations. The state plan shall provide for the selection of representatives and the manner in which the representatives will be involved in the development of the state plan. If the participatory planning committee is not able to agree upon a final plan, the department of education shall make the final decision. The state plan shall include notation of recommendations rejected and the reason for the rejection.

ITEM 2. Amend rule 281—23.2(260C) as follows:

281—23.2(260C) Final plan. The final plan ~~after approval by all parties concerned~~ shall be approved by the state board of education and implemented statewide. A copy of the final plan shall be made available to all individuals in the state upon request to the department of education.

[Filed 3/11/10, effective 5/12/10]

[Published 4/7/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8644B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 24, "Community College Accreditation," Iowa Administrative Code.

The accreditation rules are being amended to update outdated language and to provide greater clarity about the accreditation process. The Department shared drafts of these rules and had discussions regarding the amendments with representatives from the following stakeholder groups: Iowa Association of Community College Presidents (IACCP), Iowa Association of Community College Trustees (IACCT), Community College Chief Academic Officers, Iowa Arts and Sciences Administrators (IASA), Community College Career and Technical Deans/Directors, Iowa State Education Association (ISEA), Community College Continuing Education Deans/Directors, Community College Business Officers, Community College Human Resource Directors, Iowa Community College Student Services Administrators (ICSSA), Community College Faculty Advisory Committee, Community College Accreditation Advisory Committee, and Community College Professional Development Advisory Committee.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the December 16, 2009, Iowa Administrative Bulletin as **ARC 8388B**. A public hearing was held on January 12, 2010, and public comments were allowed until close of business on that same date. No public comments were received.

One change has been made to the amendments that were published under Notice. Paragraph 24.5(2)"a" has been revised to match the amended language of subrule 21.4(2) (see **ARC 8646B** herein). Paragraph 24.5(2)"a" now reads as follows:

"a. College parallel or transfer. The full-time teaching load of an instructor in college parallel or transfer programs shall not exceed a maximum of 16 credit hours within a traditional semester or the equivalent. An instructor may also have a teaching assignment outside of the normal school hours, provided the instructor consents to this additional assignment and the total workload does not exceed the equivalent of 18 credit hours within a traditional semester or the equivalent thereof."

These amendments are intended to implement Iowa Code section 258.4(7) and Iowa Code chapters 260C and 261E.

EDUCATION DEPARTMENT[281](cont'd)

These amendments will become effective on May 12, 2010.

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 [24.1, 24.3 to 24.6] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8388B**, IAB 12/16/09.

[Filed 3/11/10, effective 5/12/10]

[Published 4/7/10]

[For replacement pages for IAC, see IAC Supplement 4/7/10.]

ARC 8678B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.105 and chapter 554D, the Environmental Protection Commission hereby adopts new Chapter 15, "Cross-Media Electronic Reporting," Iowa Administrative Code.

The purpose of adopted new Chapter 15 is to adopt the U.S. Environmental Protection Agency's (EPA) electronic reporting requirements for programs under Title 40 of the Code of Federal Regulations. EPA's Cross-Media Electronic Reporting Rule (CROMERR) was born out of EPA's goal to make electronic reporting and electronic record keeping available under authorized programs. EPA expects that CROMERR will (1) reduce the cost and burden of data transfer and maintenance for all parties to the data exchanges; (2) improve the data and the various business processes associated with its use; and (3) maintain the level of corporate and individual responsibility and accountability for electronic reports and records that currently exist in the paper environment.

CROMERR applies to states, tribes, and local programs that administer or seek to administer authorized programs under Title 40 and establishes standards for acceptable electronic document receiving systems against which EPA will assess authorized program electronic reporting elements. These standards address six function-specific categories: (1) system security; (2) electronic signature method; (3) submitter registration; (4) signature/certification scenario; (5) transaction record; and (6) system archives.

CROMERR impacts 40 CFR Parts 3, 9, 51, 60, 61, 63, 64, 69, 70, 71, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745 and 763. This rule making impacts electronic data currently received or planned to be received in federally mandated programs in the Environmental Services Division of the Department. Programs already receiving electronic information must modify the system(s) or create new systems to be compliant with CROMERR standards.

CROMERR does not require regulated entities to submit electronic data or require programs to accept electronic data; however, it requires that any Title 40-authorized program that chooses to use electronic submission rather than paper for reporting purposes must receive EPA approval of program revisions or modifications that address any Title 40-authorized program's electronic reporting implementations. As a result, programs accepting or planning on accepting submission of electronic documents must submit an application as required by 40 CFR Part 3 for EPA review and approval. Adoption of this rule is required for the CROMERR application to EPA.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 13, 2010, as **ARC 8467B**. A public hearing was held on February 15, 2010. No comments were received during the public comment period. Several nonsubstantive changes have been made to the rule published under Notice of Intended Action. Paragraph 15.1(4)"b" has been clarified without changing the intent of the rule. Paragraph "b" now reads as follows:

"b. Form and content of agreement. All agreements shall be in writing and filed with the electronic document receiving system administrator via a mail delivery service or by hand delivery. The agreement

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

shall include the information and follow the format as defined by the department. The agreement form may be downloaded and printed for signing during the signatory's registration process."

The language of subparagraph 15.1(5)"b"(2) has been changed to omit reference to the state of Iowa from the reporting requirement. In addition, the implementation sentence, which was inadvertently omitted from the Notice, has been added to Chapter 15.

This rule is intended to implement Iowa Code section 455B.105 and chapter 554D.

This amendment will become effective on May 12, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this rule [Ch 15] is being omitted. With the exception of the changes noted above, this rule is identical to that published under Notice as **ARC 8467B**, IAB 1/13/10.

[Filed 3/18/10, effective 5/12/10]

[Published 4/7/10]

[For replacement pages for IAC, see IAC Supplement 4/7/10.]

ARC 8679B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 445D.5(7), the Environmental Protection Commission hereby adopts amendments to Chapter 122, "Cathode Ray Tube Device Recycling," Iowa Administrative Code.

These amendments are being adopted in an effort to promote convenient cathode ray tube (CRT) recycling for consumers without compromising protection of the environment. This will be accomplished by:

- Removing the requirements for short-term collections.
- Replacing the permit requirement for facilities that collect CRTs with a registration requirement.
- Providing collection and storage requirements for registered collection points including limiting the number of CRTs on site to 2,000, limiting the storage time to one year, and requiring a training program for collection site employees.
- Increasing the length of the CRT recycling permit from three years to five years.
- Removing the requirement for DNR-approved training for staff of CRT recycling facilities.
- Simplifying the reporting requirements for CRT recycling facilities.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8468B** on January 13, 2010.

No comments were received during the public comment period or at the public hearing.

Changes from the Notice have been made to rule 567—122.22(455B,455D) in order to simplify the reporting requirements for CRT recycling facilities. The CRT recycling facilities will only need to report the number or amount of CRT devices received. The facilities will no longer need to track the number of televisions and monitors separately or the ratio of the CRTs that come from households versus businesses. Rule 567—122.22(455B,455D) now reads as follows:

"567—122.22(455B,455D) Reporting requirements for CRT recycling facilities. A CRT recycling facility shall maintain a record of the number or weight of CRT devices received each calendar year and report this information to the department within 30 days of the end of that calendar year."

These amendments are intended to implement Iowa Code sections 455D.6(7) and 455B.304(1).

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

These amendments will become effective July 1, 2010.

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 [122.2 to 122.28] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8468B**, IAB 1/13/10.

[Filed 3/18/10, effective 7/1/10]

[Published 4/7/10]

[For replacement pages for IAC, see IAC Supplement 4/7/10.]

ARC 8640B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6(6), the Department of Human Services amends Chapter 58, "Emergency Assistance," Iowa Administrative Code.

This amendment rescinds rules on Family Investment Program (FIP) Emergency Assistance. The FIP Emergency Assistance Program has not been funded since state fiscal year 2003, with the last funds allotted to the Program expended in November 2002. Funding for the Program ended due to budgetary constraints.

This amendment does not provide for waivers in specified situations because no funds are appropriated to deliver these benefits.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on January 13, 2010, as **ARC 8460B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on March 10, 2010.

This amendment is intended to implement Iowa Code section 234.6.

This amendment shall become effective on May 12, 2010.

The following amendment is adopted.

Rescind and reserve **441—Chapter 58, Division II**.

[Filed 3/11/10, effective 5/12/10]

[Published 4/7/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8642B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2009 Iowa Acts, chapter 118, section 38, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," and Chapter 76, "Application and Investigation," Iowa Administrative Code.

These amendments implement Medicaid "express lane" eligibility for children. Express lane eligibility is a process by which the Medicaid program can rely on a finding made under another program with similar eligibility requirements to determine that a child meets Medicaid eligibility requirements. The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) authorized, as a state option, the reliance on a finding from an express lane agency in determining whether a child satisfies one or more components of Medicaid eligibility. 2009 Iowa Acts, chapter 118, requires the Department to implement CHIPRA's express lane option in order to qualify for federal performance bonus funding.

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Under these amendments, children under the age of 19 who have already been determined eligible for Food Assistance based on the family's income and circumstances will be allowed to enroll in Medicaid under the Mothers and Children (MAC) coverage group without filing a separate application. Approximately one-tenth of the children now eligible for Food Assistance are not receiving medical assistance.

The family must affirmatively request the child's Medicaid enrollment within a reasonable period of time and must still meet the specific Medicaid requirements of attestation and verification of alien or citizen status. Medicaid enrollment through the express lane process will be for an initial period of eligibility (up to 12 months), after which all redeterminations of eligibility will be made based on standard Medicaid eligibility requirements and procedures.

Implementation of the express lane option requires separate error rate sampling, monitoring, and reporting. Error rates exceeding 3 percent will require corrective action planning and federal repayment of error cases.

The amendments also make technical changes to update form names and numbers.

These amendments do not provide for waivers in specified situations because they benefit the families affected by streamlining eligibility procedures and making more children eligible for Medicaid benefits. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on January 13, 2010, as **ARC 8461B**. The Department received no comments on the Notice of Intended Action. However, the Department has made the following changes to the amendments as published under Notice of Intended Action:

- The proposed amendments to form numbers in subrule 75.2(1) have been omitted, since that subrule was updated in amendments Adopted and Filed Emergency After Notice and published in the Iowa Administrative Bulletin on February 10, 2010, as **ARC 8503B**. Amendments to paragraphs 76.1(1)“c” and 76.5(1)“d” are revised to reflect that all versions of the form SSI Medicaid Information are now identified using the number 470-0364.

- The introductory paragraph of new subrule 76.1(8) has been reworded as follows: “*a*. The department shall rely on a determination of eligibility for food assistance pursuant to 441—Chapter 65 as establishing that a child under the age of 19 meets all eligibility requirements established in 441—subrule 75.1(28) except for citizenship or alienage requirements, unless:”

- New subparagraph (3) is added to paragraph 76.1(8)“*a*” as follows: “(3) The household's income as calculated by the food assistance program exceeds the income limit for the mothers and children coverage group found at 441—subparagraph 75.1(28)“*a*”(1).” This change addresses the potential that the Food Assistance income limit may at some time become higher than the Medicaid income limit.

- Paragraph 76.1(8)“*b*” is revised to read as follows: “*b*. To obtain express lane eligibility, the child's household must request medical assistance for the child on Form 470-4851, Express Lane Medicaid for Children. The department will mail Form 470-4851 to the household when a child eligible for the express lane option is approved for food assistance pursuant to 441—Chapter 65. An adult member of the child's household or a child receiving food assistance as head of household must sign Form 470-4851 and return it to the department within 30 calendar days of issuance.” This change more precisely reflects Food Assistance policy. An 18-year-old is considered a child for the mothers and children coverage group, but not for Food Assistance.

The Council on Human Services adopted these amendments on March 10, 2010.

These amendments are intended to implement Iowa Code section 249A.3.

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These amendments shall become effective on June 1, 2010.

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 [75.11(2)"b," 76.1, 76.5(1)"d"] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 8461B**, IAB 1/13/10.

[Filed 3/11/10, effective 6/1/10]

[Published 4/7/10]

[For replacement pages for IAC, see IAC Supplement 4/7/10.]

ARC 8650B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.12 and 2009 Iowa Code Supplement section 237A.4A, the Department of Human Services amends Chapter 109, "Child Care Centers," Iowa Administrative Code.

These amendments:

- Implement regulatory fees for issuing child care center licenses;
- Set fees for Department processing of criminal and child abuse record checks;
- Require national criminal history checks based on fingerprints for all persons subject to record checks due to involvement in child care at a licensed center;
 - Require centers to have a policy to handle incidents of biting;
 - Require that center volunteers be at least 16 years old; and
 - Clarify policy on interim permission for a new facility to open without a license and for training requirements for center directors.

Implementation of regulatory fees based on a child care center's capacity is required by Iowa Code Supplement section 237A.4A(1). Under these amendments, fee amounts range from \$50 for a center with the capacity to care for up to 20 children to \$150 for a center with the capacity to care for more than 150 children. Fees are payable before a full or provisional license is issued (every two years). Due to the required determination of capacity, the Department will notify each center of the amount of the fee and the due date. Fees will be in effect for relicensures with an effective date on or after August 1, 2010, as indicated on the license certificate, and for initial applications for licensure submitted on or after June 1, 2010.

Iowa Code Supplement section 237A.5(2) requires national criminal history checks through the Federal Bureau of Investigation and specifies that the Department shall not be responsible for the cost of these record checks. This requirement shall be phased in as centers are licensed or relicensed beginning June 1, 2010. Centers are responsible for obtaining and submitting fingerprints of staff and others who are required to have record checks. A person who has passed state record checks may begin involvement with child care pending the response to the national criminal history check.

Although the amendments set a fee for state record checks made through the Department, it is anticipated that most facilities will conduct record checks directly through the state's "single contact repository" (SING). The single contact repository allows facilities electronic access to criminal and abuse registry information through one contact, instead of requiring separate requests to each agency. To use SING, centers will need to set up business accounts with the Department of Public Safety. In order to reduce duplicate expenses for national criminal history checks when a person moves to another facility, the rules provide that one child care center may forward specified information about these checks to another center upon request.

The amendments clarify that the Department's standard procedure is to issue Form 470-4690, Permission to Open Without a License, to a new center when compliance with administrative

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requirements is established and then to complete other aspects of the licensing inspection process after the center begins operation.

The amendments also clarify that training requirements for all center directors are the same as for full-time staff, regardless of whether the director is considered full-time or part-time.

The requirement for a policy about biting is intended to promote better outcomes when biting occurs, since biting often leads to children being injured and to child abuse assessments.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8118B**. The Department received written comments on the Notice of Intended Action from 35 people, and 31 people attended the public hearing held to receive comments on the proposed amendments. Comments focused on the financial burden for the centers to support the cost of the record checks and the effect this added cost would have on center programs, the usefulness and need for fingerprinting for national checks and the negative effect this requirement would have on hiring and use of volunteers, and the prohibition on paying licensing fees by check.

In response to these comments, the Department has made changes to the amendments as published under Notice of Intended Action to:

- Allow payments to be submitted by check and provide that payment by a check that is denied for insufficient funds is grounds for revocation or suspension of the license.

- Shorten the period for the payment of licensing fees from 30 state working days after the issuance of the fee notice to 30 calendar days for more specificity.

- Add more detailed information on the requirements for a center's policy on biting.

- Add a requirement for the center to have a policy to ensure that people do not have unauthorized access to children at the center. This requirement reinforces the center's responsibility for ensuring that children are not exposed to people who may pose a risk of harm to them. Only persons who are subject to a record check and who have been cleared for involvement with child care may be directly responsible for child care or have access to a child when the child is alone.

- Clarify who is subject to a record check by defining "direct responsibility for child care" and revising the definition of "unrestricted access." Exemptions to record checks are granted for parents, guardians, and custodians in relation to their own children. Volunteers will not need to have record checks unless they are responsible for child care for a child other than their own child or will have access to other children when they are alone.

- Allow exemptions to record checks for professionals licensed by the Educational Examiners Board who are delivering professional services within the center consistent with law and rules governing their license. In order to obtain licensure, these professionals must undergo a background check that includes a check of the Iowa criminal, sex offender, and child abuse registries and a fingerprint-based check of the FBI criminal database.

- Allow centers 30 days after a person is cleared through the state record check process to submit fingerprints for the national record check. This change allows centers to avoid the expense of a national record check for people who do not start work or who leave soon after being hired.

- Allow centers to request a waiver of the state and national record check procedures for student interns when record checks have been performed by the educational institution.

- Allow centers to request a waiver of the national record check process for center staff who have had national record checks to comply with federal regulations.

- Clarify that centers must have submitted fingerprints for all of their staff before their next relicensure after June 1, 2010, but allow an extra month to obtain fingerprints for centers whose licenses are renewed on June 1, 2010.

- Clarify what type of access to children is permitted and restricted in a center and add amendments to subrule 109.10(16) to reflect provisions of Iowa Code chapter 692A enacted in 2009 Iowa Acts, chapter 119. Under this legislation, a sex offender with a sex offense against a minor shall not be present upon the property of a child care center without the written permission of the center director, except for the time reasonably necessary to transport the offender's own minor child or ward to and from the center. Persons with a sex offense against a minor are also prohibited from operating, managing, being employed by, or acting as a contractor or volunteer at a child care center.

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These amendments provide for waivers in specified situations related to records checks, upon written request by the center and upon approval of the Department. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). However, the Department does not have authority to waive statutory provisions.

The Council on Human Services adopted these amendments on March 10, 2010.

These amendments are intended to implement 2009 Iowa Code Supplement sections 237A.4A and 237A.5.

These amendments shall become effective on June 1, 2010.

The following amendments are adopted.

ITEM 1. Amend rule **441—109.1(237A)**, definition of “Unrestricted access,” as follows:

“*Unrestricted access*” means that a person has contact with a child alone; ~~has access in providing care, education, guidance, or discipline to a child; or has access to the facility beyond the passage area and room in which the person's child is in~~ is directly responsible for child care.

ITEM 2. Adopt the following **new** definitions of “Direct responsibility for child care” and “Regulatory fee” in rule **441—109.1(237A)**:

“*Direct responsibility for child care*” means being charged with the care, supervision, or guidance of a child.

“*Regulatory fee*” means the amount payable to the department for licensure of a child care center based on the capacity of the center.

ITEM 3. Amend paragraphs **109.2(1)“c”** and **“d”** as follows:

c. When a center makes a sufficient application for an initial ~~or renewal~~ license, it may operate for a period of up to 120 calendar days from the date of issuance of Form 470-4690, Permission to Open Without a License, pending a final licensing decision. A center has made a sufficient application when it has submitted the following to the department:

(1) to (4) No change.

d. Applicants shall be notified of approval or denial of initial applications within 120 days from the date the application is submitted.

(1) If the applicant has been issued Form 470-4690, Permission to Open Without a License, the applicant shall be notified of approval or denial within 120 calendar days of the date of issuance of Form 470-4690.

(2) No full or provisional license shall be issued before payment of the applicable regulatory fee as determined pursuant to subrule 109.2(7).

ITEM 4. Amend paragraph **109.2(2)“a”** as follows:

a. An applicant showing full compliance with center licensing laws and these rules, including department approval of center plans and procedures and submission of the regulatory fee as specified in subrule 109.2(7) to the department by the due date, shall be issued a license for 24 months. In determining whether or not a center is in compliance with the intent of a licensing standard outlined in this chapter, the department shall make the final decision.

ITEM 5. Adopt the following **new** paragraph **109.2(4)“f”**:

f. The regulatory fee as specified in subrule 109.2(7) is not received by the department's division of fiscal management by the due date indicated on Form 470-4834, Child Care Center Licensing Fee Invoice.

ITEM 6. Adopt the following **new** paragraph **109.2(5)“f”**:

f. The regulatory fee as specified in subrule 109.2(7) is not paid in full due to insufficient funds to cover a check submitted to the department for the fee.

ITEM 7. Adopt the following **new** subrule 109.2(7):

109.2(7) Regulatory fees. For relicensures with an effective date on or after August 1, 2010, as indicated on the license certificate, and for initial applications for licensure submitted on or after June

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1, 2010, a fee based upon center capacity is due to the department before the issuance of the license in accordance with this subrule.

a. *Fee structure.* The amount of the fee is based on the capacity of the center as indicated below:

Center Capacity	Fee Amount
0 to 20 children	\$50
21 to 50 children	\$75
51 to 100 children	\$100
101 to 150 children	\$125
151 or more children	\$150

b. *Determination of capacity.* The licensing consultant shall determine center capacity by dividing the amount of usable space by the amount of space required per child, as specified in subrule 109.11(1) and subparagraphs 109.11(3)“a”(2) and (3). Upon approval by the department, the final determination of center capacity may include evaluation of other factors that influence capacity, as long as physical space requirements per child as defined in subrule 109.11(1) and subparagraphs 109.11(3)“a”(2) and (3) are maintained.

c. *Notification.* Upon final determination of center capacity by the licensing consultant, the licensing consultant or designee shall sign and provide Form 470-4834, Child Care Center Licensing Fee Invoice, to the center.

d. *Payment.* The center shall return Form 470-4834 to the department with the licensing fee payment within 30 calendar days from the date of the licensing consultant’s or designee’s signature on Form 470-4834. Payment may be in the form of cash, check, money order, or cashier’s check.

- (1) Payment must be received before the department will issue a full or provisional license.
- (2) Regulatory fees are nonrefundable and nontransferrable.

ITEM 8. Adopt the following **new** paragraphs **109.4(2)“g”** and **“h”**:

g. Develop and implement a policy for responding to incidents of biting that includes the following elements.

- (1) An explanation of the center’s perspective on biting.
- (2) A description of how the center will respond to individual biting incidents and episodes of ongoing biting.
- (3) A description of how the center will assess the adequacy of caregiver supervision and the context and the environment in which the biting occurred.
- (4) A description of how the center will respond to the individual child or caregiver who was bitten.
- (5) A description of the process for notification of parents of children involved in the incident.
- (6) A description of how the incident will be documented.
- (7) A description of how confidentiality will be protected.
- (8) A description of first-aid procedures that the center will use in response to biting incidents.

h. Develop a policy to ensure that people do not have unauthorized access to children at the center. The policy shall be subject to review for minimum safety standards by the licensing consultant. The policy shall include but is not limited to the following:

- (1) The center’s criteria for allowing people to be on the property of the facility when children are present.
- (2) A description of how center staff will supervise and monitor people who are permitted on the property of the center when children are present, but who have not been cleared for involvement with child care through the formal record check process as outlined in subrule 109.6(6). The description shall include definitions of “supervision” and “monitoring.”
- (3) A description of how responsibility for supervision and monitoring of people in the center will be delegated to center staff, which includes provisions that address conflicts of interest.

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(4) A description of how the policy will be shared with parents, guardians, and custodians of all children who are enrolled at the center.

ITEM 9. Amend subrule 109.6(5) as follows:

109.6(5) *Volunteers and substitutes.* A volunteer shall be at least 16 years of age. All volunteers and substitutes shall:

a. All volunteers and substitutes shall sign Sign a statement indicating whether or not they have one of the following:

(1) A conviction of any law in any state or any record of founded child abuse or dependent adult abuse in any state.

(2) A communicable disease or other health concern that could pose a threat to the health, safety, or well-being of the children.

b. The center shall have the volunteer or substitute: Sign a statement indicating the volunteer or substitute has been informed of the volunteer's or substitute's responsibilities as a mandatory reporter.

(1) Complete Form 595-1396, DHS Criminal History Record Check, Form B.

(2) Complete Form 470-0643, Request for Child Abuse Information.

(3) Sign a statement indicating the volunteer or substitute has been informed of the volunteer's or substitute's responsibilities as a mandatory reporter.

c. Undergo the record check process when the person is responsible for child care for a child other than the person's own child or has access to other children when they are alone. Records of the record check process shall be maintained as required in subparagraph 109.9(1) "b."

ITEM 10. Amend subrule 109.6(6) as follows:

109.6(6) *Record checks.* ~~The department shall conduct criminal and child abuse record checks in Iowa for each owner, director, staff member, or subcontracted staff person with direct responsibility for child care or with access to a child when the child is alone and for anyone living in the child care facility who is 14 years of age or older. The department may use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check Form B, or any other form required for criminal and child abuse record checks. The department may also conduct criminal and child abuse record checks in other states and may conduct dependent adult abuse, sex offender, and other public or civil offense record checks in Iowa or in other states.~~

a. *Applicability.*

(1) Criminal and child abuse record checks shall be conducted for:

1. Each owner, director, staff member, substitute, volunteer, or subcontracted staff person with direct responsibility for child care or with access to a child when the child is alone;

2. Anyone living in the child care facility who is 14 years of age or older.

(2) Parents, guardians, and custodians are exempt from the record check process in relation to access to their own children or wards.

(3) Professional staff who hold a current, valid license issued by the educational examiners board are exempt from the record check process in relation to children in the center to whom they provide professional services consistent with Iowa Code chapter 272 and rules adopted by the educational examiners board.

b. *Authorization.* The person subject to record checks shall complete Form 595-1396, DHS Criminal History Record Check Form B, and any other forms required by the department of public safety to authorize the release of records.

c. *Iowa records checks.* Checks and evaluations of Iowa child abuse and criminal records, including the sex offender registry, shall be completed before the person's involvement with child care at the center. Iowa records checks shall be repeated at a minimum of every two years and when the department or the center becomes aware of any possible transgressions. The department is not responsible for the cost of conducting the Iowa records check.

(1) The child care center may access the single-contact repository (SING) as necessary to conduct a criminal and child abuse record check of the person in Iowa. If the results of the check indicate a potential transgression, the center shall send a copy of the results to the department for determination

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of whether or not the person may be involved with child care, regardless of the person's status with the center.

(2) Unless a record check has already been conducted in accordance with subparagraph (1), the department shall conduct a criminal and child abuse record check in Iowa for a person who is subject to a record check. When the department conducts the records check, the fee shall be \$25 for each record check through June 30, 2010, and \$35 effective July 1, 2010. The center shall submit the fee before the department initiates the record check process. Payment must be in the form of cash, check, money order, or cashier's check. The department may access SING to conduct the records check. The department may also conduct dependent adult abuse, sex offender, and other public or civil offense record checks in Iowa for a person who is subject to a record check.

(3) Centers that participate in student intern programs may seek a waiver for substitution of the state record check process with a check performed by the student's educational institution. Requests for a waiver shall be submitted on Form 470-4893, Record Check Waiver, to the address listed on the form.

d. National criminal history checks. National criminal history checks based on fingerprints are required for all persons subject to record checks under this subrule effective with a center's initial licensure or relicensure on or after June 1, 2010. The national criminal history check shall be repeated for each person every four years and when the department or center becomes aware of any new transgressions committed by that person in another state. The department is not responsible for the cost of conducting the national criminal history check.

(1) The child care center is responsible for obtaining the fingerprints of all persons subject to record checks. Fingerprints may be taken by law enforcement agencies, by agencies or companies that specialize in taking fingerprints, or by center staff or subcontractors who have received appropriate training in the taking of fingerprints.

(2) If the results of the Iowa records checks do not warrant prohibition of the person's involvement with child care or otherwise present protective concerns, the person may be involved with child care on a provisional basis until the national criminal history check and evaluation have been completed.

(3) The child care center shall provide fingerprints to the department of public safety no later than 30 days after the subject's approval for employment at the center. The center shall submit the fingerprints on forms or in a manner allowed by the department of public safety.

(4) Centers that are required to submit fingerprint-based checks of the FBI national criminal database to comply with federal regulations may seek a waiver to substitute that record check for the procedure required in this subrule. Requests for a waiver shall be submitted on Form 470-4893, Record Check Waiver, to the address listed on the form.

(5) Centers that participate in student intern programs may seek a waiver to substitute the fingerprint-based check of the FBI national criminal database performed by the student's educational institution for the procedure required in this subrule. Requests for a waiver shall be submitted on Form 470-4893, Record Check Waiver, to the address listed on the form.

(6) A center considering involvement of a person who has had a national criminal history check at another center may request information from that center. That center may provide the following information in writing upon a center's request, using Form 470-4896, National Criminal History Check Confirmation:

1. Date of most recent national criminal history check conducted by the center on the person in question, and

2. Whether or not the national check process resulted in clearance of the person for involvement with child care.

(7) If the results of the national criminal history check indicate that the person has committed a transgression, the center, if interested in continuing the person's involvement in child care, shall send a copy of the results to the department for evaluation. The department shall determine whether or not the person may be involved with child care.

(8) A center shall submit all required fingerprints to the department of public safety before the issuance or renewal of the center's license on or after June 1, 2010. EXCEPTION: Centers that have an

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initial or renewal licensure date of June 1, 2010, shall have until July 1, 2010, to submit the fingerprints to the department of public safety.

~~a. e.~~ *Mandatory prohibition.* A person with the following convictions or founded abuse reports is prohibited from involvement with child care:

(1) to (6) No change.

~~b. f.~~ *Mandatory time-limited prohibition.*

(1) No change.

(2) After the five-year prohibition period ~~from the date of the conviction or the founded abuse report as defined in subparagraph 109.6(6) "b"(1)~~ imposed pursuant to 109.6(6) "~~f~~"(1), the person may request the department to perform an evaluation under paragraph ~~109.6(6) "e"~~ 109.6(6) "g" to determine whether prohibition of the person's involvement with child care continues to be warranted.

~~e. g.~~ *Evaluation required.* For all other transgressions, and as requested under subparagraph ~~109.6(6) "b"(2)~~ 109.6(6) "~~f~~"(2), the department shall notify the affected person and the licensee that an evaluation shall be conducted to determine whether prohibition of the person's involvement with child care is warranted.

(1) to (3) No change.

~~d. h.~~ *Evaluation decision.* Within 30 days of receipt of a completed Form 470-2310, Record Check Evaluation, the department shall make a decision on the person's involvement with child care. The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements and corrective action plan under this paragraph.

(1) to (4) No change.

~~e. i.~~ *Notice to parents.* The department shall notify the parent, guardian, or legal custodian of each child for whom the person provides child care if there has been a founded child abuse ~~record~~ against committed by an owner, director, or staff member of the child care center. The center shall cooperate with the department in providing the names and addresses of the parent, guardian, or legal custodian of each child for whom the facility provides child care.

~~f.~~ *Repeat of record checks.* ~~The child abuse and criminal record checks shall be repeated at a minimum of every two years and when the department or the center becomes aware of any transgressions. Any new transgressions discovered shall be handled in accordance with this subrule.~~

ITEM 11. Amend subrule 109.7(2) as follows:

109.7(2) Staff Center directors and staff employed 20 hours or more per week. The requirements of this subrule apply to all center directors, regardless of whether the director works on a full-time or part-time basis.

a. During their first year of employment, all center directors and all staff employed 20 hours or more per week shall receive the following training:

(1) to (6) No change.

b. Following their first year of employment, all center directors and all staff who are employed 20 hours or more a week shall:

(1) to (3) No change.

ITEM 12. Amend subrule 109.9(1) as follows:

109.9(1) *Personnel records.* The center shall maintain personnel information sufficient to ensure that persons employed in the center meet minimum staff and training requirements and do not pose any threat to the health, safety, or well-being of the children. Each employee's file shall contain, at a minimum, the following:

a. A statement signed by each individual indicating whether or not the individual has any conviction ~~by~~ of violating any law of in any state or if the individual has any record of founded child abuse or dependent adult abuse in any state.

b. Copies of all records checks kept in accordance with state and federal law regarding confidentiality of records checks. These records shall include:

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(1) A copy of Form 595-1396, DHS Criminal History Record Check, Form B, or any other permission form approved by the department of public safety for conducting an Iowa or national criminal history record check. The center shall complete the form and forward it to the department before the start of employment.

e. (2) A copy of Form 470-0643, Request for Child Abuse Information, when applicable.

(3) Copies of the results of Iowa records checks conducted through the SING for review by the department upon request.

(4) Copies of national criminal history check results.

(5) Any department-issued documents sent to the center related to a records check, regardless of findings.

c. Reserved.

d. to f. No change.

ITEM 13. Amend subrule 109.10(16) as follows:

109.10(16) Supervision and access.

a. The center director and on-site supervisor shall ensure that each staff member, substitute, or volunteer knows the number and names of children assigned to that staff member, substitute, or volunteer for care. Assigned staff, substitutes, and volunteers shall provide careful supervision.

b. Any person in the center who is not an owner, staff member, substitute, or volunteer who has a record check and department approval to be involved with child care shall not have unrestricted access to children for whom that person is not the parent, guardian, or custodian.

c. Persons who are exempt from the record check process are granted access in accordance with 109.6(6) "a"(2) unless the provisions of paragraph 109.10(16) "d" apply.

d. A sex offender who has been convicted of a sex offense against a minor and who is required to register with the Iowa sex offender registry under the provisions contained in Iowa Code chapter 692A shall not operate, manage, be employed by, or act as a contractor or volunteer at a child care center. The sex offender also shall not be present upon the property of a child care center without the written permission of the center director, except for the time reasonably necessary to transport the offender's own minor child or ward to and from the center.

(1) Written permission shall include the conditions under which the sex offender may be present, including:

1. The precise location in the center where the sex offender may be present;

2. The reason for the sex offender's presence at the facility;

3. The duration of the sex offender's presence;

4. Description of the supervision that the center staff will provide the sex offender to ensure that no child is alone with the sex offender.

(2) Before giving written permission, the center director shall consult with the center licensing consultant. The written permission shall be signed and dated by the center director and the sex offender and kept on file for review by the center licensing consultant.

[Filed 3/12/10, effective 6/1/10]

[Published 4/7/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8651B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services amends Chapter 150, "Purchase of Service," Iowa Administrative Code.

This amendment rescinds and readopts an amendment that was Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on January 13, 2010, as **ARC 8447B**. The amendment:

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- Implements a decrease in the reimbursement rate for supervised apartment living services provided from January 1, 2010, to June 30, 2010. During this period, the maximum reimbursement shall be the rates in effect on December 1, 2009, reduced by 5 percent. This reduction is necessary to achieve the savings required by Executive Order Number 19, which mandated a 10 percent across-the-board cut in expenditures.

- Clarifies that rates will not be adjusted if a provider adds a new service. The initial reimbursement rate for any new service shall be based upon actual and allowable costs.

Notice of Intended Action for this amendment was published on January 13, 2010, as **ARC 8448B** to solicit comments. The Department received no comments on the Notice of Intended Action. This amendment is identical to that Adopted and Filed Emergency and published under Notice of Intended Action.

This amendment does not provide for waivers in specified situations. Needed savings will not be realized if waivers are granted. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on March 11, 2010.

This amendment is intended to implement Iowa Code section 234.6 and Executive Order Number 19.

This amendment shall become effective on May 12, 2010.

The following amendment is adopted.

Rescind subparagraphs **150.3(5)“p”(2)** and **(3)** and adopt the following new subparagraphs in lieu thereof:

(2) Effective for the period from January 1, 2010, to June 30, 2010, the reimbursement rates for services provided under a purchase of social service agency contract for supervised apartment living shall be decreased by 5 percent of the rates in effect on December 1, 2009.

(3) The initial reimbursement rate for any new service shall be based upon actual and allowable costs. A new service does not include a new building or location or other changes in method of service delivery for a service currently provided under the contract.

1. For shelter care, if the provider is currently offering shelter care under social services contract, the only time the provider shall be considered to be offering a new service is if the provider adds a service other than shelter care.

2. For supervised apartment living, the only time a provider shall be considered to be offering a new service is when the agency adds a cluster site or a scattered site for the first time. If, for example, the agency has a supervised apartment living cluster site, the addition of a new site does not constitute a new service.

3. If the department defines, in administrative rule, a new service as a social service that may be purchased, this shall constitute a new service for purposes of establishment of a rate. Once the rate for the new service is established for a provider, the rate will be subject to any limitations established by administrative rule or law.

[Filed 3/12/10, effective 5/12/10]

[Published 4/7/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8652B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services amends Chapter 152, “Foster Group Care Contracting,” Iowa Administrative Code.

This amendment rescinds and readopts an amendment that was Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on January 13, 2010, as **ARC 8449B**. The amendment implements a decrease in the reimbursement rates for foster group care provided from January 1, 2010, to

HUMAN SERVICES DEPARTMENT[441](cont'd)

June 30, 2010. During this period, the maximum reimbursement shall be the rate in effect on December 31, 2009, reduced by 5 percent. This reduction is necessary to achieve the savings required by Executive Order Number 19, which mandated a 10 percent across-the-board cut in expenditures.

Notice of Intended Action on this amendment was published on the same date as **ARC 8450B** to solicit comments. The Department received no comments on the Notice of Intended Action. This amendment is identical to that Adopted and Filed Emergency and published under Notice of Intended Action.

This amendment does not provide for waivers in specified situations. Needed savings will not be realized if waivers are granted. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on March 10, 2010.

This amendment is intended to implement Iowa Code section 234.6 and Executive Order Number 19.

This amendment shall become effective on May 12, 2010.

The following amendment is adopted.

Rescind subparagraph **152.3(1)“h”(2)** and adopt the following **new** subparagraph in lieu thereof:

(2) Rates may be changed by mandated across-the-board decreases. Effective for the period from January 1, 2010, to June 30, 2010, the negotiated reimbursement rates for foster group care shall be decreased by 5 percent of rates in effect on December 31, 2009.

[Filed 3/12/10, effective 5/12/10]

[Published 4/7/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8653B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 156, "Payments for Foster Care," Chapter 187, "Aftercare Services and Supports," and Chapter 201, "Subsidized Adoptions," Iowa Administrative Code.

These amendments rescind and readopt amendments that were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on January 13, 2010, as **ARC 8451B**. The amendments reduce the reimbursement rate for foster family care and adoption and guardianship subsidies to achieve the savings required by Executive Order Number 19, which mandated a 10 percent across-the-board cut in state expenditures. Specifically, these amendments:

- Implement a 5 percent reduction in the basic reimbursement rate and the additional payments for special behavioral needs for foster family care provided through the end of state fiscal year 2010. Since the maximum maintenance payments for adoption and guardianship subsidies are based on the foster family care payment rates, those payments will also be reduced.

- Implement a 5 percent reduction in the clothing allowance payments for children in foster care.

- Substitute a specific reimbursement amount for the maximum maintenance payment in the supervised apartment living program and for the maximum stipend payment in the preparation for adult living (PAL) program. These rates have been based on the foster family care payment rates, but changes in these rates are not part of the Department's approved spending reduction plan.

- Limit payment for nonrecurring adoption expenses and, by reference, guardianship expenses. A maximum of \$500 will be reimbursed for attorney fees, court costs, and other related legal expenses.

- Suspend payment of special services payments negotiated as part of an adoption subsidy agreement between January 1, 2010, and June 30, 2010. Special services may be included in the agreement with the understanding that no payments will be made during this fiscal year. The suspension precludes the need to renegotiate the subsidy agreement if funds become available for special services in the future. Special services provisions in agreements that are already in effect on January 1, 2010, will not be affected.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Notice of Intended Action to solicit comments on these amendments was also published in the Iowa Administrative Bulletin on January 13, 2010, as **ARC 8452B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

These amendments do not provide for waivers in specified situations. Needed savings will not be realized if waivers are granted. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on March 10, 2010.

These amendments are intended to implement Iowa Code sections 234.35, 234.38, 234.46, and 600.17 to 600.23 and Executive Order Number 19.

These amendments shall become effective May 12, 2010.

The following amendments are adopted.

ITEM 1. Rescind subrule 156.6(1) and adopt the following **new** subrule in lieu thereof:

156.6(1) Basic rate. A monthly payment for care in a foster family home licensed in Iowa shall be made to the foster family based on the following schedule effective January 1, 2010, to June 30, 2010:

Age of child	Daily rate
0 through 5	\$15.54
6 through 11	\$16.16
12 through 15	\$17.69
16 or over	\$17.93

ITEM 2. Rescind subparagraph **156.6(4)“f”(1)** and adopt the following **new** subparagraph in lieu thereof:

(1) Additional maintenance payments made under this paragraph shall begin no earlier than the first day of the month following the month in which Form 470-4401 is completed and shall be awarded as follows:

1. Behavioral needs rated at level 1 qualify for a payment of \$4.75 per day.
2. Behavioral needs rated at level 2 qualify for a payment of \$9.50 per day.
3. Behavioral needs rated at level 3 qualify for a payment of \$14.25 per day.

ITEM 3. Rescind subrule 156.8(1) and adopt the following **new** subrule in lieu thereof:

156.8(1) Clothing allowance. When, in the judgment of the worker, clothing is needed at the time the child is removed from the child's home and placed in foster care, an allowance may be authorized, not to exceed \$237.50, to purchase clothing.

a. Once during each calendar year that the child remains in foster care, the department worker may authorize another clothing allowance, not to exceed \$190 for family foster care and \$100 for all other levels when:

- (1) The child needs clothing to replace lost clothing or because of growth or weight change, and
- (2) The child does not have escrow funds to cover the cost.

b. When clothing is purchased by the foster family, the foster family shall submit receipts to the worker within 30 days of purchase for auditing purposes, using Form 470-1952, Foster Care Clothing Allowance.

ITEM 4. Rescind subrule 156.12(1) and adopt the following **new** subrule in lieu thereof:

156.12(1) Maintenance. When a youth at least aged 16 but under the age of 20 is living in a supervised apartment living situation, the maximum monthly maintenance payment for the youth shall be \$573.90. This payment may be paid to the youth or another payee, other than a department employee, for the youth's care.

ITEM 5. Rescind subrule 187.12(2) and adopt the following **new** subrule in lieu thereof:

187.12(2) Amount of monthly stipend. The maximum monthly stipend shall be \$574.

a. The stipend shall be prorated based on the date of entry.

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. Effect of income.

(1) When the monthly unearned income of the youth exceeds the maximum monthly stipend, the youth is not eligible for a stipend.

(2) When the net earnings of the youth exceed the maximum monthly stipend, the stipend shall be reduced the following month by 50 cents for every dollar earned over the maximum monthly stipend.

ITEM 6. Rescind paragraph **201.6(1)“a”** and adopt the following new paragraph in lieu thereof:

a. Reimbursement to the adoptive family or direct payment made to a provider is suspended from January 1, 2010, to June 30, 2010, for any special services negotiated in that period except for nonrecurring expenses as defined in subparagraph (7).

(1) Outpatient counseling or therapy services. Reimbursement for outpatient individual or family services may be provided from a non-Medicaid provider only with approval from the service area manager or designee and when one of the following applies:

1. The services are not available from a Medicaid provider within a reasonable distance from the family.

2. The child and the family were already receiving therapy or counseling from a non-Medicaid provider and it would not be in the child's best interest to disrupt the services.

3. Available Medicaid providers lack experience in working with foster, adoptive, or blended families.

Reimbursement to non-Medicaid providers shall be limited to the Medicaid rate.

(2) Expenses for transportation, lodging, or per diem related to preplacement visits, not to exceed \$2000 per family.

(3) Medical services not covered by the Medicaid program shall be limited to an additional premium amount due to the child's special needs to include the child in the family's health insurance coverage group. An adoption subsidy payment shall not supplement the Medicaid payment rate to a Medicaid provider or a non-Medicaid provider.

(4) Child care, if the family has entered into a presubsidy or subsidy agreement on or before June 30, 2004, that contains a provision for child care reimbursement. Child care subsidy payments shall not exceed the maximum rates established in 441—paragraph 170.4(7)“a” for the child's age and type of care, unless the department grants a waiver under rule 441—1.8(17A,217). Child care services are available through the child care assistance program to families that meet the requirements of 441—Chapter 170.

(5) Medical transportation not covered by Medicaid and the family's lodging and meals, if necessary, when the child is receiving specialized care or the child and family are required to stay overnight as part of a treatment plan.

(6) Supplies and equipment as required by the child's special needs and unavailable through other resources. When a sibling group of three or more are placed together, a one-time-only payment can be made, not to exceed \$500 per child. When home modifications have been authorized to accommodate a child's special needs and the family later sells the house, the family shall repay the department an amount equal to the increase in the equity value of the home attributable to the modifications.

(7) Nonrecurring expenses. Payment for nonrecurring expenses is generally limited to a total of \$500 per child for attorney fees, court costs and other related legal expenses. Nonrecurring expenses may be paid when the adoptive family has negotiated an Adoption Subsidy Agreement, Form 470-0747, or an Agreement to Future Adoption Subsidy, Form 470-0762.

(8) Funeral benefits at the amount allowed for a foster child in accordance with 441—subrule 156.8(5).

[Filed 3/12/10, effective 5/12/10]

[Published 4/7/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8654B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services rescinds Chapter 159, “Child Care Resource and Referral Grants Program,” and adopts Chapter 159, “Child Care Resource and Referral Services,” Iowa Administrative Code.

This amendment rescinds and replaces the chapter on grants for the operation of regional resource and referral agencies to support child care services. The new chapter reflects current state contracting procedures. The current contractors have been operating under “sole source” contracts, a practice which is no longer allowed. The Department plans to issue a request for proposals early in 2010 to reprocure these services. The new chapter supports those requirements. It does not alter the current scope of services provided to parents, providers and communities by the child care resource and referral agencies.

These rules do not provide for waivers in specified situations because the rules must conform to state contracting requirements in Iowa Code chapter 8A and Department of Administrative Services rules at 11—Chapters 106 and 107.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on January 13, 2010, as **ARC 8459B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action except for a change in the address in subrule 159.4(1) from “Bureau of Child Care and Community Services” to “Bureau of Child Care” due to the Department’s recent restructuring.

The Council on Human Services adopted this amendment on March 10, 2010.

These rules are intended to implement Iowa Code section 237A.26.

These rules will become effective on June 1, 2010.

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 159] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 8459B**, IAB 1/13/10.

[Filed 3/12/10, effective 6/1/10]

[Published 4/7/10]

[For replacement pages for IAC, see IAC Supplement 4/7/10.]

ARC 8656B**INSPECTIONS AND APPEALS DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104 and 10A.401 to 10A.403, the Department of Inspections and Appeals hereby rescinds Chapter 71, “Overpayment Recovery Unit,” and adopts new Chapter 90, “Public Assistance Debt Recovery Unit,” Iowa Administrative Code.

Chapter 71 is being rescinded and replaced with Chapter 90. Chapter 90 has been updated to conform with current practices, laws, regulations, and rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8484B** on January 13, 2010. No public comment has been received. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 10A.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

These amendments will become effective May 12, 2010.

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 [rescind Ch 71; adopt Ch 90] is being omitted. These amendments are identical to those published under Notice as **ARC 8484B**, IAB 1/13/10.

[Filed 3/15/10, effective 5/12/10]

[Published 4/7/10]

[For replacement pages for IAC, see IAC Supplement 4/7/10.]

ARC 8673B

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76 and 2009 Iowa Code Supplement section 155A.6B, the Board of Pharmacy hereby amends Chapter 1, "Purpose and Organization," and Chapter 3, "Pharmacy Technicians"; adopts new Chapter 5, "Pharmacy Support Persons"; and amends Chapter 6, "General Pharmacy Practice," Chapter 7, "Hospital Pharmacy Practice," Chapter 8, "Universal Practice Standards," Chapter 14, "Public Information and Inspection of Records," Chapter 16, "Nuclear Pharmacy Practice," Chapter 18, "Centralized Prescription Filling and Processing," Chapter 25, "Child Support Noncompliance," Chapter 31, "Student Loan Default or Noncompliance with Agreement for Payment of Obligation," Chapter 32, "Nonpayment of State Debt," and Chapter 36, "Discipline," Iowa Administrative Code.

In Item 10, the rules in new Chapter 5 establish a registration program for pharmacy support persons, including identification of individuals required to register or exempt from registration as pharmacy support persons, timeliness of registration, the information to be provided with an application for registration, registration and renewal fees, and penalties for late registration or renewal. The rules identify the tasks that may be performed by a pharmacy support person under the direct supervision of a pharmacist and also identify tasks that may not be delegated to a pharmacy support person, place the ultimate responsibility for tasks performed by a pharmacy support person with the supervising pharmacist, identify the basis for denial of an application for registration, and identify the grounds for disciplinary action against the registration of a pharmacy support person including the sanctions that may be imposed pursuant to disciplinary action.

Amendments to Chapter 3 in Items 3 to 7 are necessary due to the establishment of the new pharmacy support person registration program in new Chapter 5. Identification of tasks that may be delegated to pharmacy support persons resulted in the need to amend language regarding the delegation of technical functions to pharmacy technicians to ensure that the duties and functions authorized for each group of registrants are clearly delineated.

The remaining amendments in Items 11 through 18 and Items 21 through 25 amend terminology to maintain consistency in references to pharmacy support persons, authorize the pharmacist in charge of a pharmacy to identify tasks that a pharmacy support person may perform in the temporary absence of the supervising pharmacist subject to the final approval of the supervising pharmacist, and establish requirements for the utilization of pharmacy support persons in general and hospital pharmacy practice and in nuclear pharmacy practice.

Items 1, 2, 19, and 20 identify the registration of pharmacy support persons as a responsibility of the Board of Pharmacy and identify the types and format of program records that will be maintained including designation of confidential and public records. Items 26 through 31 identify registrations issued to pharmacy support persons as subject to suspension or revocation due to nonpayment of certain debts, including nonpayment of child support, debts owed to the state of Iowa, and nonpayment of student loan obligations. Items 32 through 41 amend rules relating to disciplinary actions to ensure that registrations

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issued to pharmacy support persons are subject to the same rights, responsibilities, and procedures as other licenses and registrations under the Board's jurisdiction.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the December 16, 2009, Iowa Administrative Bulletin as **ARC 8380B**. The Board received written comments from one pharmacist regarding the proposed amendments. In response to those comments, the Board made the following changes to the amendments published under Notice:

- Item 6 has been revised by retaining the term “on site” from the current language, eliminating the proposed term “present,” and adding “and available,” to clarify the intent and extent of the required pharmacist supervision of a pharmacy technician's activities. Subrule 3.21(1) now reads as follows:

“**3.21(1) Technical dispensing functions.** A pharmacist may delegate technical dispensing functions to an appropriately trained and registered pharmacy technician, but only if the pharmacist is on site and available to supervise the pharmacy technician when delegated functions are performed, except as provided in 657—subrule 6.7(2) or 657—subrule 7.6(2), as appropriate, or as provided for telepharmacy in 657—Chapter 9. The pharmacist shall provide and document the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative. A pharmacy technician shall not delegate technical functions to a pharmacy support person.”

- In Item 7, numbered paragraph “6,” the phrase “a hospital nursing unit” has been changed to “a hospital patient care unit” to include an area within the hospital that may not be supervised by nursing staff.

- In Item 10, subrule 5.4(1), the effective date of the rules regarding the registration of pharmacy support persons has been changed from April 1 to June 1, 2010.

- In rule 657—5.5(155A), numbered paragraph “4” has been changed to clarify that the intent of pharmacist or pharmacy technician supervision of facility maintenance personnel within the pharmacy department is to ensure medication security and patient privacy. The final phrase of the paragraph has been deleted because it is redundant. Paragraph “4” now reads as follows:

“4. Facility maintenance personnel including but not necessarily limited to cleaning, sanitation, structural, and mechanical maintenance personnel. Facility maintenance personnel deemed exempt from registration shall be directly supervised by a pharmacist or a certified pharmacy technician who is responsible for the maintenance person's activities within the pharmacy department to ensure medication security and patient privacy.”

- In the same rule, numbered paragraph “5” has been revised by adding administrative support persons functioning outside the pharmacy department to those who are exempt from registration as pharmacy support persons. Paragraph “5” now reads as follows:

“5. Any person not directly employed by or under contract to the pharmacy, and not under the direct supervision of a pharmacist, who provides data processing, billing, maintenance, or administrative support functions outside the pharmacy department.”

- In subrule 5.25(3), language regarding unlawful discrimination has been updated. The subrule now reads as follows:

“**5.25(3) Discrimination.** It is unethical for a pharmacy support person to unlawfully discriminate between patients or groups of patients for reasons of religion, race, creed, color, sex, sexual orientation, gender identity, age, national origin, or disease state when providing pharmaceutical services.”

The amendments were approved during the March 9, 2010, meeting of the Board of Pharmacy.

These amendments will become effective on June 1, 2010.

PHARMACY BOARD[657](cont'd)

These amendments are intended to implement Iowa Code sections 147.55, 147.107, 155A.3, 155A.6A, 155A.13, 155A.18, 155A.23 and 155A.33 and 2009 Iowa Code Supplement section 155A.6B.

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 [amend Chs 1, 3, 6 to 8, 14, 16, 18, 25, 31, 32, 36; adopt Ch 5] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 8380B**, IAB 12/16/09.

[Filed 3/17/10, effective 6/1/10]

[Published 4/7/10]

[For replacement pages for IAC, see IAC Supplement 4/7/10.]

ARC 8672B**PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272C.2, the Board of Pharmacy hereby amends Chapter 2, "Pharmacist Licenses," Iowa Administrative Code.

The amendments define continuing education for the practice of pharmacy, correct the name of the pharmacy education accreditation council, identify additional programs that qualify for the drug therapy course requirement in subrule 2.12(4), clarify the information required on the program attendance certificate and on reports to the Board, clarify the process for exemption from continuing education requirements in subrule 2.12(1), and identify types of non-ACPE provider programs that will be accepted for no more than 50 percent of the total continuing education credits required during a renewal period.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the December 30, 2009, Iowa Administrative Bulletin as **ARC 8412B**. The Board received written comments regarding the proposed amendments from one individual. Those comments related primarily to terminology that is currently universally used in relation to professional continuing education.

In response to those comments, the adopted amendments have been revised to change "program" to "activity" (including other root derivations of the term), to change "attendance certificate" to "statement of credit," and to change "approved" to "accredited" as those terms or phrases are used throughout the amendments.

In Item 3, in subrule 2.12(3), paragraph "a" is amended by deleting subparagraphs (2) and (6) and appropriately renumbering the remaining subparagraphs. In addition, the term "program identification number" is amended to read "universal activity number." Finally, in subrule 2.12(3), paragraph "b" is amended by changing the term "certificates" to "statements of credit."

In Item 5, in subrule 2.12(7), paragraphs "b" and "c" were identified as "no change" as proposed under Notice. However, while paragraph "c" has not been changed, the Board has amended the language in paragraph "b" to read as follows:

"b. The board may require a pharmacist to submit the activity statements of credit that document successful completion of the activities included with or on the renewal application."

The amendments were approved during the March 9, 2010, meeting of the Board of Pharmacy.

These amendments will become effective on May 12, 2010.

These amendments are intended to implement Iowa Code section 272C.2.

The following amendments are adopted.

PHARMACY BOARD[657](cont'd)

ITEM 1. Amend rule 657—2.12(272C), introductory paragraph, as follows:

657—2.12(272C) Continuing education requirements. Pharmacists shall complete continuing education for license renewal pursuant to the requirements of this rule. For purposes of this rule, “continuing education” means a structured educational activity that is applicable to the practice of pharmacy, that promotes problem solving and critical thinking, and that is designed or intended to support the continuing development of pharmacists to maintain and enhance their competence.

ITEM 2. Amend subrule 2.12(1) as follows:

2.12(1) Continuing education ~~program~~ activity attendance. Continuing education programs activities that carry the seal of an American Council on Pharmaceutical Education Accreditation Council for Pharmacy Education (ACPE)-approved accredited provider will automatically qualify for continuing education credit. Program attendance Attendance is mandated in order for a pharmacist to receive credit unless the program activity is a an ACPE-accredited correspondence course that ACPE approved.

a. *Non-ACPE provider program activity.* A pharmacist requesting individual credit for completing a non-ACPE provider program shall submit a request for approval of the program to the board office no later than the date the program commences. The request shall be made on forms provided by the board office. A maximum of 50 percent of the total continuing education credits required pursuant to subrule 2.12(4) may be obtained through completion of non-ACPE provider activities if such activities are provided by an accredited health-professional continuing education provider, such as a continuing medical education (CME) provider, and if the activity content directly relates to the pharmacist’s professional practice.

b. *Exemption for health-related graduate studies.* A pharmacist who is continuing formal education in health-related graduate programs may be exempted from meeting the continuing education requirements during the period of such enrollment. An applicant for this exemption shall petition the board, as soon as possible following enrollment in the qualifying graduate program, on forms provided by the board office. At the discretion of the board, exemption during part-time or short-term enrollment in a health-related graduate program may be prorated for the actual period of such enrollment.

ITEM 3. Amend subrule 2.12(3) as follows:

2.12(3) Continuing education ~~program attendance certificate~~ activity statement of credit.

a. An approved accredited provider will be required to make available to an individual pharmacist a certificate statement of credit that indicates successful completion of and participation in a continuing education program activity. The certificate statement of credit will carry the following information:

- (1) Pharmacist’s full name.
- ~~(2) Pharmacist’s license number.~~
- ~~(3) (2) Number of contact hours or CEUs awarded for program-attended activity completion.~~
- ~~(4) (3) Date and place of continuing education program of live activity or date of completion of home study activity.~~
- ~~(5) (4) Name of program accredited provider.~~
- ~~(6) An indicator of the type or category of continuing education program completed.~~
- (5) Activity title and universal activity number.

b. A pharmacist must retain certificates statements of credit in the pharmacist’s personal files for four years.

ITEM 4. Amend subrule 2.12(4) as follows:

2.12(4) Continuing education ~~program~~ activity topics. Each pharmacist is required to obtain a minimum of 50 percent of the pharmacist’s required 3.0 CEUs in ACPE-approved accredited courses dealing with drug therapy. Programs Activities qualifying for the drug therapy course requirement will include the ACPE topic designator “01” or “02” in the last two digits of the program universal activity number.

PHARMACY BOARD[657](cont'd)

ITEM 5. Amend subrule 2.12(7) as follows:

2.12(7) Reporting continuing education credits.

a. A pharmacist shall submit on or with the renewal application form documentation that the continuing education requirements have been met. Documentation shall be in a format that includes the following:

- (1) The total number of credits accumulated for the renewal period;
- (2) The individual ~~programs attended~~ activities completed, including activity title and universal activity number;
- (3) The dates of ~~participation~~ completion;
- (4) The credits awarded for each ~~course~~ activity;
- (5) The name of the provider of each ~~course~~ activity; and
- (6) Identification of the ~~programs~~ activities completed to comply with the drug therapy ~~course~~ requirements in subrule 2.12(4).

b. The board may require a pharmacist to submit the ~~program attendance certificates~~ activity statements of credit that document successful completion of the ~~programs~~ activities included with or on the renewal application.

c. No change.

[Filed 3/17/10, effective 5/12/10]

[Published 4/7/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8671B

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendment prohibits, unless as specifically excepted, animals within a licensed pharmacy.

The provisions of this subrule are minimum requirements and shall not be subject to waiver or variance.

Notice of Intended Action was published in the December 30, 2009, Iowa Administrative Bulletin as **ARC 8414B**. The Board received written comments from one pharmacist regarding the proposed amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the March 9, 2010, meeting of the Board of Pharmacy.

This amendment will become effective on May 12, 2010.

This amendment is intended to implement Iowa Code sections 155A.13 and 155A.13A.

The following amendment is adopted.

Amend subrule 8.5(4) as follows:

8.5(4) Orderly and clean. The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be in good operating condition and maintained in a sanitary manner. Animals shall not be allowed within a licensed pharmacy unless that pharmacy is exclusively providing services for the treatment of animals or unless the animal is a service dog or assistive animal as defined in Iowa Code subsection 216C.11(1).

[Filed 3/17/10, effective 5/12/10]

[Published 4/7/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8670B**PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby rescinds Chapter 15, "Correctional Facility Pharmacy Practice," and adopts new Chapter 15, "Correctional Pharmacy Practice," Iowa Administrative Code.

The amendment rescinds current Chapter 15 and proposes new rules regarding correctional pharmacy practice. A pharmacy licensed as a correctional pharmacy is issued a limited-use pharmacy license subject to the requirements of new Chapter 15. The rules define terms used throughout the chapter and establish the purpose and scope of correctional pharmacy practice. Reference library requirements are identified, and the responsibilities of the pharmacist in charge are enumerated. Security requirements are established, including requirements for training and utilization of pharmacy technicians and pharmacy support persons, identification of individuals authorized to access the pharmacy in the absence of the pharmacist, and identification of individuals authorized to access drug supplies and to administer patient drugs. The rules establish requirements for prescription drug orders, administration records, unit dose and med-pak dispensing, and dispensing for patient self-administration, including requirements for labeling of drug packaging. An emergency/first dose drug supply is authorized to be maintained for the care of facility patients, and the requirements for administration of a drug from the emergency supply are established, including record keeping and pharmacist review. Policies and procedures relating to all aspects of the correctional pharmacy are to be developed and implemented by the pharmacist in charge.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the December 30, 2009, Iowa Administrative Bulletin as **ARC 8416B**. The Board received no written comments regarding the proposed amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the March 9, 2010, meeting of the Board of Pharmacy.

These rules will become effective on May 12, 2010.

These rules are intended to implement Iowa Code sections 124.301, 124.303, 124.306, 124.308, 126.10, 126.11, 155A.6A, 155A.13, 155A.27, 155A.28, 155A.31, 155A.32, and 155A.34 through 155A.36 and 2009 Iowa Code Supplement section 155A.6B.

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 15] is being omitted. These rules are identical to those published under Notice as **ARC 8416B**, IAB 12/30/09.

[Filed 3/17/10, effective 5/12/10]

[Published 4/7/10]

[For replacement pages for IAC, see IAC Supplement 4/7/10.]

ARC 8669B**PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby amends Chapter 17, "Wholesale Drug Licenses," Iowa Administrative Code.

The amendment requires drug wholesalers to complete an annual inventory of all controlled substances in stock and to maintain the record of that inventory for a period of two years from the date of the inventory.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

PHARMACY BOARD[657](cont'd)

Notice of Intended Action was published in the December 30, 2009, Iowa Administrative Bulletin as **ARC 8415B**. The Board received no written comments regarding the proposed amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the March 9, 2010, meeting of the Board of Pharmacy.

This amendment will become effective on May 12, 2010.

This amendment is intended to implement Iowa Code sections 124.306 and 155A.17.

The following amendment is adopted.

Amend subrule 17.16(2) as follows:

17.16(2) Records maintained. Inventories and records shall be made available for inspection and photocopying by any authorized official of the board or of any governmental agency charged with enforcement of these rules for a period of two years following disposition of the drugs. ~~A biennial~~ The annual inventory of controlled substances shall be maintained for a minimum of ~~four~~ two years from the date of the inventory.

[Filed 3/17/10, effective 5/12/10]

[Published 4/7/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8658B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 139A.8, the Department of Public Health hereby amends Chapter 7, "Immunization and Immunization Education: Persons Attending Elementary or Secondary Schools, Licensed Child Care Centers, or Institutions of Higher Education," Iowa Administrative Code.

The rules in Chapter 7 describe immunization requirements for attendance at elementary or secondary schools or licensed child care centers and requirements for immunization education of students entering institutions of higher education.

The amendments change the childhood vaccination schedule, specifically affecting the polio vaccine, based upon a new recommendation from the Centers for Disease Control and Prevention (CDC). The amendments also add a new use of the immunization registry, which allows the Department to track inventory or utilization of pharmaceutical agents to prepare for or respond to an emergency event.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 16, 2009, as **ARC 8399B**. In addition, these amendments were Adopted and Filed Emergency and were published in the December 16, 2009, Iowa Administrative Bulletin as **ARC 8377B**. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on January 27, 2010, as **ARC 8491B**. No public comment was received on these amendments. These amendments are identical to those published under Notice of Intended Action, Amended Notice of Intended Action and Adopted and Filed Emergency.

These amendments were adopted by the State Board of Health on March 10, 2010.

These amendments shall become effective May 12, 2010, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These amendments are intended to implement Iowa Code section 139A.8.

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 [7.4(1), 7.11(2)] is being omitted. These amendments are identical to those published under Notice as **ARC 8399B** and Adopted and Filed Emergency **ARC 8377B**, IAB 12/16/09.

[Filed 3/15/10, effective 5/12/10]

[Published 4/7/10]

[For replacement pages for IAC, see IAC Supplement 4/7/10.]

ARC 8659B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health hereby amends Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials," Iowa Administrative Code.

These amendments clarify the rules governing the supervision of fluoroscopic procedures.

Notice of Intended Action was published in the September 23, 2009, Iowa Administrative Bulletin as **ARC 8161B**. The adopted amendments are identical to those published under Notice.

The Department received 283 comments on these amendments; the majority (206) were in support of the amendments. Eighty-three of these comments were from certified registered nurse anesthetists (CRNAs), 20 were from radiologic technologists, 19 were from CEOs and 37 were from physicians. Reasons for supporting the amendments were:

- Fluoroscopy provides a visual to make procedures safer for patients.
- In favor of the training and education requirements.
- Hospitals and clinics rely on CRNAs for anesthesia services.
- Access to care in rural areas of Iowa.
- It is a clarification of existing practice, and CRNAs have been using fluoroscopy safely.

The remaining 77 comments were in opposition to the amendments. Forty of these comments were from physicians, either anesthesiologists or radiologists, and 26 were from radiologic technologists. Reasons cited for opposing the amendments were:

- The rule is too broad and contradictory to national standards.
- CRNAs lack the necessary education and experience.
- It is outside the scope of practice for a CRNA to supervise fluoroscopy.
- Allowing CRNAs to supervise fluoroscopy means that they are interpreting images.

No changes were made to the Noticed rule based on overwhelming support of the noticed language.

The following points are in response to the opposing comments:

- It was stated that the rule is contradictory to national standards, when in fact the practice of CRNAs supervising fluoroscopy is slowly gaining national recognition, although it has yet to be addressed. Additionally, the neighboring state of Nebraska recently proposed rules to allow CRNAs to use fluoroscopy.

- Currently there is an absence of dedicated radiation safety curriculum; however, the Iowa Board of Nursing rules adopted in August 2009 address the education concern. Likewise, there is proof of a long-standing practice of the safe utilization of fluoroscopy by CRNAs.

- The Iowa Board of Nursing's position is that it is within the scope of practice for a CRNA to supervise fluoroscopy.

- Claiming that CRNAs are interpreting images is a misrepresentation of the utilization of fluoroscopy for the purpose of CRNA services. The fluoroscopy images provide a visual for guidance, not for diagnosis.

These amendments were adopted by the State Board of Health on March 10, 2010.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These amendments will become effective on May 12, 2010.

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

The following amendments are adopted.

ITEM 1. Rescind subparagraph **41.1(5)“1”(2)**.

ITEM 2. Renumber subparagraphs **41.1(5)“1”(3)** and **(4)** as **41.1(5)“1”(2)** and **(3)**.

ITEM 3. Adopt the following **new** paragraph **41.1(5)“n”**:

n. Supervision of fluoroscopy. The use of fluoroscopy by radiologic technologists and radiologic students shall be performed under the direct supervision of a licensed practitioner or an advanced registered nurse practitioner (ARNP), pursuant to 655—subrule 7.2(2), for the purpose of localization to obtain images for diagnostic or therapeutic purposes. The use of fluoroscopy by radiologist assistants shall be as defined in 641—42.6(136C).

[Filed 3/15/10, effective 5/12/10]

[Published 4/7/10]

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ARC 8660B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby amends Chapter 131, “Emergency Medical Services Provider Education/Training/Certification,” Iowa Administrative Code.

The rules in Chapter 131 describe the standards for the education, training, and certification of emergency medical services providers and establish a standard of conduct for training programs, students, and providers. These amendments allow a candidate to complete certification testing while being reviewed for certification, change the practical testing requirements, change the extension process for renewal, and incorporate the authority to levy civil penalties as granted in Iowa Code chapter 272C.

Notice of Intended Action was published in the January 27, 2010, Iowa Administrative Bulletin as **ARC 8497B**. No public comments were received. The adopted amendments are identical to those published under Notice.

These amendments were adopted by the State Board of Health on March 10, 2010.

These amendments will become effective on May 12, 2010.

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

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 [131.4, 131.7(2)] is being omitted. These amendments are identical to those published under Notice as **ARC 8497B**, IAB 1/27/10.

[Filed 3/15/10, effective 5/12/10]

[Published 4/7/10]

[For replacement pages for IAC, see IAC Supplement 4/7/10.]

ARC 8661B**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby amends Chapter 132, "Emergency Medical Services—Service Program Authorization," Iowa Administrative Code.

The rules in Chapter 132 describe the standards for the authorization of EMS services. These amendments remove regulations for air medical services, allow satellite services in other cities, ensure the public of an ambulance response when calling 911, reference the Iowa EMS Patient Registry Data Dictionary as the one currently adopted in the trauma rules, and incorporate the authority to levy civil penalties as granted in Iowa Code chapter 272C.

Notice of Intended Action was published in the January 27, 2010, Iowa Administrative Bulletin as **ARC 8498B**. No public comments were received. The adopted amendments are identical to those published under Notice.

These amendments were adopted by the State Board of Health on March 10, 2010.

These amendments will become effective on May 12, 2010.

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

The following amendments are adopted.

ITEM 1. Rescind the definitions of "Air ambulance," "Fixed-wing aircraft" and "Rotorcraft ambulance" in rule **641—132.1(147A)**.

ITEM 2. Amend paragraph **132.7(1)"g"** as follows:

g. The certificate of authorization shall be issued ~~only~~ to the service program based in the city named in the application ~~and shall not be inclusive of any other base of operation when that base of operation is located in a different city.~~ Any ambulance service or nontransport service that ~~is based in and~~ operates from more than one city shall apply for and, if approved, shall receive a separate an inclusive authorization for each base of city of operation that desires to provide emergency medical care is listed in the application.

ITEM 3. Rescind and reserve subrule **132.7(3)**.

ITEM 4. Adopt the following **new** paragraph **132.8(3)"p"**:

p. Ensure a response to requests for assistance when dispatched by a public safety answering point within the primary service area identified in the service program's authorization application.

ITEM 5. Amend subrule 132.8(7) as follows:

132.8(7) Adoption by reference. The Iowa EMS Patient Registry Data Dictionary (~~January 2004~~) identified in 641—paragraph 136.2(1) "c" is adopted and incorporated by reference for inclusion criteria and reportable patient data. For any differences which may occur between the adopted reference and this chapter, the administrative rules shall prevail.

a. The Iowa EMS Patient Registry Data Dictionary (~~January 2004~~) identified in 641—paragraph 136.2(1) "c" is available through the Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the EMS bureau Web site (www.idph.state.ia.us/ems).

b. to f. No change.

ITEM 6. Amend subrule 132.10(3), introductory paragraph, as follows:

132.10(3) Service program authorization may be denied, issued a civil penalty not to exceed \$1000, issued a citation and warning, placed on probation, suspended, ~~or~~ revoked, or otherwise

PUBLIC HEALTH DEPARTMENT[641](cont'd)

disciplined by the department in accordance with Iowa Code subsection 147A.5(3) for any of the following reasons:

[Filed 3/15/10, effective 5/12/10]

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ARC 8662B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby adopts new Chapter 144, "Emergency Medical Services—Air Medical Service Program Authorization," Iowa Administrative Code.

The rules in Chapter 144 describe the requirements for authorization of emergency medical services' air medical services.

Notice of Intended Action was published in the January 27, 2010, Iowa Administrative Bulletin as **ARC 8499B**. No public comments were received. The adopted rules are identical to those published under Notice.

These rules were adopted by the State Board of Health on March 10, 2010.

These rules will become effective on May 12, 2010.

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

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 144] is being omitted. These rules are identical to those published under Notice as **ARC 8499B**, IAB 1/27/10.

[Filed 3/15/10, effective 5/12/10]

[Published 4/7/10]

[For replacement pages for IAC, see IAC Supplement 4/7/10.]

ARC 8663B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 135.11, the Department of Public Health hereby rescinds Chapter 170, "Description of Organization," and adopts a new Chapter 170, "Organization of the Department," Iowa Administrative Code.

This new chapter provides a description of the organization of the Department, which states the general course and method of its operations; the administrative subdivisions of the Department and the programs implemented by each of them; a statement of the mission of the Department; and the methods by which and location where the public may obtain information or make submissions or requests.

Notice of Intended Action was published in the January 27, 2010, Iowa Administrative Bulletin as **ARC 8493B**. No public comments were received. The adopted rules are identical to those published under Notice.

These rules were adopted by the State Board of Health on March 10, 2010.

These rules will become effective on May 12, 2010.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These rules are intended to implement Iowa Code section 17A.3 and chapter 135.

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 170] is being omitted. These rules are identical to those published under Notice as **ARC 8493B**, IAB 1/27/10.

[Filed 3/15/10, effective 5/12/10]

[Published 4/7/10]

[For replacement pages for IAC, see IAC Supplement 4/7/10.]

ARC 8664B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.7 and 135.11, the Department of Public Health hereby amends Chapter 171, "Petitions for Rule Making," Iowa Administrative Code.

This chapter provides a description of the procedure for the submission, consideration and disposition of a petition for rule making. This amendment strikes the reference to 1998 Iowa Acts.

Notice of Intended Action was published in the January 27, 2010, Iowa Administrative Bulletin as **ARC 8494B**. No public comments were received. The adopted amendment is identical to the one published under Notice.

This amendment was adopted by the State Board of Health on March 10, 2010.

This amendment will become effective on May 12, 2010.

This amendment is intended to implement Iowa Code section 17A.7.

The following amendment is adopted.

Amend **641—Chapter 171**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 3/15/10, effective 5/12/10]

[Published 4/7/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/7/10.

ARC 8665B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.9 and 135.11, the Department of Public Health hereby amends Chapter 172, "Declaratory Orders," Iowa Administrative Code.

This chapter provides a description of the form, content and filing of petitions for declaratory orders, the procedural rights of persons in relation to the petitions, and the disposition of the petitions. The amendments strike the references to 1998 Iowa Acts.

Notice of Intended Action was published in the January 27, 2010, Iowa Administrative Bulletin as **ARC 8495B**. No public comments were received. The adopted amendments are identical to those published under Notice.

These amendments were adopted by the State Board of Health on March 10, 2010.

These amendments will become effective on May 12, 2010.

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

The following amendments are adopted.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 1. Amend subrule 172.8(1) as follows:

172.8(1) Within the time allowed by ~~1998 Iowa Acts, chapter 1202, section 13(5)~~ Iowa Code section 17A.9, after receipt of a petition for a declaratory order, the department or designee shall take action on the petition as required by ~~1998 Iowa Acts, chapter 1202, section 13(5)~~ Iowa Code section 17A.9.

ITEM 2. Amend subrule 172.9(1), introductory paragraph, as follows:

172.9(1) The department shall not issue a declaratory order where prohibited by ~~1998 Iowa Acts, chapter 1202, section 13(1)~~, Iowa Code section 17A.9 and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

ITEM 3. Amend ~~641~~—**Chapter 172**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 17A as ~~amended by 1998 Iowa Acts, chapter 1202~~.

[Filed 3/15/10, effective 5/12/10]

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