



# 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”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

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

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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 2008

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
<b>*Dec. 26 '07*</b>	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08
Jan. 11	Jan. 30	Feb. 19	Mar. 5	Mar. 7	Mar. 26	Apr. 30	July 28
Jan. 25	Feb. 13	Mar. 4	Mar. 19	Mar. 21	Apr. 9	May 14	Aug. 11
Feb. 8	Feb. 27	Mar. 18	Apr. 2	Apr. 4	Apr. 23	May 28	Aug. 25
Feb. 22	Mar. 12	Apr. 1	Apr. 16	Apr. 18	May 7	June 11	Sep. 8
Mar. 7	Mar. 26	Apr. 15	Apr. 30	May 2	May 21	June 25	Sep. 22
Mar. 21	Apr. 9	Apr. 29	May 14	<b>***May 14***</b>	June 4	July 9	Oct. 6
Apr. 4	Apr. 23	May 13	May 28	May 30	June 18	July 23	Oct. 20
Apr. 18	May 7	May 27	June 11	June 13	July 2	Aug. 6	Nov. 3
May 2	May 21	June 10	June 25	<b>***June 25***</b>	July 16	Aug. 20	Nov. 17
<b>***May 14***</b>	June 4	June 24	July 9	July 11	July 30	Sep. 3	Dec. 1
May 30	June 18	July 8	July 23	July 25	Aug. 13	Sep. 17	Dec. 15
June 13	July 2	July 22	Aug. 6	Aug. 8	Aug. 27	Oct. 1	Dec. 29
<b>***June 25***</b>	July 16	Aug. 5	Aug. 20	<b>***Aug. 20***</b>	Sep. 10	Oct. 15	Jan. 12 '09
July 11	July 30	Aug. 19	Sep. 3	Sep. 5	Sep. 24	Oct. 29	Jan. 26 '09
July 25	Aug. 13	Sep. 2	Sep. 17	Sep. 19	Oct. 8	Nov. 12	Feb. 9 '09
Aug. 8	Aug. 27	Sep. 16	Oct. 1	Oct. 3	Oct. 22	Nov. 26	Feb. 23 '09
<b>***Aug. 20***</b>	Sep. 10	Sep. 30	Oct. 15	Oct. 17	Nov. 5	Dec. 10	Mar. 9 '09
Sep. 5	Sep. 24	Oct. 14	Oct. 29	Oct. 31	Nov. 19	Dec. 24	Mar. 23 '09
Sep. 19	Oct. 8	Oct. 28	Nov. 12	<b>***Nov. 12***</b>	Dec. 3	Jan. 7 '09	Apr. 6 '09
Oct. 3	Oct. 22	Nov. 11	Nov. 26	<b>***Nov. 26***</b>	Dec. 17	Jan. 21 '09	Apr. 20 '09
Oct. 17	Nov. 5	Nov. 25	Dec. 10	<b>***Dec. 10***</b>	Dec. 31	Feb. 4 '09	May 4 '09
Oct. 31	Nov. 19	Dec. 9	Dec. 24	<b>***Dec. 24***</b>	Jan. 14 '09	Feb. 18 '09	May 18 '09
<b>***Nov. 12***</b>	Dec. 3	Dec. 23	Jan. 7 '09	Jan. 9 '09	Jan. 28 '09	Mar. 4 '09	June 1 '09
<b>***Nov. 26***</b>	Dec. 17	Jan. 6 '09	Jan. 21 '09	Jan. 23 '09	Feb. 11 '09	Mar. 18 '09	June 15 '09
<b>***Dec. 10***</b>	Dec. 31	Jan. 20 '09	Feb. 4 '09	Feb. 6 '09	Feb. 25 '09	Apr. 1 '09	June 29 '09
<b>***Dec. 24***</b>	Jan. 14 '09	Feb. 3 '09	Feb. 18 '09	Feb. 20 '09	Mar. 11 '09	Apr. 15 '09	July 13 '09

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
10	Friday, October 17, 2008	November 5, 2008
11	Friday, October 31, 2008	November 19, 2008
12	Wednesday, November 12, 2008	December 3, 2008

**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\*\*\***

AGENCY	HEARING LOCATION	DATE AND TIME
<b>CORRECTIONS DEPARTMENT[201]</b>		
Institutions and administration, amendments to ch 20 IAB 9/24/08 <b>ARC 7184B</b>	Iowa Department of Corrections 510 E. 12th St. Des Moines, Iowa	October 14, 2008 11 a.m. to 1 p.m.
<b>ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]</b>		
Targeted jobs withholding tax credit program, 71.1 to 71.6 IAB 10/8/08 <b>ARC 7249B</b>	ICN Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	October 29, 2008 2 to 3 p.m.
Small business disaster recovery financial assistance program, ch 78 IAB 10/8/08 <b>ARC 7236B</b>	ICN Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	October 28, 2008 2 to 3 p.m.
<b>EDUCATIONAL EXAMINERS BOARD[282]</b>		
Class A license requirements, 14.115 IAB 10/8/08 <b>ARC 7252B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	November 5, 2008 1 p.m.
<b>EDUCATION DEPARTMENT[281]</b>		
Competent private instruction and dual enrollment, 31.1 to 31.10 IAB 10/8/08 <b>ARC 7211B</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 28, 2008 1:30 to 3 p.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b>		
Maximum annual Title V operating permit fee, 22.106(1) IAB 10/8/08 <b>ARC 7220B</b>	Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	November 12, 2008 10 a.m.
Wastewater disposal systems, amendments to chs 60, 62 to 64 IAB 9/10/08 <b>ARC 7152B</b>	Room A, Public Library 123 S. Linn St. Iowa City, Iowa	October 8, 2008 7 p.m.
	Conference Rooms 5E and 5W Wallace State Office Bldg. Des Moines, Iowa	October 9, 2008 1:30 p.m.
Used oil and used oil filters, 119.1 to 119.9 IAB 10/8/08 <b>ARC 7219B</b>	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 28, 2008 1 p.m.
<b>INSURANCE DIVISION[191]</b>		
Insurance producers, amendments to ch 10 IAB 9/24/08 <b>ARC 7201B</b>	330 Maple St. Des Moines, Iowa	October 14, 2008 10 a.m.
Continuing education for insurance producers, 11.1(3), 11.2 to 11.4, 11.10(8) IAB 9/24/08 <b>ARC 7202B</b>	330 Maple St. Des Moines, Iowa	October 14, 2008 10 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME
<b>INSURANCE DIVISION[191] (Cont'd)</b>		
Prohibited designation, 15.8(3)“e” IAB 9/24/08 <b>ARC 7205B</b>	330 Maple St. Des Moines, Iowa	October 14, 2008 10 a.m.
Premium rate increase—protection to consumers, 39.29(14) IAB 9/24/08 <b>ARC 7200B</b>	330 Maple St. Des Moines, Iowa	October 14, 2008 10:30 a.m.
Independent review of benefit trigger determinations, 39.41 to 39.55 IAB 9/24/08 <b>ARC 7207B</b>	330 Maple St. Des Moines, Iowa	October 14, 2008 11 a.m.
<b>IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]</b>		
Covered wages; reemployment earnings limit, contributions and interest, 6.3, 12.8(4) IAB 9/10/08 <b>ARC 7262B</b>	7401 Register Dr. Des Moines, Iowa	October 28, 2008 9 a.m.
<b>NATURAL RESOURCE COMMISSION[571]</b>		
Horsepower limitations—Lake Icaria, Adams County, 45.4(3)“b” IAB 10/8/08 <b>ARC 7217B</b>	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 28, 2008 9 a.m.
Daily bag and possession limit—bluegill and crappie, 81.1, 81.2(12) IAB 9/10/08 <b>ARC 7146B</b>	Pioneer Ridge Nature Center 1339 US Hwy 63 Bloomfield, Iowa	October 9, 2008 7 p.m.
Nonresident deer hunting—special licenses, 94.6(3) IAB 9/10/08 <b>ARC 7148B</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 21, 2008 10 a.m.
Wild turkey spring hunting—special licenses, 98.11(3) IAB 9/10/08 <b>ARC 7150B</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 21, 2008 10 a.m.
Wild turkey fall hunting—special licenses, 99.2(4) IAB 9/10/08 <b>ARC 7151B</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 21, 2008 10 a.m.
Depredation permit fees, 106.11(4)“e” IAB 9/10/08 <b>ARC 7147B</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 21, 2008 10 a.m.
<b>PROFESSIONAL LICENSURE DIVISION[645]</b>		
Election of officers; competency examination or alcohol or drug screening, 4.3(2), 4.15 IAB 9/24/08 <b>ARC 7165B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	October 14, 2008 9 to 9:30 a.m.
Reactivation fee for certified health service providers in psychology, 5.16(12) IAB 10/8/08 <b>ARC 7268B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 3, 2008 10 to 11 a.m.
Board of cosmetology arts and sciences, rescind chs 59, 62, amend chs 60, 61, 63 to 65 IAB 10/8/08 <b>ARC 7221B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 4, 2008 9 to 9:30 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME
<b>PROFESSIONAL LICENSURE DIVISION[645] (Cont'd)</b>		
Board of hearing aid dispensers, rescind chs 120, 125; amend chs 121, 122, 124 IAB 9/24/08 <b>ARC 7156B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	October 14, 2008 10 to 11 a.m.
Board of physical and occupational therapy, rescind chs 199, 204, 205, 210; amend chs 200, 202, 203, 206, 207, 209 IAB 9/24/08 <b>ARC 7158B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	October 14, 2008 9:30 to 10 a.m.
<b>PUBLIC HEALTH DEPARTMENT[641]</b>		
Water treatment systems, ch 14 IAB 9/24/08 <b>ARC 7171B</b>	Fifth Floor Conference Room 518, Side 1 Lucas State Office Bldg. Des Moines, Iowa	October 14, 2008 1 p.m.
<b>PUBLIC SAFETY DEPARTMENT[661]</b>		
Reduced ignition propensity cigarettes, ch 61 IAB 9/24/08 <b>ARC 7180B</b>	First Floor Public Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 14, 2008 8:30 a.m.
Electrical installations—update of National Electrical Code reference, 201.3 IAB 9/24/08 <b>ARC 7178B</b>	First Floor Public Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 14, 2008 10 a.m.
Electrical requirements—update of National Electrical Code reference, 301.5 IAB 9/24/08 <b>ARC 7179B</b>	First Floor Public Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 14, 2008 10 a.m.
Installation requirements—update of National Electrical Code reference, 504.1 IAB 9/24/08 <b>ARC 7177B</b>	First Floor Public Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 16, 2008 10:15 a.m.
Electrical inspection program, chs 550 to 553, 559 IAB 9/24/08 <b>ARC 7176B</b>	First Floor Public Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 16, 2008 10:15 a.m.

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

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

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

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

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
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    Soil Conservation Division[27]  
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**ARC 7251B****COLLEGE STUDENT AID COMMISSION[283]****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 261.3, the College Student Aid Commission hereby proposes to amend Chapter 9, "All Iowa Opportunity Foster Care Grant Program," Iowa Administrative Code.

The purpose of this amendment is to clarify that awards shall not exceed the full cost of attendance as determined by the college or university minus other federal, state, or college or university gift aid and work study provided to the student.

Interested persons may submit comments orally or in writing by 4:30 p.m. on October 28, 2008, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515)725-3400.

This amendment is intended to implement Iowa Code chapter 261.

The following amendment is proposed.

Amend subrule 9.4(5) as follows:

**9.4(5) Academic-year awards.** All Iowa opportunity foster care grants are provided during the traditional nine-month academic year, which is generally defined as September through May. Awards shall not exceed the full cost of attendance as determined by the college or university minus other federal, state, or college or university ~~financial~~ gift aid, and work study aid provided to the student.

**ARC 7248B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on August 13, 2008, as **ARC 7068B** to amend Chapter 71, "Targeted Jobs Withholding Tax Credit Program," Iowa Administrative Code.

The initial Notice of Intended Action was published to solicit comments on amendments to establish a limit on the total amount of withholding tax credits awarded based upon the total amount of depreciable assets in the project, to establish and define required financial support to be provided by the pilot project city to the project, and to require all applications to be presented to the Iowa Economic Development Board for comment prior to the Department's approval.

After the submission of the proposed amendments, IDED staff identified additional amendments that they intended to recommend for inclusion in the final amendments. Staff sent an E-mail to the contacts at the pilot project cities (Keokuk, Sioux City, Burlington, Council Bluffs, Fort Madison) about the additional changes under consideration. The final amendments were scheduled to be presented to the Iowa Economic Development Board in September. The additional changes that staff planned to recommend to the Board for the final amendments would have:

- Removed both the requirement that the business arrange for the required match and the requirement for case-by-case match determinations for projects receiving tax credits under the targeted jobs withholding tax credit.

- Stipulated that the pilot project city must provide either a tax abatement or a local match equal to that abatement for projects that will result in an increase in local taxes.

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

- Eliminated the proposed exemption from the match requirements for projects which do not result in a local tax increase.

Concerns were raised by members of the Administrative Rules Review Committee about the additional changes that were under consideration for the final amendments. There was concern that these changes significantly altered the initial Notice of intended Action. Legal counsel advised the Committee that it was his opinion that the amendments should be renoticed.

The policy issues raised by the Iowa Economic Development Board and the Iowa Department of Economic Development about this program, including its local match requirements, are substantive and deserve a thorough review by the public. These important issues should not be clouded by possible challenges about compliance with procedural rule-making requirements. Therefore, the Department is submitting a new Notice of Intended Action (see **ARC 7249B** herein). This action will allow time to distribute the updated proposed amendments that incorporate the additional changes recommended by staff and collect public comment on all the proposed amendments.

**ARC 7249B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development gives Notice of Intended Action to adopt amendments to Chapter 71, "Targeted Jobs Withholding Tax Credit Program," Iowa Administrative Code.

The proposed amendments establish a limit on the total amount of withholding tax credits awarded based upon the total amount of depreciable assets in the project, establish and define required financial support to be provided by the pilot project city to the project, and require all applications to be presented to the Iowa Economic Development Board for comment prior to the Department's approval.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 29, 2008. Interested persons may submit written comments to: Stoney B. Harris, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4735.

A public hearing to receive comments about the proposed amendments will be held from 2 to 3 p.m. on October 29, 2008, at the above address in the ICN Room, Second Floor.

These amendments are intended to implement Iowa Code Supplement section 403.19A.

The following amendments are proposed.

ITEM 1. Strike "81GA, HF2731" wherever it appears in **261—Chapter 71** and insert "403" in lieu thereof.

ITEM 2. Amend rule **261—71.1(403)**, definition of "Act," as follows:

"Act" means ~~2006 Iowa Acts, House File 2731~~ Iowa Code Supplement section 403.19A.

ITEM 3. Amend subrule 71.4(2) as follows:

**71.4(2) Entering into an agreement.** A pilot project city may enter into a withholding agreement with a business locating to the community from another state that is creating or retaining targeted jobs in an urban renewal area. The pilot project city may enter into a withholding agreement with a business currently located in Iowa only if the business is creating at least ten new jobs or making a qualifying investment of at least \$500,000 within the urban renewal area. The total award amount of withholding tax credits cannot exceed the total amount of capital investment of depreciable assets in the project. A business shall not be obligated to enter into a withholding agreement with a pilot project city. A pilot project city shall not enter into a withholding agreement with a business after June 30, 2010.

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

ITEM 4. Amend subrule 71.4(7) as follows:

**71.4(7) Local match requirement.** A pilot project city entering into a withholding agreement shall arrange for a match of at least one dollar for each withholding dollar received by the city. The local match may come from the pilot project city, a private donor, or the employer or a combination of the three. Local matches may be in the form of cash or in-kind contributions to be used for the project. Additionally, the pilot project city is required to provide local financial support to the project in one of the two following forms or their equivalent values:

a. Tax abatement for the project, as provided under Iowa Code chapter 427B.

b. Local participation in the form of a cash grant or in-kind grant that is equal to the value of tax abatement under Iowa Code chapter 427B, under the established five-year sliding scale, or 10 percent of the total award amount of withholding tax credits, whichever is less.

ITEM 5. Amend paragraph **71.5(1)“b”** as follows:

b. Applications for project approval for the targeted jobs withholding tax credit program may be submitted at any time. The department will review applications for projects in as timely a manner as possible. All applications will be presented to the IDED board for comment prior to the department's approval. A pilot project city will be notified in writing of the department's decision regarding the project.

ITEM 6. Amend subrule 71.6(2) as follows:

**71.6(2) Annual report.** The department shall prepare an annual report for the governor, the general assembly, and the legislative services agency on the targeted jobs withholding tax credit program. This report shall be due on ~~July 31~~ January 31 of each year. The report shall include but not be limited to the following:

a. to d. No change.

ITEM 7. Amend **261—Chapter 71**, implementation sentence, as follows:

These rules are intended to implement ~~2006 Iowa Acts, House File 2731~~ Iowa Code Supplement section 403.19A.

**ARC 7236B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development gives Notice of Intended Action to adopt new Chapter 78, “Small Business Disaster Recovery Financial Assistance Program,” Iowa Administrative Code.

These rules implement a new program to provide financial assistance to businesses that sustained physical damage or economic loss due to the 2008 natural disasters. The rules establish eligibility requirements, describe the application process, and identify the types and amounts of assistance available.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 28, 2008. Interested persons may submit written or oral comments by contacting Stoney Harris, Business Finance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4735.

A public hearing to receive comments about the proposed rules will be held from 2 to 3 p.m. on October 28, 2008, at the above address in the ICN/Main Conference Room.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 7235B**. The content of that submission is incorporated by reference.

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

These rules are intended to implement Iowa Code section 15.109.

## ARC 7252B

### 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 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

Currently nonlicensed out-of-state applicants may be issued a nonrenewable Class A license valid for one year until they are able to pass the testing requirements in the state where the teacher preparation program was completed. An applicant may then attempt to use the Class A Iowa license to obtain a license in the applicant's state without having to take the test. This amendment attempts to close a loophole that some have used to avoid taking a test in their home states.

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, November 5, 2008, 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, November 7, 2008. 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](mailto: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—14.115(272) as follows:

**282—14.115(272) Requirements for a Class A license.** A nonrenewable Class A license valid for one year may be issued to an individual who has completed a teacher education program under any one of the following conditions:

1. to 6. No change.

~~7. —Based on a nonlicensed out of state applicant. If an applicant completes a teacher education program at a non-Iowa institution and has never held a valid regular license or certificate exclusive of a temporary, emergency or substitute license or certificate, then the applicant must provide verification of successfully passing the testing requirements in the state where the teacher preparation program was completed.~~

~~8.~~ 7. Based on an administrative decision. The executive director is authorized to issue a Class A license to an applicant whose services are needed to fill positions in unique need circumstances.

**ARC 7211B****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 proposes to amend Chapter 31, "Competent Private Instruction and Dual Enrollment," Iowa Administrative Code.

No changes have been made to this chapter since 1996. With input from members of the Network of Iowa Christian Home Educators (NICHE), the Department undertook a thorough review of these rules. Key substantive changes include the following:

- Subrule 31.2(1) is amended to provide a date certain by which the mandatory reports of competent private instruction (CPI) must be filed. Iowa Code section 299.4 requires that the reports be filed with the resident districts "by the earliest starting date specified in section 279.10, subsection 1." That provision states that the first day of school is to be "no sooner than a day during the calendar week in which the first day of September falls," the earliest date of which is August 26.

- Rule 281—31.3(299) and new rule 281—31.4(299,299A) now differentiate between the duties of supervising teachers who are privately retained by families that provide CPI and the duties of supervising teachers who are hired by a school district that provides a home school assistance program. The biggest difference is in regard to licensing requirements. Iowa Code section 299A.2 requires that teachers who provide instruction or instructional supervision for a child receiving CPI shall possess a license or certificate from the Iowa Board of Educational Examiners which is "appropriate to the ages and grade levels of the children to be taught." Because public funds are used to pay for the teachers hired by a district through a home school assistance program, the Department finds that it is reasonable to require that those teachers who provide direct instruction also possess a valid endorsement as to content area if the child receives credit on a transcript provided by the district for the course. However, the Department also finds that it is reasonable to rule that CPI may not be provided by a teacher who possesses only a substitute authorization (for which the holder does not complete an approved teacher education program and which limits the holder to teaching children solely at grade levels in middle school, junior high, or high school, and for no more than five consecutive days in one job assignment), unless such teacher is the parent, guardian, or legal or actual custodian of the child for whom CPI is provided.

- Subrule 31.5(4) emphasizes the prohibition against school districts providing public funds and other resources to unlawfully benefit a child who receives CPI, with the exception of texts and supplementary materials already on hand and appropriate for use by regularly enrolled students of the district.

- Subrule 31.5(5) reflects the requirement in 2008 Iowa Acts, House File 2700, section 110, that the enrollment of each child in a home school assistance program be documented and submitted to the Department on a form provided by the Department.

- Subrule 31.6(2) codifies a long-standing appeal decision of the Department that a child under dual enrollment must receive at least one-quarter of the child's instruction by way of CPI (and no more than three-quarters by way of the district's academic programs).

- Rules 281—31.8(299A) and 281—31.9(299A) include the following changes:

- o Clarification that one option for compliance with the annual assessment requirement for a child who receives CPI is enrollment in a correspondence school accredited by an accrediting agency approved by the federal Department of Education;

- o Deletion of a listing of acceptable standardized testing in favor of a list updated annually by the Department and posted on the Department's Web site;

## EDUCATION DEPARTMENT[281](cont'd)

o Clarification about the responsibility for submitting assessment results to the district of residence; and

o Updating of portfolio evaluator credentials to be consistent with changes made by the Board of Educational Examiners.

• Rule 281—31.10(299A) is amended to conform to changes in federal regulations related to the Individuals with Disabilities Education Act (IDEA) permitting a parent to deny consent for an evaluation of the parent's child for IDEA purposes.

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

Interested individuals may make written comments on the proposed amendments on or before October 28, 2008, at 4:30 p.m. Comments on the proposed amendments should be directed to Carol Greta, Office of the Director, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; E-mail [carol.greta@iowa.gov](mailto:carol.greta@iowa.gov); or fax (515)281-4122.

A public hearing will be held on October 28, 2008, from 1:30 to 3 p.m. at the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which 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 advise the Department of Education of their specific needs by calling (515)281-3436.

These amendments are intended to implement Iowa Code chapters 299 and 299A and 2008 Iowa Acts, House File 2700, sections 108 to 111.

The following amendments are proposed.

ITEM 1. Strike “parent, guardian, or legal custodian” wherever it appears in **281—Chapter 31** and insert “parent, guardian, or legal or actual custodian” in lieu thereof.

ITEM 2. Amend rule 281—31.1(299) as follows:

**281—31.1(299,299A) Purpose.** It is the purpose of this chapter to give guidance ~~to parents, guardians, and custodians, school boards, and teachers providing or assisting and supervising~~ concerning the provision, assistance, and supervision of competent private instruction to children of compulsory attendance age outside the traditional school setting. This chapter also ~~proposes to establish~~ establishes responsibilities related to dual enrollment.

ITEM 3. Amend rule 281—31.2(299) as follows:

**281—31.2(299) Reports as to competent private instruction.**

**31.2(1) Reporting.** The parent, guardian, or legal or actual custodian of a child of compulsory attendance age who does not enroll the child in a public school or Iowa accredited nonpublic school shall complete a report in duplicate on forms created by the department of education and provided by the resident public school district, indicating the parent, guardian, or legal or actual custodian's intent to provide or arrange for competent private instruction for the child for each school year. The report shall be filed with the school board secretary by ~~the first day of school in the resident district~~ August 26, except as otherwise provided by these rules.

a. The report shall include the following information:

(1) to (6) No change.

(7) Evidence of immunization of the child or evidence of exemption, as required by law, if the child is being placed under competent private instruction for the first time.

b. No change.

**31.2(2) Late reporting.** If a parent, guardian, or legal or actual custodian decides, after enrolling a child of compulsory attendance age in a public or accredited nonpublic school and after the deadline for filing a report under subrule 31.2(1), ~~that the parent wishes~~ to provide competent private instruction to the child, the parent, guardian, or legal or actual custodian shall file the ~~report~~ report completed as fully as possible no later than 14 calendar days and a fully completed report within 30 calendar days after removing the child from the public or accredited nonpublic school. Days of the child's attendance

## EDUCATION DEPARTMENT[281](cont'd)

in the public or nonpublic school up to the time of removal shall be applied to the 148-day minimum compulsory attendance requirement for the school year affected.

ITEM 4. Amend rule 281—31.3(299) as follows:

**281—31.3(299,299A) Duties of privately retained licensed practitioners.**

**31.3(1) Scope of rule.** This rule addresses the duties of a person who is directly retained by the parent, guardian, or legal or actual custodian of a child receiving competent private instruction to provide instruction or instructional supervision for the child. The duties of a person who provides instruction or instructional supervision on behalf of a public school in the form of a home school assistance program are addressed in rule 281—31.4(299,299A).

**31.3(1) 31.3(2) Licensing requirements.** A person who provides instruction to or instructional supervision of a student receiving competent private instruction shall be either the student's parent, guardian, or legal or actual custodian or a person who possesses a valid Iowa teaching certificate or practitioner license ~~which is appropriate to the age and grade level of the student under competent private instruction.~~ A person who possesses a valid Iowa substitute teacher's license is qualified to supervise the instruction of a child who receives competent private instruction. A person who possesses only a valid Iowa substitute authorization is not qualified to supervise the instruction of a child who receives competent private instruction.

**31.3(2) 31.3(3) Duties.** The duties of a ~~certificated or licensed teacher practitioner~~ who instructs or provides instructional supervision of a student shall include the following:

a. Contact with the student and the student's parent, guardian, or legal or actual custodian at least twice per 45 days of instruction, during which time the teacher practitioner fulfills the duties described below. One of every two contacts shall be face-to-face with the student ~~under competent private instruction.~~

~~However, if the instruction or instructional supervision is provided by a public or accredited nonpublic school in the form of a home school assistance program, the teacher practitioner shall have contact with the child and the child's parent, guardian, or legal custodian at least four times per quarter during the period of instruction. One of every two contacts shall be face to face with the student under competent private instruction.~~

b. Consulting with and advising the student's parent, guardian, or legal or actual custodian ~~with respect to the following during the course of the year's visits:~~ as requested by the student's parent, guardian, or legal or actual custodian or as deemed necessary in the professional judgment of the practitioner.

- ~~(1) Lesson plans;~~
- ~~(2) Textbook and supplementary materials;~~
- ~~(3) Setting educational goals and objectives;~~
- ~~(4) Teaching and learning techniques;~~
- ~~(5) Forms of assessment and evaluation of student learning;~~
- ~~(6) Diagnosing student strengths and weaknesses;~~
- ~~(7) Interpretation of test results;~~
- ~~(8) Planning;~~
- ~~(9) Record keeping; and~~
- ~~(10) Other duties as requested or agreed upon.~~

c. Providing formal and informal assessments of the student's progress to the student and the student's parent, guardian, or legal or actual custodian.

d. and e. No change.

**31.3(3) 31.3(4) Limitations.** A licensed Iowa practitioner who is employed ~~or agrees to provide instruction or instructional supervision of programs of competent private instruction under this rule~~ shall not serve in that capacity on behalf of more than 25 families, or more than 50 children of compulsory attendance age, in an academic year unless the service is provided pursuant to the teacher's employment with a nonaccredited nonpublic school entity.

## EDUCATION DEPARTMENT[281](cont'd)

~~A licensed Iowa practitioner who is employed by a public or accredited nonpublic school to provide instruction or instructional supervision through a home school assistance program, as defined in subrule 31.4(5), shall not serve in that capacity on behalf of more than 20 families, or more than 40 children of compulsory attendance age, in an academic year.~~

~~A licensed practitioner or authorities in charge of a public or accredited private school may seek exemption from the above limitation by submitting a written request to the director of the department of education. Exemptions shall be granted when the director is satisfied that the limitation will pose a substantial hardship on the person or the school providing instruction or instructional supervision, and that the best interests of all children being served by the practitioner or school will continue to be met.~~

ITEM 5. Renumber rules **281—31.4(299A)** to **281—31.9(299A)** as **281—31.5(299A)** to **281—31.10(299A)**.

ITEM 6. Adopt the following **new** rule 281—31.4(299,299A):

**281—31.4(299,299A) Duties of licensed practitioners, home school assistance program.**

**31.4(1) Scope of rule.** This rule addresses the duties of a person who provides competent private instruction or instructional supervision for one or more children who receive competent private instruction on behalf of a school district in the form of a home school assistance program as defined in subrule 31.5(5).

**31.4(2) Licensing requirements.** A person who provides direct instruction to a student receiving competent private instruction for which the student receives credit on a transcript provided by the district for the course shall possess a valid Iowa teaching certificate or practitioner license appropriate to the content area taught and to the grade level of the student. A person who provides instructional supervision only of a student receiving competent private instruction shall possess a valid Iowa teaching certificate or practitioner license appropriate to the grade level of the student. A practitioner who possesses only a valid Iowa substitute authorization may neither provide direct instruction nor instructional supervision under this rule.

**31.4(3) Duties.** The duties of a licensed teacher who instructs or provides instructional supervision of a student shall include the following:

*a.* Contact with the student and the student's parent, guardian, or legal or actual custodian at least four times per 45 days of instruction. One of every two contacts shall be face-to-face with the student.

*b.* Consulting with and advising the student's parent, guardian, or legal or actual custodian with respect to the following during the course of the year's visits:

- (1) Lesson plans;
- (2) Textbook and supplementary materials;
- (3) Educational goals and objectives;
- (4) Teaching and learning techniques;
- (5) Forms of assessment and evaluation of student learning;
- (6) The student's strengths and weaknesses;
- (7) Interpretation of test results;
- (8) Planning;
- (9) Record keeping; and
- (10) Other duties as requested or agreed upon.

*c.* Providing formal and informal assessments of the student's progress to the student and the student's parent, guardian, or legal or actual custodian.

*d.* Annually maintaining a diary, record, or log of visitations and assistance provided.

*e.* For purposes of assisting the district to meet its "child find" obligation under the Individuals with Disabilities Education Act, referring to the child's district of residence for evaluation any child who the practitioner has reason to believe may be in need of special education.

**31.4(4) Limitations.** A licensed Iowa practitioner who is employed by a public or accredited nonpublic school to provide instruction or instructional supervision through a home school assistance program shall not serve in that capacity on behalf of more than 20 families, or more than 40 children of

## EDUCATION DEPARTMENT[281](cont'd)

compulsory attendance age, in an academic year. The authorities in charge of a public school may seek exemption from the above limitation by submitting a written request to the director of the department of education. Exemptions shall be granted when the director is satisfied that the limitation will pose a substantial hardship on the person or the school providing instruction or instructional supervision and that the best interests of all children being served by the home school assistance program will continue to be met.

ITEM 7. Amend renumbered rule 281—31.5(299A) as follows:

**281—31.5(299A) School district duties related to competent private instruction.**

**31.5(1) Reports.**

a. to c. No change.

d. ~~The district shall annually report to the department of education by April 1 the names of all resident children who are subject to an annual assessment and what form of assessment has been chosen by the child's parent, guardian, or legal custodian. The district shall cooperate with the department in gathering standardized test reports or portfolio evaluation reports for each child subject to annual assessment.~~ June 30 the names of all resident children who are subject to an annual assessment and who either failed to make adequate progress or whose parent, guardian, or legal or actual custodian failed to comply with the assessment requirements of the compulsory attendance law.

e. and f. No change.

**31.5(2) Testing assistance.**

a. ~~If a child is under dual enrollment, the district shall administer standardized tests, when and the standardized test option has been selected by the child's parent, guardian, or legal or actual custodian, the district shall administer the standardized test to the child, or may delegate the test administration to the appropriate area education agency, or allow the child's parent, guardian, or legal or actual custodian to procure standardized testing through an accredited nonpublic school. If the child is under dual enrollment, no fee is charged to the parent, guardian, or legal or actual custodian.~~

b. No change.

c. ~~If a student has been administered an approved standardized test by a an accredited nonpublic school during the academic school year for which testing is required, and the administration of the test has met the terms or protocol of the test publisher, the results~~ a copy of the test result report, from which test results not required under law may be redacted, may be submitted to the resident district and the department of education in original form by either the test administrator or the parent, guardian, or legal or actual custodian of the child being tested, in satisfaction of the annual assessment option. The submitted test results shall be accompanied by a certification statement signed by the test administrator to the effect that the publisher's protocol or terms required for test administration have been met. For purposes of this rule, "accredited nonpublic school" includes correspondence and other schools accredited by an accrediting agency approved by the federal Department of Education.

~~d. —The district shall maintain as any other confidential education record the standardized testing results for each resident child for whom the district or area education agency administers the test.~~

**31.5(3)** No change.

**31.5(4) Provision of instructional materials.**

a. ~~A public school district may shall not make monetary payments, including cash and cash equivalents, directly or indirectly to the parent, guardian, or legal or actual custodian or to a child receiving competent private instruction. A school district shall not provide texts or supplementary materials for or on behalf of a child receiving competent private instruction if such texts or supplementary materials are not provided to regularly enrolled students of the school district.~~

b. ~~A district may provide to children receiving competent private instruction available texts or supplementary materials on the same basis as they are provided to enrolled students, and shall provide available texts or supplemental instructional materials on the same basis as they are provided to enrolled students when a child is under dual enrollment or in a home school assistance program. For purposes of this paragraph, "available" means surplus texts or supplementary materials that were acquired by the district for regularly enrolled students; a district shall not purchase texts or supplementary materials to~~

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be used solely by one or more children who receive competent private instruction. If a fee, such as a textbook or towel rental fee, is charged to regularly enrolled students for participation in a class or extracurricular activity, that fee may also be charged to dual-enrolled students on the same basis as it is charged to enrolled students, but only for the specific class or extracurricular activity ~~taken.~~

c. No change.

**31.5(5) Home school assistance programs.** A school district or accredited nonpublic school may offer an assistance program for parents, guardians, or legal or actual custodians providing private instruction to a child of compulsory attendance age. ~~A parent, guardian, or legal custodian of a child of compulsory attendance age may enroll the child in a home school or private instruction assistance program in a school district or accredited nonpublic school.~~ A district or accredited nonpublic school may impose additional requirements upon children enrolled in its home school assistance program.

A parent, guardian, or legal or actual custodian seeking to enroll a child in a home school assistance program in a school district or accredited nonpublic school must file the report of competent private instruction pursuant to subrule 31.2(1). Each district and accredited nonpublic school that operates a home school assistance program shall file with the department by November 1 of each year a list of all children enrolled in the district's or school's home school assistance program on a form provided by the department.

An assistance program offered by a school district or accredited nonpublic school shall, at a minimum, meet state licensure standards for accredited school personnel in designating a practitioner to provide instruction or instructional supervision ~~of~~ for a competent private instruction program, including special education instruction, and shall meet the applicable provisions of rule ~~31.3(299)~~ 281—31.4(299,299A). All district personnel who provide or supervise instruction to children enrolled in the district's home school assistance program shall be appropriately licensed to the grade levels of the children instructed. A district shall not employ as a home school assistance program instructor a person who currently holds only a substitute authorization issued pursuant to rule 282—14.143(272). ~~The district may impose additional requirements upon children enrolled in its home school assistance program.~~

A home school assistance program is not dual enrollment, but the parent, guardian, or legal or actual custodian of a child enrolled in a home school assistance program may request dual enrollment in addition to enrollment in a home school assistance program.

ITEM 8. Amend renumbered rule 281—31.6(299A) as follows:

**281—31.6(299A) Dual enrollment.**

**31.6(1)** The parent, guardian, or legal or actual custodian of a child ~~of compulsory attendance age~~ who is receiving competent private instruction may enroll the child in the ~~public~~ school district of residence of the child under dual enrollment. The parent, guardian, or legal or actual custodian desiring dual enrollment shall notify the district of residence of the child not later than September 15 of the school year for which dual enrollment is sought.

**31.6(2)** A child under dual enrollment may participate in academic or instructional programs of the district on the same basis as any regularly enrolled student. A child under dual enrollment also is eligible to enroll in courses that offer secondary and postsecondary credit on the same basis as any regularly enrolled student. A child under dual enrollment must receive at least one-quarter of the child's instruction by way of competent private instruction and no more than three-quarters by way of the district's academic programs.

**31.6(3)** A child under dual enrollment may participate in any extracurricular activity offered by the district on the same basis as regularly enrolled students. If a child under dual enrollment was under competent private instruction the previous semester, the provisions of 281—subrule 36.15(2), paragraph “c,” shall not apply. However, other rules and policies of the state and district related to eligibility for extracurricular activities shall apply to the child. If a student seeking dual enrollment is enrolled in a nonaccredited nonpublic ~~school~~ entity that is an “associate member” of the Iowa Girls High School Athletic Union or Iowa High School Athletic Association, the student is eligible and may participate

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in interscholastic athletic competition only for the associate member ~~school~~ or a school with which the associate member ~~school~~ is in a cooperative sharing program as outlined in rule 281—36.20(280).

**31.6(4)** and **31.6(5)** No change.

ITEM 9. Amend renumbered rule 281—31.7(299) as follows:

**281—31.7(299) Open enrollment.**

**31.7(1)** The parent, guardian, or legal or actual custodian of a child receiving competent private instruction may request open enrollment to another ~~public~~ school district by following the procedures of the open enrollment law, Iowa Code section 282.18.

**31.7(2)** No change.

**31.7(3)** In the event that the parent, guardian, or legal or actual custodian of a ~~nonresident~~ an open enrollment student ~~under private instruction~~ fails to comply with state law and these rules ~~related to competent private instruction~~, the receiving district shall notify the secretary of the school district of residence ~~of the child's parent~~ regarding the noncompliance.

ITEM 10. Amend renumbered rule **281—31.8(299A)**, catchwords, as follows:

**281—31.8(299A) Baseline testing evaluation and annual assessment.**

ITEM 11. Amend renumbered subrule 31.8(1) as follows:

**31.8(1)** *When required.* When a parent, guardian, or legal or actual custodian of a child ~~of compulsory attendance age who is at least seven years old by September 15~~ provides private instruction to a child without the assistance or supervision of a validly licensed Iowa practitioner as required by law and these rules; and the parent, guardian, or legal or actual custodian does not hold a valid Iowa practitioner license ~~appropriate to the ages and grade levels of the child under competent private instruction~~, the child is subject to initial baseline testing evaluation and an annual evaluation assessment.

~~For the 1992-93 school year and thereafter, a A child who is at least seven years old by September 15; and who begins a program of competent private instruction and is subject to the annual assessment requirement; shall be administered a baseline test evaluation for the purposes of obtaining educational data. The baseline test evaluation and annual assessment shall be taken by June 30, 1993, for programs of competent private instruction begun in school years 1991-92 and 1992-93, and shall be taken by May 1 in ensuing school years. Any test listed in subrule 31.7(2) may be used to fulfill the baseline test requirement, provided that the copyright date of the test publisher's published national norms that are used for the test results being reported is within eight years of the school year in which the test is administered.~~

The parent, guardian, or legal or actual custodian may select ~~either~~ standardized testing, or portfolio assessment, or submittal of a report card from an accredited correspondence school for purposes of fulfilling the baseline evaluation and annual evaluation requirement ~~assessment requirements~~ of the law.

ITEM 12. Rescind renumbered subrules 31.8(2) to 31.8(4) and adopt the following **new** subrules in lieu thereof:

**31.8(2) Standardized testing.**

*a.* A child's parent, guardian, or legal or actual custodian who chooses standardized testing for the purpose of fulfilling the assessment requirements of the law shall select an instrument approved by the department. The department shall publish an approved list of standardized testing instruments each year. In the event that the parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement wishes to have the child take a standardized test not included on the department's published list, the parent, guardian, or legal or actual custodian shall request permission of the director of the department of education to use a different test. The decision of the director shall be final. Braille or large print editions of any approved test shall be made available for vision-impaired children. Testing norms are available for vision- and hearing-impaired children.

*b.* A child subject to the annual assessment requirement who takes a standardized test shall take a grade level form of the test that corresponds most closely to the child's chronological age unless permission is granted by the test administrator to take another grade level form of the test. When a

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parent, guardian, or legal or actual custodian requests another form of the test, the test administrator shall make a decision based upon the following:

- (1) A review of the instructional materials used by the child in the education program;
- (2) The results of curriculum-based measurement techniques including the administering of probes; and
- (3) A review of current samples of the child's work product.

The decision of the test administrator as to the appropriate grade level form of the standardized test to be taken shall be final.

A child whose educational program and instructional materials are designed for students in grades 1 through 5 shall, at a minimum, be tested in the areas of reading, language, and mathematics. A child whose educational program and instructional materials are designed for students in grades 6 through 12 shall, at a minimum, be tested in the areas of reading or literary materials, language or written expression, mathematics or quantitative thinking, science, and social studies.

If retesting is desired, a different form of the same test or a different test shall be administered to the child sufficiently in advance to allow for processing of the test results prior to the first day of classes of the succeeding school year of the resident school district.

*c. Testing times and sites.*

(1) Standardized test results are normed against a population taking the same test at approximately the same time of year. Norms for the tests exist for fall, winter, and spring. Because the annual assessment is used, in part, to determine whether the child has made at least six months' progress since the previous test, standardized tests used for determining whether adequate progress has been achieved shall be taken annually at approximately the same time each year.

(2) The school district of residence of the child shall annually, by October 1, send notification of the following to the parent, guardian, or legal or actual custodian who has selected standardized testing:

1. The times and dates when standardized tests will be administered by the school district and the area education agency over the school year, including all testing times, and that a school district or area education agency will administer standardized tests at the child's home when so requested;
2. A data sheet showing the costs associated with the tests offered by the school district and area education agency;
3. A reply form which the parent, guardian, or legal or actual custodian shall complete to indicate the date, location, and test selected, including the grade level form of the test; whether the parent, guardian, or legal or actual custodian wishes to be present for testing; and any special requests such as Braille or large print forms of the test.

*d.* Unless the child is under dual enrollment, the parent, guardian, or legal or actual custodian who has selected the standardized testing option shall timely reimburse the school district for the cost of testing the child.

**31.8(3)** *Portfolio assessment or evaluation.* A parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement may arrange to have an appropriately licensed Iowa practitioner review a portfolio of evidence of the child's progress annually by May 1, subject to the following requirements:

*a.* *Portfolio evaluator.* A single evaluator shall be designated by the parent, guardian, or legal or actual custodian who has selected the portfolio evaluation option for annual assessment. The evaluator so identified shall be approved by the superintendent of the local school district or the superintendent's designee, and shall hold a valid Iowa practitioner license or teacher certificate appropriate to the ages and grade levels of the children whose portfolios are being assessed.

A portfolio evaluator who holds an elementary classroom endorsement may assess children in grades 1 through 6. A portfolio evaluator who holds an elementary content endorsement may assess children in grades 1 through 8. A portfolio evaluator who holds a secondary content endorsement may assess children in grades 5 through 12.

A portfolio evaluator shall not evaluate the portfolios of more than 25 students per year without permission of the director of the department of education.

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b. Contents of portfolio. The child's portfolio shall contain evidence of academic progress in the minimum curriculum areas of reading, language arts, and mathematics if the child is in grade 1 through 5. For children in grades 6 through 12, the portfolio shall contain evidence in the minimum curriculum areas of reading, language arts, mathematics, science, and social studies.

For each curriculum area, the portfolio shall include a book of lesson plans, a diary, or other written record indicating the subject matter taught and activities in which the child has been engaged, and an outline of the curriculum used by the child. The portfolio may also include a list of, a reference to, or material from the textbooks and resource materials used by the child in each subject area.

The portfolio shall also include copies of any tests or other formal and informal assessment instruments used to measure student progress over the current academic year, a copy of the baseline evaluation, and the most recent assessment report of the student's annual progress.

For each subject area to be evaluated, the portfolio shall include examples of the student's work and may include self-assessments by the student.

c. The parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement who has a physical or mental disability so significant that the results of a standardized test would be meaningless for assessment purposes may request the department's approval of an alternative evaluation.

**31.8(4) Report card from accredited correspondence school.** For a child subject to annual assessment who is enrolled as a student of a correspondence school that is a member of a national or regional accrediting association recognized by the United States Secretary of Education and accredited for elementary and secondary education, the district of residence and the department shall accept the annual report of progress (report card) sent by the correspondence school to the child's parent, guardian, or legal or actual custodian, if the annual report of progress includes a listing of subjects taken and grades received. A passing grade in all content areas for which annual assessment is required shall be deemed evidence of adequate progress for the purpose of annual assessment.

ITEM 13. Amend renumbered rule 281—31.9(299A) as follows:

**281—31.9(299A) Reporting assessment results.**

**31.9(1) Baseline ~~tests~~ evaluations.** The baseline ~~test~~ evaluation results of each child subject to the baseline ~~test~~ evaluation requirement of Iowa Code section 299B.4 and subrule 31.7(1) shall be reported by the ~~test administrator~~ child's parent, guardian, or legal or actual custodian to the school district of residence of the child ~~and to the department of education~~ by June 30 of the year in which the ~~test~~ evaluation was taken.

The baseline ~~test~~ evaluation shall serve only as data from which subsequent progress shall be measured; the baseline ~~test~~ evaluation alone is not an indication of educational progress or a lack of progress.

**31.9(2) Standardized tests.** The results of a standardized test taken by a child subject to the annual assessment requirements shall be reported by the ~~test administrator~~ child's parent, guardian, or legal or actual custodian to the district of residence of the child ~~and to the department of education~~ by June 30 of the year in which the test was taken. ~~The results shall be submitted in original form as received from the agency responsible for scoring the test. The results shall be submitted either in original form or as a true and correct photocopy of the original form as received from the agency responsible for scoring the test, from which any test results not required under law may be redacted.~~

**31.9(3) Portfolio assessments.** The ~~assessment~~ results of an assessment of a child's educational portfolio made by a qualified Iowa licensed practitioner ~~or practitioners~~ shall be submitted by the portfolio ~~evaluator(s)~~ evaluator to the child's parent, guardian, or legal or actual custodian, who shall send a copy to the district of residence of the child, ~~and the department of education~~ by June 30 of the year in which the assessment was done.

The report ~~shall~~ may be in narrative form and shall include assessments of the child's achievement and progress in the curriculum areas including reading, language arts, and mathematics for children whose grade level of study is fifth grade and below, and those subjects plus the additional areas of science and social studies for students whose grade level of study is sixth grade and above. The report shall

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include a statement as to whether the child has demonstrated adequate progress in each of the areas of study ~~for which the portfolio evaluator is qualified to provide an assessment~~. The report shall be signed by ~~each~~ the evaluator.

**31.9(4) Report card from accredited correspondence school.** Report cards from an accredited correspondence school shall be submitted by the child's parent, guardian, or legal or actual custodian to the child's district of residence by June 30 of the year in which the report cards were issued by the accredited correspondence school.

**31.9(5) Confidentiality of annual assessments.** The district shall maintain as any other confidential education record the standardized testing, portfolio evaluation, and report cards from an accredited correspondence school for each resident child subject to annual assessment.

ITEM 14. Amend renumbered rule 281—31.10(299A) as follows:

**281—31.10(299A) Special education students.** When a child has been identified as currently requiring special education, the child is eligible to receive competent private instruction with the written approval of the director of special education of the area education agency of the child's district of residence.

The director of special education of each area education agency shall issue a written decision, approving provision of competent private instruction, conditioning approval on modification of the proposed program, or denying approval, based upon the appropriateness of the proposed competent private instruction program for the child requiring special education, considering the child's individual disability. Pursuant to 34 CFR Section 300.300, the parent, guardian, or legal or actual custodian of a child with a disability is not required to seek approval from the area education agency to provide competent private instruction for the child if the parent, guardian, or legal or actual custodian does not consent to initial evaluation or to reevaluation of the child for receipt of special education services or programs.

The request for approval for placement under competent private instruction by the parent or guardian may be presented to the special education director at any time during the calendar year. If the special education director denies approval or if no written decision has been rendered within 30 calendar days, that decision or the absence thereof is subject to review by an impartial administrative law judge under provisions of 20 U.S.C. Section 1401 et seq., federal regulations adopted thereunder, and Iowa Code section 256B.6 and rules adopted thereunder found at ~~281—41.112(17A,256B,290) et seq~~ 281—41.500(256B,34CFR300) et seq.

If a parent, guardian, or legal or actual custodian of a child requiring special education provides private instruction without the approval of the director of special education, the director may either request an impartial hearing before an administrative law judge under the rules of special education, ~~281—41.112(17A,256B,290)~~ 281—41.500(256B,34CFR300) et seq., or notify the secretary of the child's district of residence for referral of the matter to the county attorney pursuant to Iowa Code section 256B.6, incorporating chapter 299.

A program of competent private instruction provided to a student requiring special education is not a program of special education for purposes of federal and state law.

The director of special education shall advise the parent, guardian, or legal or actual custodian of a child requiring special education of the probable consequences of placing the child under private instruction and withdrawing the child from specialized instruction and services to which the child is entitled. The director of special education may require the parent, guardian, or legal or actual custodian of a child requiring special education to accept full responsibility for the parent's, guardian's or legal or actual custodian's decision to reject special education programs and services, forgoing a later request for compensatory education for the period of time when the child was under private instruction.

ITEM 15. Amend **281—Chapter 31**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 299 and 299A and 2008 Iowa Acts, House File 2700, sections 108 to 111.

**ARC 7220B**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Notice of Intended Action**

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

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

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

The purpose of this rule making is to increase from the current fixed dollar amount of \$39 per ton to \$62 per ton the maximum annual Title V Operating Permit fee that the Environmental Protection Commission can establish on the first 4,000 tons of actual emissions of each regulated pollutant emitted annually from a major source. Budget projections and estimates of actual emissions indicate that the annual fee will have to be increased above \$39 per ton to maintain the current level of service in state fiscal years 2010 to 2015.

The Department met with members of the public and industry and with environmental groups to obtain preliminary input on raising the maximum fee. The data, assumptions, and methodology used to arrive at the \$62 per ton fee level cap and other changes were reviewed and discussed in detail at meetings on May 22 and June 5, 2008. The meetings were advertised in the State of Iowa's Public Meeting Calendar, on the Air Quality Bureau Web site, and by list server articles. The Department requested that comments be submitted by July 1, 2008. Two comments were received by this date. One comment suggested exploring additional grant opportunities while creating a new fee program for minor sources. The second comment concurred with the need to increase the fee cap but also requested that the Department continue to restrict the use of the fees to air quality programs for which they were intended; to streamline permitting processes; to seek other funding mechanisms; and to recognize that clean air benefits all Iowans and, therefore, the State's general revenue funds should provide support for the Department.

The Department received additional comments from MidAmerican Energy after the July 1, 2008, deadline. MidAmerican Energy raised several concerns on increasing the fee cap and the use of Title V funds for various program areas. The Department met with MidAmerican on July 24, 2008, to address their concerns. No additional comments have been received.

The data, assumptions, and methodology were determined to be reasonable based on past budget information, available salary contract information, and past actual emissions trends. The Department will continue to work with interested parties to examine alternate fee scenarios.

The increase from \$39 per ton to \$62 per ton is based on budget projections for the next three state fiscal years and estimates of the actual emissions during this period. Basing the maximum fee level on budget projections for the next five state fiscal years should prevent the need for the Commission to change the fee level cap provision in subrule 22.106(1) again for at least this period of time. The need to increase the maximum fee level to maintain the current level of services is the result of the combination of increases in staff salaries due to negotiated contract increases and projected decreases in actual emissions over this period. The \$62 per ton maximum fee level is a 59 percent increase over the next five state fiscal years to account for estimated increases in salary expenditures, including indirect costs, and increases in the costs of equipment, including equipment to operate an ambient air monitoring network.

Any person may make written suggestions or comments on the proposed amendment on or before November 13, 2008. Written comments should be directed to Wendy Rains, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322. Comments may be sent by fax to (515)242-5094 or by electronic mail to [wendy.rains@dnr.iowa.gov](mailto:wendy.rains@dnr.iowa.gov).

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

A public hearing will be held on November 12, 2008, at 10 a.m. at the Department's Air Quality Bureau offices located at 7900 Hickman Road, Urbandale, Iowa. Comments may be submitted orally or in writing during the public hearing. All comments must be received no later than November 13, 2008. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility, should contact the Department of Natural Resources to advise of any specific needs.

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

The following amendment is proposed.

Amend subrule 22.106(1) as follows:

**22.106(1) Fee established.** Any person required to obtain a Title V permit shall pay an annual fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994. Beginning July 1, 1996, Title V operating permit fees will be paid on or before July 1 of each year. The fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The department and the commission will review the fee structure on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the programs required by the Act. The department shall submit the proposed budget for the following fiscal year to the commission no later than the March meeting. The commission shall set the fee based on the reasonable cost to run the program and the proposed budget no later than the May commission meeting of each year. The commission shall provide an opportunity for public comment prior to setting the fee. The commission shall not set the fee higher than ~~\$39~~ \$62 per ton without adopting the change pursuant to formal rule making.

**ARC 7219B****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.304, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 119, "Waste Oil," Iowa Administrative Code.

These amendments are being proposed to incorporate the changes made to Iowa Code section 455D.13 as amended by 2008 Iowa Acts, House File 2668. This legislation requires retailers that sell oil filters to post a sign informing their customers of the nearest collection site for used oil filters. It also requires businesses to recycle the used oil filters that they generate.

The proposed changes to Chapter 119 include the addition of collection requirements for used oil filters, the addition of signage requirements for filter retailers, updates to the signage requirements for oil retailers, removal of some of the Department's responsibilities, and rescission of the state procurement regulations. The amendments also change the term "waste oil" to "used oil" to be consistent with Iowa Code section 455D.13 as amended by 2008 Iowa Acts, House File 2668, and EPA regulations.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before 4:30 p.m. on October 28, 2008. Such written materials should be directed to Kathleen Hennings, Land Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8646; or E-mail [Kathleen.Hennings@dnr.iowa.gov](mailto:Kathleen.Hennings@dnr.iowa.gov). Persons wishing to convey their views orally should contact Kathleen Hennings by telephone at (515)281-5859.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

When submitting comments, stakeholders are encouraged by the Department to utilize the following guidelines. These guidelines aid the Department in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments on behalf of a business or organization or as an individual.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language to improve the specific rule(s) and explain why.

A public hearing will be held on October 28, 2008, at 1 p.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, 502 East Ninth Street, Des Moines, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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 to advise of specific needs.

These amendments are intended to implement 2008 Iowa Acts, House File 2668.

The following amendments are proposed.

ITEM 1. Amend **567—Chapter 119**, title, as follows:

WASTE USED OIL AND USED OIL FILTERS

ITEM 2. Amend rule 567—119.1(455D,455B) as follows:

**567—119.1(455D,455B) Authority, purpose, and applicability.**

**119.1(1) Authority.** Pursuant to Iowa Code sections 455D.7(1), 455D.6(6), and 455B.304, the environmental protection commission is given the authority to adopt rules regulating the disposal, collection, recycling and reuse of waste used oil and used oil filters.

**119.1(2) Purpose.** The purpose of these rules is to protect the public health and the environment by regulating the disposal and collection of waste used oil and used oil filters and to promote the reuse and recycling of used oil which is a limited energy resource and used oil filters.

**119.1(3) Applicability.** The provisions of this chapter apply to oil retailers, oil filter retailers, sanitary disposal project permittees, and persons involved in the collection of waste used oil, and persons involved in the generation or collection of used oil filters.

ITEM 3. Amend rule 567—119.2(455D,455B) as follows:

**567—119.2(455D,455B) Definitions.** The following definitions apply to the provisions of this chapter:

“*Contaminated*” means waste used oil mixed with hazardous waste as defined by the resource conservation and recovery Act or with incompatible wastes including, but not limited to: antifreeze, solvents, paints, pesticides, or household hazardous materials. Minimal amounts of vehicle fuel shall not be considered an incompatible waste.

“*Customer*” means any individual who purchases oil or oil filters or generates waste used oil or used oil filters for personal or family purposes, including a farmer or a farm household.

“*Department*” means the department of natural resources.

“*Division*” means ~~the land quality and waste management assistance division of the department.~~

“*Lubricating oils*” means ~~engine lubricating oils, hydraulic fluids and gear oils, excluding marine and aviation oils.~~

“*Recycling Used oil recycling*” means the preparation of used oil for reuse as a petroleum product by rerefining, reprocessing, reclaiming, or other means or to use used oil as a substitute for a petroleum product made from new oil, provided that the preparation or use is operationally safe, environmentally sound, and complies with all federal and state laws.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

“Retailer” means a person offering for sale or selling a petroleum-based or synthetic oil or oil filter to the ultimate consumer or user of the product, as an over-the-counter product or whereby the consumer is charged separately for the oil ~~product~~ or oil filter when coupled with a service.

“Tank” means a closable stationary or mobile device designed to contain an accumulation of waste used oil and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

“Used oil filter” means a filter that removes impurities from the oil used to lubricate an internal combustion engine and has been used for its intended purpose.

“Used oil filter recycling” means the preparation of used oil filters for steel recovery.

“~~Waste~~ Used oil” means any petroleum-based or synthetic oil which through its use, storage, or handling has become unsuitable for its original purpose due to the presence of chemical or physical impurities. Waste Used oil includes, but is not limited to, the following:

1. Spent lubricating fluids which have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine.

2. Spent industrial oils, including compressor, turbine, bearing, hydraulic, metalworking, electrical, and refrigerator oils.

Waste Used oil does not include oil which has been contaminated or contains PCBs of 5ppm or greater.

“~~Waste~~ Used oil collection site” means any commercial, municipal, or nonprofit establishment or operation which has a waste used oil collection tank on the premises, and accepts waste used oil for temporary storage prior to the recycling of that which is collected.

“~~Waste~~ Used oil collector” means any sanitary landfill operator, sanitary disposal project operator, oil retailer, or other individual who operates a waste used oil collection site.

ITEM 4. Amend rule 567—119.3(455D,455B) as follows:

**567—119.3(455D,455B) Prohibited disposal.**

**119.3(1)** ~~Waste Used~~ oil shall not be accepted for final disposal at any sanitary landfill. However, a sanitary landfill or sanitary disposal project, as defined in Iowa Code section 455B.301, may accept waste used oil for temporary storage or collection if the ultimate disposition of the oil is for recycling or reuse. All necessary permits or permit conditions must be obtained prior to the storage or collection of waste used oil at these landfills and projects.

**119.3(2)** ~~Rescinded IAB 8/18/93, effective 9/22/93.~~ A business that generates used oil filters or accepts used oil filters from a person shall not dispose of the used oil filters in a sanitary landfill and shall source separate and recycle the used oil filters.

ITEM 5. Rescind rule 567—119.4(455D,455B) and adopt the following **new** rule in lieu thereof:

**567—119.4(455D,455B) Operational requirements for acceptance of used oil.** Any person accepting used oil from customers shall comply with the following requirements:

**119.4(1)** Used oil shall be accepted which is contained in a closed, unbreakable, preferably reusable, container.

**119.4(2)** Used oil collectors shall provide supervision of the collection process to minimize the risk of spills and to prevent customers from depositing contaminated used oil into the collection tank. However, this does not preclude designating unsupervised drop-off sites for used oil as long as the following conditions are met:

- a. Only sealed containers of five gallons or less shall be accepted.
- b. The designated drop-off site must be protected from the elements.
- c. Customers shall drop off their used oil in containers at the designated site and are not permitted to deposit their used oil into a collection tank.
- d. The designated site must be located on an impervious surface engineered to contain potential spills.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**119.4(3)** During noncollection hours, the tank must be secured to prevent the contamination of the collected used oil.

**119.4(4)** A sign shall be placed on or near the used oil collection tank which includes the statement: This tank is for used oil collection only. The depositing of other materials is prohibited.

**119.4(5)** Collectors of used oil shall ensure that the ultimate disposition of used oil collected is for recycling and reuse.

**119.4(6)** Used oil found to be contaminated shall be managed as a hazardous waste. There is no obligation to accept contaminated oil.

**119.4(7)** Used oil collectors shall comply with Iowa Code section 455B.386 when actual or imminent oil spills pose a threat to the public health or the environment.

**119.4(8)** Absorbent material shall be available at the site for use by the operator to control spillage or discharge of used oil.

ITEM 6. Adopt the following new rules **567—199.5(455D,455B)** to **567—119.7(455D,455B)**:

**567—119.5(455D,455B) Operational requirements for acceptance of used oil filters.** Any person accepting used oil filters from customers shall comply with the following requirements:

**119.5(1)** The used oil filters shall be collected, stored and transported in a container designed and maintained to prevent the spillage or discharge of used oil from the filters.

**119.5(2)** The collection container shall be located on an impervious surface engineered to contain spills.

**119.5(3)** The collection container shall be protected from inclement weather.

**119.5(4)** The collection container shall be clearly labeled “used oil filters.”

**119.5(5)** Used oil filter collectors shall comply with Iowa Code section 455B.386 when actual or imminent oil spills pose a threat to the public health or the environment.

**119.5(6)** Absorbent material shall be available at the site for use by the operator to control spillage or discharge of used oil from the used oil filters.

**567—119.6(455D,455B) Oil retailer requirements.** In addition to the requirements set forth in rules 119.4(455D,455B) and 119.5(455D,455B) relating to used oil and used oil filter collection, used oil retailers also shall comply with the following:

**119.6(1)** A durable, legible sign at least 8½" by 11" in size shall be placed near the point of sale which contains the following:

*a.* Language informing the customer that it is unlawful to dispose of used oil at a sanitary landfill, and that the customer should return used oil to used oil collection sites for recycling and reuse;

*b.* The language “RECYCLE USED OIL” in bold lettering;

*c.* A list of the benefits from recycling used oil including, but not limited to, “conserves energy, reuses limited resources, and protects Iowa’s drinking water”;

*d.* The language “used oil is a household hazardous material” and the household hazardous materials program symbol, at least 2 inches in length, as shown below;



*e.* The warning that the disposal of used oil in a landfill or its deposit or discharge into any state waterway is unlawful;

*f.* The name, address and location of at least one used oil collection site located within the county in which the retailer is located. If there is more than one used oil collection site located in the county, then the nearest collection site shall be listed on the posted sign.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**119.6(2)** Retailers may obtain the required signs upon request from the department. Retailers choosing to develop and post their own signs must obtain a variance from the departmental rules. Signs must be at least 8½" by 11" in size and contain the information stipulated above. To request a variance, retailers should forward to the department for review the sign they wish to substitute for the departmental sign.

**119.6(3)** Retailers are not required to collect used oil generated by commercial or municipal establishments.

**119.6(4)** Used oil shall be accepted during normal business hours.

**119.6(5)** Those retailers who do not sell any other household hazardous materials except for motor oil may comply with the household hazardous materials informational sign posting requirement of 567—Chapter 144 through compliance with subrule 119.6(1).

**567—119.7(455D,455B) Oil filter retailer requirements.** In addition to the above requirements set forth in rules 119.4(455D,455B) to 119.6(455D, 455B) relating to used oil and used oil filter collection, oil filter retailers also shall comply with the following:

**119.7(1)** A durable, legible sign at least 8½" by 11" in size shall be placed near the point of sale which contains the following:

- a. The language "RECYCLE USED OIL FILTERS" in bold lettering;
- b. A list of the benefits from recycling used oil filters including, but not limited to, "conserves energy, reuses limited resources, and protects Iowa's drinking water";
- c. The language "used oil filters are a household hazardous material" and, at least 2 inches in length, the household hazardous materials program symbol as shown below;



d. The name, address and location of at least one used oil filter collection site located within the county in which the retailer is located. If there is more than one used oil filter collection site located in the applicable county, then the nearest collection site shall be listed on the posted sign.

**119.7(2)** Retailers who choose to collect used oil filters shall accept used oil filters generated by residential households or farmers, but are not required to collect used oil filters generated by commercial or municipal establishments.

**119.7(3)** Used oil filters shall be accepted during normal business hours.

**119.7(4)** Those retailers who do not sell any other household hazardous materials except for oil filters may comply with the household hazardous materials informational sign posting requirement of 567—Chapter 144 through compliance with subrule 119.7(1).

ITEM 7. Renumber rules **567—119.5(455D,455B)** and **567—199.6(455D,455B)** as **567—119.8(455D,455B)** and **567—119.9(455D,455B)**.

ITEM 8. Rescind rules **567—119.7(455D,455B)** and **567—119.8(455D,455B)**.

ITEM 9. Amend renumbered rule 567—119.8(455D,455B) as follows:

**567—119.8(455D,455B) Tanks.**

**119.8(1) Aboveground.** In addition to the requirements imposed by the office of the state fire marshal, the following standards are applicable to aboveground ~~waste~~ used oil collection tanks:

a. The tank shall be of sufficient size to handle the projected quantities of used oil to be returned to this specific collection site.

b. The tank shall be designed and maintained to prevent the spillage or discharge of ~~waste~~ used oil. Tanks must be set upon an impermeable surface engineered to contain potential spills.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

c. Absorbent material shall be available at the tank site for use by the operator to control ~~waste used~~ oil spillage or discharge.

d. The tank shall have a level gauge or some other adequate means for checking the oil level within the tank.

e. The tank shall be constructed in accordance with American Petroleum Institute specifications and standards.

**119.8(2) *Underground.*** Underground storage tanks used to collect or store ~~waste used~~ oil shall comply with the standards in part 8 of division IV of Iowa Code chapter 455B, entitled "Underground Storage Tanks," and the promulgated rules, Iowa Administrative Code, 567—Chapters 135 and 136.

ITEM 10. Amend renumbered rule 567—119.9(455D,455B) as follows:

**567—119.9(455D,455B) Locating collection sites.** If the retailer is unaware of any locations within the county where ~~waste used oil is or used oil filters are~~ being accepted from customers, ~~then the retailer shall cooperate with other retailers to identify a waste oil collection site for customers. To identify a waste oil collection site, retailers should consider recruiting an operator of a facility which already has the means to collect waste oil. If through this cooperative effort no sites can be identified, then the retailer should consider accepting waste oil from customers according to the standards listed in this chapter. the retailer shall contact the department to determine if a collection site is located in the county. If no collection site is currently available in the county, the retailer shall accept used oil and used oil filters from customers.~~

ITEM 11. Amend **567—Chapter 119**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 455D.6(6) and 455D.13 as amended by 2008 Iowa Acts, House File 2668, and chapter 455B, division IV, part 1.

**ARC 7267B**

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 239B.4(6), the Department of Human Services proposes to amend Chapter 7, "Appeals and Hearings," Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," and Chapter 46, "Overpayment Recovery," Iowa Administrative Code.

The proposed amendments eliminate quarterly reporting for families receiving benefits under the Family Investment Program (FIP) who have earned income. Under these amendments, all families receiving FIP will be subject to semiannual reporting. They will complete a report form every six months and have an annual interview.

Moving from quarterly reporting to semiannual reporting for FIP will benefit families in several ways:

- Reducing the number of times that clients must report also reduces "procedural" cancellations caused by failure to return reports, returning reports late, or client errors in completing report forms when clients otherwise continue to meet eligibility requirements. Participants with physical or mental health issues, disabilities, literacy issues, or family crises are likely to have the most difficulty completing reports timely and accurately. Although the family's benefits can be reinstated when these errors are corrected, the cancellation may result in a break in assistance for the family.

- Reducing procedural cancellations also helps maintain consistent participation in work and training activities. Procedural cancellations resulting in a break in FIP assistance also cause a break in PROMISE JOBS services. Even short breaks disrupt efforts to engage the family in work and training activities and may force families to drop out of activities intended to lead to long-term self-sufficiency.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- Changing to a semiannual review stabilizes family income. When income is projected for six months, minor fluctuations do not affect eligibility and benefits. Major changes in income and other household circumstances must still be reported and acted upon.

- These changes align FIP reporting frequency with the reporting required for Food Assistance and Medicaid. Currently FIP requires more frequent reports than Food Assistance or Medicaid. Most FIP families also receive Food Assistance and Medicaid. These changes will ensure that income is treated more consistently between programs.

- Alignment of reporting procedures across programs also reduces the number of different forms a family may be required to complete. The proposed amendments remove requirements for completing the Public Assistance Eligibility Report and the Combined PAER/FAIR in favor of using a single report form, the Review/Recertification Eligibility Document. These changes will reduce client confusion about reporting requirements.

Other changes included in these amendments are as follows:

- Item 9 clarifies that when a FIP participant is approved for foster care or subsidized adoption assistance while staying in the same home, FIP is canceled effective the first of the next month following the date when approval of the foster care or subsidized adoption assistance is entered into the Department's computer system. When a nonparental caretaker relative who is receiving FIP for a child is approved for foster care or subsidized adoption assistance for that child, occasionally it is necessary to make retroactive payment for past months due to legal and system requirements. The amendment clarifies that FIP payments for the month for which the foster care or subsidized adoption assistance is approved or any past months for which foster care or subsidized adoption payments are made retroactively are not subject to recoupment.

- Item 10 corrects an implementation sentence to reflect the rescission of school attendance as an eligibility requirement.

These amendments do not provide for waivers in specified situations because they benefit clients or clarify current procedures. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before October 29, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 239B.4.

The following amendments are proposed.

ITEM 1. Amend paragraphs 7.7(2)“f,” “g,” “k” and “l” as follows:

f. The ~~county~~ agency establishes that the recipient has been accepted for assistance in another ~~county or~~ state.

g. Cash assistance or food ~~stamps are~~ assistance is changed because a child is removed from the home as a result of a judicial determination or is voluntarily placed in foster care.

k. The agency terminates or reduces benefits or makes changes based on ~~one of the following completed forms~~ a completed Form 470-2881, 470-2881(M), 470-4083(Spanish), or 470-4083(M), Review/Recertification Eligibility Document, as described at 441—paragraph ~~40.27(1)“b”:~~ 40.27(1)“b.”

~~(1) Form 470-0454, 470-0455, or 470-3719(S), Public Assistance Eligibility Report.~~

~~(2) Form 470-4387, 470-4387(M), or 470-4387(S), Combined PAER/FAIR.~~

~~(3) Form 470-2881, 470-2881(M), 470-4083 (Spanish), or 470-4083(M), Review/Recertification Eligibility Document.~~

l. The agency terminates benefits for failure to return a completed ~~quarterly~~ report form, as described in paragraph “k.”

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend paragraph **7.9(1)“b”** as follows:

*b.* The appellant requests a hearing within ten days from the date adequate notice is issued for cancellation, reduction, or suspension of food stamp assistance, family investment program, or Medicaid benefits, based on the completed report form, including:

- ~~(1) Public Assistance Eligibility Report, Form 470-0454, 470-0455, or 480-3719(S).~~
- ~~(2) (1) Review/Recertification Eligibility Document, Form 470-2881, 470-2881(M), 470-4083 (Spanish), or 470-4083(M).~~
- ~~(3) (2) Transitional Medicaid Notice of Decision/Quarterly Income Report, Form 470-2663 or 470-2663(M).~~
- ~~(4) Combined PAER/FAIR, Form 470-4387, 470-4387(M), or 470-4387(S).~~

ITEM 3. Amend paragraph **40.22(5)“c”** as follows:

*c.* When eligibility factors are met, assistance shall be reinstated when ~~one of the following a~~ completed forms Form 470-2881, 470-2881(M), 470-4083 (Spanish), or 470-4083(M), Review/Recertification Eligibility Document, is received by the local office department within ten days of the date a cancellation notice is sent to the recipient because the form was incomplete or not returned.

- ~~(1) Public Assistance Eligibility Report, Form 470-0454, 470-0455, or 470-3719(S).~~
- ~~(2) Combined PAER/FAIR, Form 470-4387, 470-4387(M), or 470-4387(S).~~
- ~~(3) Review/Recertification Eligibility Document, Form 470-2881, 470-2881(M), 470-4083 (Spanish), or 470-4083(M).~~

ITEM 4. Rescind and reserve subrule **40.24(3)**.

ITEM 5. Rescind paragraphs **40.27(1)“a”** and **“b.”**

ITEM 6. Amend subrule 40.27(1), introductory paragraph, as follows:

**40.27(1)** Eligibility factors shall be reviewed at least every six months for the family investment program.

*a.* A semiannual review shall be conducted using information contained in and verification supplied with ~~Form 470-0454, 470-0455 or 470-3719(S), Public Assistance Eligibility Report, or Combined PAER/FAIR, Form 470-4387, 470-4387(M), or 470-4387(S)~~ 470-2881, 470-2881(M), 470-4083 (Spanish), or 470-4083(M), Review/Recertification Eligibility Document.

*b.* An interview shall be conducted at least annually at the time of a review using information contained in and verification supplied with Form 470-2881, 470-2881(M), 470-4083 (Spanish), or 470-4083(M), Review/Recertification Eligibility Document.

*c.* When the client has completed a Health and Financial Support Application, Form 470-0462 or 470-0466 (Spanish), for another purpose required by the department, this form may be used as the review document for the semiannual or annual review.

ITEM 7. Amend subrule 40.27(3) as follows:

**40.27(3)** Information for semiannual reviews ~~shall be submitted on Form 470-0454, 470-0455, or 470-3719(S), Public Assistance Eligibility Report, or Form 470-4387, 470-4387(M), or 470-4387(S), Combined PAER/FAIR.~~ Information for and the annual determination interview shall be submitted on Form 470-2881, 470-2881(M), 470-4083 (Spanish), or 470-4083(M), Review/Recertification Eligibility Document.

*a.* When the client has completed Form 470-0462 or Form 470-0466 (Spanish), Health and Financial Support Application, for another purpose, this form may be used as ~~the quarterly report or as~~ the review document for the semiannual or annual review.

~~*b.*~~ The review form shall be signed by the payee, the payee's authorized representative, or, when the payee is incompetent or incapacitated, someone acting responsibly on the payee's behalf.

~~*b.* When both parents or a parent and a stepparent are in the home, both shall sign the Public Assistance Eligibility Report, the Combined PAER/FAIR, the Review/Recertification Eligibility Document, or the Health and Financial Support Application.~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 8. Amend paragraph **40.27(4)“b”** as follows:

*b.* The recipient shall complete Form 470-0454, ~~470-0455, or 470-3719(S), Public Assistance Eligibility Report, or Form 470-4387, 470-4387(M), or 470-4387(S), Combined PAER/FAIR, or Form 470-2881, 470-2881(M), 470-4083 (Spanish), or 470-4083(M), Review/Recertification Eligibility Document, when requested by the local office department~~ in accordance with these rules. ~~The form department shall be supplied supply the form~~ as needed to the recipient ~~by the department~~. The department shall pay the cost of postage to return the form.

(1) When the form is issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the ~~local office department~~ by the fifth calendar day of the following month. When the form is not issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the ~~local office department~~ by the seventh day ~~of the month~~ after the date it is mailed by the department.

(2) ~~The local office department shall also supply the recipient with Form 470-0454, 470-0455, or 470-3719(S), Public Assistance Eligibility Report, or Form 470-4387, 470-4387(M), 470-4387(S), Combined PAER/FAIR, or Form 470-2881, 470-2881(M), 470-4083 (Spanish), or 470-4083(M), Review/Recertification Eligibility Document, on request.~~

(3) No change.

ITEM 9. Amend subrule 41.25(2) as follows:

**41.25(2) Duplication of assistance.** A recipient whose needs are included in a family investment program grant shall not concurrently receive a grant under any other public assistance program administered by the department, including IV-E foster care, or state-funded foster care.

*a.* A recipient shall not concurrently receive the family investment program and subsidized adoption unless exclusion of the person from the FIP grant will reduce benefits to the family.

*b.* When a family investment program recipient is approved for foster care or subsidized adoption assistance while remaining in the same home, family investment program assistance shall be canceled effective the first day of the next calendar month following the date approval of the foster care or subsidized adoption payment is successfully entered into the department's computer system. FIP assistance for the month for which the foster care or subsidized adoption payment is approved or any past months for which foster care or subsidized adoption payments are made retroactively shall not be subject to recoupment.

*c.* ~~Neither shall a~~ A recipient shall not concurrently receive a grant from a public assistance program in another state.

*d.* When a recipient leaves the home of a specified relative, no payment for a concurrent period shall be made for the same recipient in the home of another relative.

ITEM 10. Amend rule ~~441—41.25(239B)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~chapters chapter 239B and 299~~.

ITEM 11. Amend subparagraph **41.27(9)“b”(1)** as follows:

(1) ~~The local office department shall prospectively compute eligibility and benefits when a Public Assistance Eligibility Report, Form 470-0454, 470-0455, or 470-3719(S); a Combined PAER/FAIR, Form 470-4387, 470-4387(M), or 470-4387(S); or a Review/Recertification Eligibility Document, Form 470-2881, 470-2881(M), or 470-4083 (Spanish), or 470-4083(M), is completed as described in 441—40.27(239B). All countable earned and unearned income received by the eligible group during the previous 30 days shall be used to project future income. If the participant indicates that the 30-day period is not indicative of future income, income from a longer period or verification of anticipated income from the income source may be used to project future income.~~

ITEM 12. Amend rule ~~441—46.21(239B)~~, definition of “Procedural error,” as follows:

“Procedural error” means a technical error that does not in and of itself result in an overpayment.

Procedural errors include:

1. and 2. No change.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

3. Failure of the ~~local office~~ department to conduct the interviews described in 441—subrules 40.24(2) and 40.27(1).
4. Failure to request a ~~Public Assistance Eligibility Report, a Combined PAER/FAIR, or a Review/Recertification Eligibility Document~~ at the time of a ~~quarterly, semiannual, or annual~~ review.
5. Failure of ~~local office~~ department staff to cancel the family investment program benefits when the client submits a ~~Public Assistance Eligibility Report, a Combined PAER/FAIR, or a Review/Recertification Eligibility Document~~ that is not complete as defined in 441—paragraph 40.27(4)“b.” However, overpayments of grants as defined above based on incomplete reports are subject to recoupment.

**ARC 7263B****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 225.6(1) and 2008 Iowa Acts, Senate File 2425, section 52, subsection 2(e), the Department of Human Services proposes to adopt Chapter 26, “Emergency Mental Health Crisis Services System,” Iowa Administrative Code.

This chapter will implement an emergency mental health crisis services system. The purpose of the system is ultimately to provide a statewide array of time-limited intervention services to:

- Reduce escalation of mental health crisis situations,
- Relieve the immediate distress of persons experiencing a mental health crisis,
- Reduce the risk of persons in crisis harming themselves or others, and
- Promote timely access to appropriate services for those persons who require ongoing mental health services.

The system will be implemented through a competitive bidding process, and its scope will be limited to the extent of the legislative appropriation. For state fiscal year 2009, \$1.5 million has been appropriated for this purpose. The Department expects to issue a request for proposals in October 2008 to begin one or more pilot projects. Proposals may be submitted by a community mental health center or other accredited mental health service provider and may cover a service area of one or more counties.

These rules provide for four required services: telephone hotline services, mobile crisis services, walk-in crisis services, and crisis care coordination services. The rules describe requirements for providing and documenting the services. Services shall be provided to any person who appears to be in a mental health crisis or in a situation that is likely to develop into a mental health crisis if supports are not provided, regardless of the person’s age, income, health coverage, or prior diagnosis.

These rules provide for the waiver of any requirement in this chapter when:

- Strict enforcement of a requirement would result in unreasonable hardship on the provider or on a consumer, or an alternative to a rule, including a new concept, method, procedure or technique, new equipment, new personnel qualifications or the implementation of a pilot project is in the interests of better consumer care or program management; and
- Granting the waiver would not diminish the effectiveness of the services provided by the program, violate the purposes of the program, or adversely affect consumers’ health, safety, or welfare.

Any interested person may make written comments on these proposed rules on or before October 29, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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](mailto:policyanalysis@dhs.state.ia.us).

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These rules are intended to implement Iowa Code chapter 225C as amended by 2008 Iowa Acts, Senate File 2425, section 52.

The following amendment is proposed.

Adopt the following **new** 441—Chapter 26:

CHAPTER 26  
EMERGENCY MENTAL HEALTH CRISIS SERVICES SYSTEM

PREAMBLE

This chapter is promulgated to establish standards, general provisions, requirements, and procedures for the operation of emergency mental health crisis services programs. This chapter relates only to programs providing emergency mental health crisis services. It is not intended to regulate other mental health service programs or other emergency service programs.

Emergency mental health crisis services shall be available to persons who are experiencing a mental health crisis or are in a situation likely to turn into a mental health crisis if supportive services are not provided.

The department shall issue contracts for emergency mental health crisis services programs. The department will determine contract specifications. Funding for emergency mental health crisis services is contingent on appropriations from the legislature.

**441—26.1(225C) Definitions.**

“*Accreditation*” means the approval granted by the department that indicates that an emergency mental health crisis services program meets the requirements of 441—Chapter 24.

“*Commission*” means the mental health, mental retardation, developmental disabilities, and brain injury commission established by Iowa Code section 225C.5.

“*Community mental health center*” means an organization operated under the authority of Iowa Code chapter 230A and accredited by the department under 441—Chapter 24.

“*Consumer*” means a person receiving emergency mental health crisis services from a program.

“*Coordinated emergency mental health crisis services plan*” means a plan prepared by an emergency mental health crisis services program to ensure availability of emergency mental health crisis services that are appropriate to the specific conditions and needs of the people in the geographic area in which the program operates.

“*Crisis care coordination*” means a service coordination and referral program component, including written working agreements with inpatient behavioral health units, to ensure that consumers are referred to mental health services and other supports necessary to maintain community-based living capacity after inpatient care.

“*Crisis care coordinator*” means a person who is designated to provide crisis care coordination for a consumer.

“*Crisis intervention plan*” means the same as defined in 441—24.1(225C).

“*Department*” means the Iowa department of human services.

“*Emergency mental health crisis services*” means a coordinated array of crisis services for providing a response to assist an individual adult or child who is experiencing a mental health crisis or who is in a situation that is reasonably likely to cause the individual to have a mental health crisis unless assistance is provided.

“*Guardian*” means the person or agency appointed by a court order to act as the guardian of a person or, in the case of a minor, means the legal guardian responsible for the minor.

“*Mental disorder*” means a condition listed in the Diagnostic and Statistical Manual of Mental Disorders IV-R (4th edition), published by the American Psychiatric Association, or in the International Classification of Diseases, 9th edition, Clinical Modification, ICD-9-CM, Chapter 5, “Mental Disorders,” published by the U.S. Department of Health and Human Services.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

*“Mobile crisis service”* means a service that provides immediate, on-site, in-person mental health services for persons experiencing a mental health crisis. Mobile teams can operate out of a wide variety of locations, either centralized or distributed throughout the community, and can serve persons unknown to the mental health services system. Teams may specialize in services to adults or children exclusively, but often become involved in treating the entire family or other support system.

*“Program”* means an emergency mental health crisis services program as set forth in this chapter and accredited under 441—Chapter 24.

*“Response plan”* means the plan of action developed by program staff to assist a person experiencing a mental health crisis.

*“Telephone crisis services”* means a telephone response service that provides callers with immediate information, counseling, support, and referral and screens for situations that require an in-person response.

*“Walk-in crisis services”* means emergency mental health crisis services provided at one or more locations where a person can receive information and immediate, face-to-face counseling, support, and referral.

**441—26.2(225C) Applicability.** This chapter applies to an entity awarded a contract for provision of an emergency mental health crisis services program and to any subcontractors of the entity.

**26.2(1)** Entities that are eligible to apply for a contract include:

- a. A community mental health center,
- b. A provider approved in a waiver adopted by the commission to provide services to a county in lieu of a community mental health center,
- c. A unit of the department or other state agency,
- d. A county, or
- e. Any other public or private provider that meets the accreditation of approval standards for an emergency mental health crisis services provider.

**26.2(2)** If any service is provided under contract by another provider, the program shall maintain a copy of the contract.

**441—26.3(225C) Program operations.**

**26.3(1) Scope and availability.** A program shall provide emergency mental health crisis services 24 hours a day and 7 days a week to all persons in the geographic area served by the program who are experiencing a crisis and are in need of crisis mental health services, including children, adolescents, adults and older persons, regardless of income level or diagnosis.

**26.3(2) Administrative requirements.** The program shall:

- a. Be governed by an organizational chart and policies and procedures that clearly identify the staff persons responsible for the emergency service.
- b. Comply with accreditation standards in 441—Chapter 24.
- c. Work effectively with 911 and other local emergency services, including law enforcement and the courts.

**26.3(3) Service delivery.** The program shall:

- a. Coordinate crisis services across the behavioral health services continuum.
- b. Provide counseling, consultation and information and referral services both to individuals in distress (children, adults, and older adults) and to people calling on behalf of those individuals.
- c. Provide face-to-face contact for crisis intervention. Face-to-face contact for crisis intervention may be provided as a function of the organization’s outpatient program during regular hours of outpatient program operation, with an on-call system for face-to-face contact for crisis intervention at all other times.
- d. Provide immediate evaluation and mental health care to persons experiencing a mental health crisis.
- e. Provide telephone follow-up on mobile mental health crisis services.
- f. Provide recovery-oriented, person-centered services.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

*g.* Provide transport for treatment directly or arrange for the safe and considerate emergency transport of individuals in crisis.

**441—26.4(225C) Plan for coordination of services.** Each emergency mental health crisis services program shall prepare a written coordinated emergency mental health crisis services plan for providing coordinated emergency mental health crisis services within the counties the program serves. The written plan shall be submitted to the department for review and approval when the program contracts with the department and shall be updated annually thereafter.

**26.4(1)** The coordinated emergency mental health crisis services plan shall include a description of all of the following:

*a.* The nature and extent of the emergency mental health crisis services needs in the counties served.

*b.* The service area's overall system of care for people with mental health problems.

*c.* The services the program offers.

*d.* How the services to be offered by the program have been adapted to address the specific strengths and needs of the service area's residents.

*e.* How individuals, families, and other providers and agencies can obtain program services.

*f.* Criteria for selecting and identifying consumers who present a high risk for having a mental health crisis.

*g.* The criteria and priorities the program applies in making decisions during the assessment and response stages.

*h.* A process for developing, maintaining and implementing individualized crisis intervention plans on a consumer's behalf.

*i.* The specific responsibilities, if any, which other mental health providers in the counties served will have in providing emergency mental health crisis services.

*j.* The procedures for communicating with the central point of coordination designated for the county where the consumer resides, when central point of coordination involvement is necessary to coordinate:

(1) Service referrals, or

(2) Assistance in making the transition from one service to one or more services.

*k.* The process to be used to:

(1) Ensure rapid communication between the program and the other providers and agencies, and

(2) Address issues around confidentiality and exchange of information.

*l.* Any formal or informal agreements that have been made with other providers and agencies to receive or provide backup coverage.

*m.* Any role the program may play in situations in which emergency commitment procedures are required.

*n.* The agreements that the program has made with law enforcement agencies, hospital emergency rooms, or a mental health institute, including any written memoranda of understanding.

**26.4(2)** If an agreement or memorandum of understanding is used for psychiatric hospitalization, the coordinated emergency mental health crisis services plan shall:

*a.* Outline the role program staff will have in responding to calls in which a person may be in need of hospitalization, including provision of on-site and telephone assistance.

*b.* Describe the role staff will have in screening persons in crisis situations to determine the need for hospitalization.

*c.* Provide a process for including the emergency mental health crisis services program in planning to support persons who:

(1) Are being discharged from an inpatient stay; or

(2) Will be living in the community under an involuntary commitment.

**26.4(3)** If a program provides emergency services in conjunction with substance abuse treatment services, child protective services or any other emergency services, the coordinated emergency mental health crisis services plan shall describe how the services are coordinated and delivered.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**441—26.5(225C) Required services.** A program shall provide directly or contract for the delivery of telephone crisis services, mobile crisis services, walk-in crisis services, and crisis care coordination services as described in this rule.

**26.5(1) Telephone crisis service.** A program shall operate a crisis telephone hotline either directly or through a contract between the program and another provider. The service shall:

- a. Be available 24 hours a day and 7 days a week.
- b. Be directed at achieving one or more of the following outcomes:
  - (1) Immediate relief of distress in pre-crisis and crisis situations.
  - (2) Reduction of the risk of escalation of a crisis.
  - (3) Arrangements for emergency on-site responses when necessary to protect persons in a mental health crisis.
  - (4) Referral of callers to appropriate services when other intervention or additional intervention is required.

**26.5(2) Mobile crisis service.** The program shall provide a mobile emergency mental health crisis service that provides on-site, in-person interventions for persons experiencing a mental health crisis. The service shall be available 24 hours a day, 7 days a week, and shall have the capacity to intervene quickly, day or night.

**26.5(3) Walk-in crisis service.** The program shall provide a walk-in service that provides unscheduled face-to-face support and intervention at an identified location or locations that is available for at least eight hours a day, five days a week. The service may be provided directly by the program or through a contract with another mental health provider.

**26.5(4) Crisis care coordination service.** The program shall provide a defined coordination and service transition program component, including working agreements with inpatient behavioral health units. The service shall ensure that a consumer who has given consent for crisis care coordination is referred to mental health services and other supports necessary to maintain community-based living capacity, including targeted case management as defined in 441—Chapter 90. When appropriate, emergency service staff may facilitate transfer of consumers to other mental health programs. The service shall be available eight hours a day, five days a week.

**441—26.6(225C) Optional services.** Programs may offer additional services, such as peer-to-peer telephone support and crisis stabilization services, that are designed to address needs identified in the coordinated emergency mental health crisis services plan, but the additional services may not be provided in lieu of the services required in rule 441—26.5(225C).

**26.6(1) Peer-to-peer telephone support.** Peer-to-peer telephone support is a service that provides non-crisis-oriented, supportive counseling to callers.

**26.6(2) Crisis stabilization.** Crisis stabilization provides individualized, short-term, intensive, community-based treatment and support to avoid the need for inpatient hospitalization. The service is intended for persons who would benefit from close monitoring and support with activities of daily living. Crisis stabilization may be provided in the consumer's home or in a location that can be staffed 24 hours a day during the period of crisis. Services can be offered from a few hours to several days, to several weeks if needed.

**441—26.7(225C) Consumer assessment and response planning.**

**26.7(1) Eligibility for services.** To receive emergency mental health crisis services, a person shall be in a mental health crisis or be in a situation that is likely to develop into a mental health crisis if supports are not provided.

**26.7(2) Written policies.** A program shall have written policies that describe all of the following:

- a. The procedures to be followed for:
  - (1) Assessing the needs of a person who requests or is referred to the program for emergency mental health crisis services, and
  - (2) Planning and implementing an appropriate response based on the assessment.
- b. Adjustments to the general procedures that will be followed when:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- (1) A person referred for services has a sensory, cognitive, physical, or communication impairment that requires an adaptation or accommodation in conducting the assessment or delivering services; or
- (2) A person's language or form of communication is one in which staff of the program are not fluent.
  - c. The type of information to be obtained from or about a person seeking services.
  - d. Criteria for determining:
    - (1) When emergency mental health crisis services are needed, and
    - (2) What type of service should be provided.
  - e. Procedures to be followed for referral to other programs when a decision is made that a person's condition does not constitute an actual or imminent mental health crisis.
  - f. Procedures for obtaining immediate backup or a more thorough evaluation when the staff person making the initial contact requires assistance.
  - g. Procedures for:
    - (1) Coordinating referrals,
    - (2) Providing and receiving backup, and
    - (3) Exchanging information with other mental health service providers in the county, including the development of crisis intervention plans for persons who are at high risk for crisis.
  - h. Criteria for deciding when a situation requires:
    - (1) A face-to-face response,
    - (2) The use of mobile crisis services,
    - (3) Stabilization services, if available, or
    - (4) Hospitalization.
  - i. If the program dispenses medication, procedures governing the prescription and administration of medications to consumers and for monitoring the response of consumers to their medications.
  - j. Procedures for collecting and recording specific indicators of service effectiveness.

**26.7(3) Initial contact.** During an initial contact with a person who may be experiencing a mental health crisis, staff of the program shall gather sufficient information, as appropriate and possible given the nature of the contact, to assess the person's need for emergency mental health crisis services and to prepare and implement a response plan. This information shall include, but not be limited to, any available information regarding:

- a. The person's location, if the contact is by telephone.
- b. The circumstances resulting in the contact with the program, including:
  - (1) Any events that may have led up to the contact,
  - (2) The apparent severity of the immediate problem, and
  - (3) The potential for harm to self or others.
- c. The primary concerns of the person in crisis or a person making the initial contact on behalf of the person in crisis.
- d. The person's mental status and physical condition, including:
  - (1) Any over-the-counter, prescription or illicit drugs the person may have taken,
  - (2) Prior incidents of drug reaction or suicidal behavior, and
  - (3) Any history of the person's abuse of alcohol or other drugs.
- e. If the person is threatening to harm self or others:
  - (1) The specificity and apparent lethality of the threat, and
  - (2) The availability of the means to carry out the threat, including the person's access to any weapon or other object that may be used for doing harm.
- f. If the person appears to have been using alcohol or over-the-counter, prescription or illicit drugs, the nature and amount of the substance ingested.
- g. The names of any people who are or who might be available to support the person, such as friends, family members, or current or past mental health service providers.

**26.7(4) Determination of need and response plan.** Based on an assessment of the information available after an initial contact, staff of the program shall determine whether the consumer is in need of emergency mental health crisis services and shall prepare and implement any necessary response.

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a. If the person is not in need of emergency mental health crisis services but could benefit from other types of assistance, staff shall, if possible, refer the person to other appropriate service providers in the community.

b. If the person is in need of emergency mental health crisis services, staff of the program shall:

(1) Prepare and initiate a response plan consisting of services and referrals necessary to reduce or eliminate the person's immediate distress, and

(2) De-escalate the present crisis.

c. The response plan shall be approved by a qualified mental health professional either:

(1) Before services are delivered, or

(2) Within five days after delivery of services, not including Saturdays, Sundays, or legal holidays.

**26.7(5) Crisis care coordination.** After a response plan has been implemented and the consumer has returned to a more stable level of functioning, program staff shall determine what follow-up contacts by program staff or referrals to other providers in the community are necessary to help the consumer maintain stable functioning.

a. If ongoing support is needed, the program shall provide coordination and referral with supports necessary for successful connection to services, unless the consumer does not consent to further services.

b. Follow-up and referral services may include but are not limited to the following:

(1) Contacting the consumer's ongoing mental health providers or case manager, if any, to coordinate information and services related to the consumer's care and support.

(2) If a consumer appears to have service needs relative to substance abuse, developmental disability, or other co-occurring disorders, contacting a service provider in the area of related need in order to coordinate information and service delivery for the consumer.

(3) Conferring with family members or other persons providing support for the consumer to determine if the response and follow-up are meeting the consumer's needs.

(4) Developing a new crisis intervention plan or revising an existing plan to better meet the consumer's needs based on what has been learned during the mental health crisis.

**26.7(6) Crisis intervention plan.** The program shall prepare a written crisis intervention plan for any consumer who is found to be at high risk for a recurrent mental health crisis under the criteria established in the coordinated community services plan.

a. A consumer's crisis intervention plan shall identify, to the extent possible:

(1) Potential personal psychiatric, environmental, and medical emergencies;

(2) Life situations that are likely to be problematic;

(3) Strategies and natural supports to enable the consumer to self-manage, alleviate, or end the crisis;

(4) How the consumer can access emergency services that may be needed.

b. A consumer's crisis intervention plan shall be developed in cooperation with the consumer and with the consumer's parents or guardian if required to give consent for treatment. Unless the immediate need of a crisis intervention plan to enhance the safety of the consumer does not allow time for consultation, the plan shall be written in consultation with mental health providers serving the consumer.

c. Whenever possible, the crisis intervention plan shall include all of the following:

(1) The name, address, and telephone number of the crisis care coordinator or case manager, if any, coordinating services for the consumer.

(2) The address and telephone number where the consumer currently lives, and the names of other persons with whom the consumer is living.

(3) The usual work, school, or activity schedule followed by the consumer.

(4) A description of the consumer's strengths and needs and of the important people or things in the consumer's life that may help staff to develop a rapport with the consumer in a crisis and to fashion an appropriate response.

(5) The names and addresses of the consumer's medical and mental health service providers.

(6) Regularly updated information about previous emergency mental health crisis services provided to the consumer.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(7) The diagnosis that is being used to guide treatment for the consumer, a list of the medications the consumer is receiving, and the name of the physician prescribing them.

(8) A description of the strategies that program staff should consider in helping to relieve the consumer's distress, de-escalate inappropriate behaviors, or respond to situations in which the consumer or others are placed at risk.

(9) A list of people who may be able to assist the consumer in the event of a mental health crisis.

(10) Any additional information deemed necessary by the provider.

*d.* The crisis intervention plan shall be reviewed and approved by a licensed mental health professional.

*e.* Program staff shall use a method for storing active crisis intervention plans that allows ready access in the event of a crisis arising, but that also protects the confidentiality of the consumer for whom a plan has been developed.

*f.* A crisis intervention plan shall be reviewed and modified as necessary, given the needs of the consumer.

**26.7(7) Service notes.** Program staff shall prepare service notes as soon as possible following a consumer contact. The service notes shall:

*a.* Identify the consumer seeking a referral for emergency mental health crisis services;

*b.* Describe the crisis; and

*c.* Identify or describe all of the following, if applicable:

(1) The time, place, and nature of the contact.

(2) The person initiating the contact.

(3) The staff person or persons involved and any other persons present or involved.

(4) The assessment of the consumer's need for emergency mental health crisis services.

(5) The response plan developed based on the assessment.

(6) The emergency mental health crisis services provided to the consumer and the outcomes achieved.

(7) Any provider, agency, or individual to whom a referral was made on behalf of the consumer experiencing the crisis.

(8) Follow-up services provided on behalf of the consumer.

(9) If there was a crisis intervention plan on file for the consumer, any proposed amendments to the plan in light of the results of the response to the request for services.

(10) If it was determined that the consumer was not in need of emergency mental health crisis services, any suggestions or referrals provided on behalf of the consumer.

(11) Any additional information deemed necessary by the provider.

**441—26.8(225C) Consumer records.** The program administrator is responsible for the maintenance and security of all consumer-related records.

**26.8(1) Content.** A program shall maintain accurate records of services provided to consumers, including:

*a.* Service notes prepared,

*b.* Crisis intervention plans, and

*c.* Data tracking forms as required by the department.

**26.8(2) Maintenance.** A program shall maintain consumer records:

*a.* For seven years for adult consumers.

*b.* Until three years after the consumer reaches the age of majority, for consumers who are younger than 18 years old.

**26.8(3) Confidentiality.** Consumer records shall be kept confidential as required under state and federal law.

**26.8(4) Disposition upon program closing.** An organization providing emergency mental health crisis services under contract with a county or the department shall establish a written plan for maintenance and disposition of consumer records in the event that the program loses its accreditation or otherwise terminates operations. The plan shall include a written agreement with the county or

## HUMAN SERVICES DEPARTMENT[441](cont'd)

department to have the county or department act as the repository and custodian of the consumer records for the required retention period or until the records have been transferred to a new program.

**441—26.9(225C) Consumer rights.**

**26.9(1) Policies and procedures.** All programs shall comply with state law on the rights of consumers. Programs shall be delivered in a culturally and linguistically competent manner.

**26.9(2) Conflict resolution.**

a. A program shall establish a process for informal resolution of concerns raised by consumers, family members, and other agencies involved in meeting the needs of consumers.

b. A program shall establish a grievance resolution system.

c. A program shall inform consumers and their parents or guardians, where the consent of the parent or guardian is required for services, that they have the option of using either formal or informal procedures for resolving complaints and disagreements.

**441—26.10(225C) Accreditation.**

**26.10(1)** An organization, such as a private agency contracting with a county or counties to operate an emergency mental health crisis services program or a community mental health center or multiple community mental health centers, seeking to have an emergency mental health crisis services program accredited or reaccredited under 441—Chapter 24 shall submit a written application to the department. The application shall contain information and supporting documents required by the department.

**26.10(2)** Before application for reaccreditation, a program shall review its coordinated emergency mental health crisis services plan and adjust the plan based on information received through:

a. Surveys under 441—Chapter 24,

b. Consultation with other participants in the plan's development, and

c. Comments and suggestions received from other resources, including staff, consumers, family members, other service providers and interested members of the public.

**441—26.11(225C) Waivers.** The department may grant a waiver of any requirement in this chapter when the department determines that granting the waiver would not diminish the effectiveness of the services provided by the program, violate the purposes of the program, or adversely affect consumers' health, safety or welfare. The department may not grant a waiver of consumer confidentiality or rights under this chapter or under other administrative rules.

**26.11(1) Applicable circumstances.** A program may request a waiver when one of the following applies:

a. Strict enforcement of a requirement would result in unreasonable hardship on the provider or on a consumer.

b. An alternative to a rule, including a new concept, method, procedure or technique, new equipment, new personnel qualifications or the implementation of a pilot project is in the interests of better consumer care or program management.

**26.11(2) Application.** An application for a waiver under this rule shall be made in writing to the Division of Mental Health and Disability Services, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, and shall specify all of the following:

a. The requirement to be waived.

b. The period for which the waiver is requested.

c. Any alternative action which the program proposes.

d. The reason for the request.

**26.11(3) Decision.** The department shall grant or deny each request for waiver in writing. The department may require additional information from the program before acting on the request for a waiver. The department's decision to grant or deny a waiver shall be final.

a. Notice of denial shall contain the reasons for denial. If a notice of a denial is not issued within 60 days after the receipt of a completed request, the waiver shall be automatically approved.

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- b.* The department may:
- (1) Impose any condition on the granting of a waiver that it deems necessary.
  - (2) Limit the duration of a waiver. No waiver may continue beyond the period of accreditation without a specific renewal of the waiver by the department.

These rules are intended to implement Iowa Code chapter 225C as amended by 2008 Iowa Acts, Senate File 2425, section 52.

**ARC 7265B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 225C.6(1), the Department of Human Services proposes to adopt Chapter 27, "Mental Health Services for Children and Youth," Iowa Administrative Code.

The proposed chapter is the initial step in meeting the Department's mandate to establish a comprehensive community-based mental health services system for children and youth. Legislation defines "children" as persons under 18 years of age and "youth" as persons 18 through 21 years of age who had a serious emotional disturbance before reaching age 18.

Legislation requires the Department to establish a system that allows children and youth with mental health disorders to have access to mental health services in the least restrictive setting possible so that they can live with their families and remain in their communities. These rules direct the development of local community-based systems of care by establishing a lead agency at the local level that will be responsible for directly providing or coordinating the mental health services for this population in the community. The lead agency will also be responsible for developing school-based mental health collaborations with local educational entities.

The goal of the lead agencies and the local systems of care is to promote access to less restrictive, more appropriate, and less costly services in the community. Access to community-based services has the potential to:

- Decrease unnecessary involvement of children and youth with the child welfare and juvenile justice systems;
- Reduce the number of mental health commitments and placements in inpatient, residential, out-of-state, and other more costly care;
- Improve educational outcomes of children and youth; and
- Result in keeping children and youth with their families.

These rules reflect the formulation of basic administrative procedures. Other, more comprehensive policies and procedures about service delivery will be developed through provider contracts and provider accreditation processes. The system will be implemented through a competitive bidding process, and its scope will be limited to the extent of the legislative appropriation. For state fiscal year 2009, \$500,000 has been appropriated for this purpose. The Department expects to issue a request for proposals in October 2008 to begin one or more pilot projects.

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

Any interested person may make written comments on these proposed rules on or before October 29, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street,

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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](mailto:policyanalysis@dhs.state.ia.us).

These rules are intended to implement Iowa Code chapter 225C as amended by 2008 Iowa Acts, Senate File 2425, sections 53 to 56.

The following amendment is proposed.

Adopt the following **new** 441—Chapter 27:

CHAPTER 27  
MENTAL HEALTH SERVICES FOR CHILDREN AND YOUTH

PREAMBLE

The purpose of this chapter is to establish a comprehensive community-based mental health services system for children and youth. The system is intended to improve access to mental health treatment, services, and other supports in the least restrictive setting possible so that children and youth who have serious emotional disturbances or other qualifying mental health disorders can live with their families and remain in their communities.

**441—27.1(225C) Definitions.**

“*Catchment area*” means the designated service area of the local lead agency as identified in its contract with the department.

“*Child*” means a person under 18 years of age.

“*Commission*” means the mental health, mental retardation, developmental disabilities, and brain injury commission established by Iowa Code section 225C.5.

“*Comprehensive community-based services*” means services that are provided in a variety of community settings, including home, school, child care facilities, and other typical environments for children, youth, and families.

“*Comprehensive mental health assessment*” means a comprehensive assessment of a child or youth to identify functional skills, strengths, and needed services. Mental health assessments are delivered as established through provider accreditation standards for evaluation services under 441—Chapter 24.

“*Culturally competent*” means that an organization:

1. Has a defined set of values and principles and demonstrates behaviors, attitudes, policies, and structures that enable the organization to work effectively cross-culturally;
2. Has the capacity to value diversity, conduct self-assessment, manage the dynamics of difference, acquire and institutionalize cultural knowledge, and adapt to diversity and the cultural contexts of the communities the organization serves;
3. Systematically involves consumers, key stakeholders, and communities in all aspects of policy making, administration, practice, and service delivery.

“*Department*” means the Iowa department of human services.

“*Division*” means the division of mental health and disability services within the department.

“*Functional impairment*” means difficulties that (1) substantially interfere with or limit a person from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills; and (2) substantially interfere with or limit the person’s role or functioning in family, school, or community activities. “Functional impairment” includes difficulties of episodic, recurrent, and continuous duration. “Functional impairment” does not include difficulties resulting from temporary and expected responses to stressful events in a person’s environment.

“*Intensive care coordination*” means the process by which mental health services are coordinated with the services of other involved agencies and with informal supports. The service model for intensive care coordination is a combined brokerage and direct service model of care.

“*Local lead agency*” means the agency designated through a contract with the department to have responsibility for the implementation of a comprehensive community-based mental health service system

## HUMAN SERVICES DEPARTMENT[441](cont'd)

at the local or regional level through the development of local systems of care for children and youth with mental health disorders.

“*Mental health disorder*” means a diagnosable Axis I mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within the Diagnostic and Statistical Manual of Mental Disorders IV-R (4th edition), published by the American Psychiatric Association.

“*Other qualifying mental health disorder*” means a mental health crisis or any diagnosable mental health disorder that is likely to lead to a mental health crisis unless there is an intervention.

“*Serious emotional disturbance*” means a diagnosable mental, behavioral, or emotional disorder that (1) is of sufficient duration to meet diagnostic criteria specified within the Diagnostic and Statistical Manual of Mental Disorders IV-R (4th edition), published by the American Psychiatric Association, and (2) results in functional impairment. “Serious emotional disturbance” does not include substance use and developmental disorders unless such disorders co-occur with such a diagnosable mental, behavioral, or emotional disorder.

“*System of care*” means a coordinated network of community-based supports and services that are organized to meet the challenges of children and youth with serious emotional disturbance and their families.

“*Youth*” means a person who is 18 years of age or older but under 22 years of age and who met the criteria for having a serious emotional disturbance before reaching the age of 18.

**441—27.2(225C) Administration.** The department of human services is the lead agency responsible for the development, implementation, oversight, and management of the mental health services system for children and youth. The mental health and disability services division shall fulfill the department’s responsibilities.

**27.2(1) Delegation of duties.** The division shall develop comprehensive community-based systems of care for children and youth through entering into contracts with eligible applicants to establish a local lead agency.

- a. A local lead agency may be:
  - (1) A community mental health center under Iowa Code chapter 230A, or
  - (2) A provider approved in a waiver adopted by the commission to provide services to a county in lieu of a community mental health center that is accredited through 441—Chapter 24 to provide outpatient services, emergency services, and evaluation services.
  - (3) A local service partner.
- b. A local lead agency must be accredited through 441—Chapter 24 for outpatient services, emergency services, and evaluation services.
- c. The lead agency’s catchment area may be one county or a group of contiguous counties served by one or more community mental health centers or county-designated providers approved in waivers adopted by the commission to provide services to a county in lieu of a community mental health center.
- d. Lead agencies shall demonstrate collaboration with existing local service providers, county central point of coordination administrators, and other stakeholders in the children’s mental health system to:

- (1) Reduce duplication of services,
- (2) Increase coordination among service providers, and
- (3) Improve access to comprehensive community-based services for children, youth, and families.

**27.2(2) Responsibilities.** The local lead agency shall directly provide, contract for, or coordinate mental health treatment, services, and supports in the community for children and youth among the targeted population groups and their families. Local systems of care shall demonstrate that:

- a. Children and youth are served in the least restrictive, most appropriate manner.
- b. Within the limits of appropriations for the system of care, children and youth are not inappropriately denied necessary mental health services.
- c. Mental health services for children and youth are coordinated with other community services for children and youth in the fields of:
  - (1) Child welfare;

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- (2) Court services and juvenile justice;
- (3) Education, including public and nonpublic schools, area education agencies, and any other educational setting; and
- (4) Health care, including inpatient and residential care.
  - d. School-based mental health collaborations are developed.
  - e. Children and youth receive individualized service planning through a strengths-based process in which parents and families are full participants.
  - f. Services for children and youth with co-occurring disorders are provided without regard to which diagnosis is primary.
  - g. Parents of children and guardians of children or youth have a primary decision-making role in the planning, provision, and coordination of services for the child or youth as well as with the policies and procedures regarding the comprehensive community-based mental health services system for children and youth.
  - h. Service access is determined by the individualized needs of each child or youth and shall comply with the standards of cultural competency as defined in this chapter.

**441—27.3(225C) Targeted population groups.** Services shall be directed toward children and youth in the following targeted population groups and their families:

- 27.3(1)** Children and youth who have or are at risk for serious emotional disturbance including:
  - a. Children and youth with serious emotional disturbance who have co-occurring substance abuse, developmental disability, or other special health care needs.
  - b. Children and youth with serious emotional disturbance who are at risk for placement in, who are involved with, or who are returning to the community from other more restrictive settings, such as psychiatric hospitals, substance abuse treatment facilities, foster family homes, foster group care, emergency shelters, psychiatric medical institutions for children, mental health institutes, or detention centers.
- 27.3(2)** Children and youth who have other qualifying mental health disorders.
- 27.3(3)** Children and youth who have mental health disorders.
- 27.3(4)** Children and youth whose mental or emotional condition, whether chronic or acute, represents a danger to themselves, their families, school students or staff, or the community.

**441—27.4(225C) Determination of services.** Services for children and youth shall be determined by:

- 27.4(1)** Comprehensive mental health assessments of children and youth that are designed to identify functional skills, strengths, and services needed; and
- 27.4(2)** The development of an individualized service plan comprised of services and supports that are clinically indicated based on the information gathered through the mental health assessment process.

**441—27.5(225C) Requirements for local lead agencies.**

- 27.5(1) Service responsibilities.** Each local lead agency shall be responsible for:
  - a. Implementation of a comprehensive community-based mental health services system for children and youth within the catchment area through the development of local systems of care.
  - b. Leadership and coordination of the local system of care through creating a shared community vision, set of values, and outcomes among participants in the collaboration that is monitored through community governance structures.
  - c. Partnership with existing resources, such as parents, families, advocacy groups, local providers and other stakeholders in children's mental health services, to meet the service needs of children and youth with mental health disorders and their families.
  - d. Direct provision of, coordination of, or contracts for mental health services to be provided in the community for children and youth within the targeted population groups.
  - e. Coordination of other community services and supports to meet the needs of children and youth within the targeted population groups.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

*f.* Directly providing intensive care coordination functions, which include the facilitation of the individualized service planning process, or coordinating those functions with targeted case management or other case managers involved with the child or youth to ensure nonduplication of services and to maximize resources.

*g.* Administration of Form 470-4592, SED Criteria Checklist, a standardized functional assessment tool, to identify children and youth with serious emotional disturbance.

*h.* Provision of comprehensive mental health assessments of children and youth that are designed to identify functional skills, strengths, and needed services and result in the development of an individualized service plan.

*i.* Direct provision of outpatient psychotherapy and counseling services, emergency services, and evaluation services as defined in 441—Chapter 24.

*j.* Direct provision or coordination of remedial services, children's mental health waiver services, and respite services.

*k.* Coordination of mental health services with the services of other involved agencies, such as child welfare, juvenile justice, court services, and inpatient facilities.

*l.* Provision of intensive care coordination with the mental health institutes, other inpatient hospitals, psychiatric medical institutions for children, foster group homes, the child's or youth's family, local schools, and other involved services or agencies when a child or youth needs more extensive care.

Staff from the lead agency shall:

(1) Continue to provide intensive care coordination during any out-of-home placement;

(2) Serve as a liaison among the family, school, and other local service providers; and

(3) Facilitate follow-up services in the community upon discharge.

*m.* Collaboration with the division about the individualized service needs of children and youth in out-of-state residential treatment or other group care with the goal of addressing those service needs in Iowa.

*n.* Implementation and management of school-based mental health collaborations that focus on:

(1) Early identification and assessment of children and youth with mental health disorders;

(2) Facilitation of access to and provision of treatment for identified children and youth; and

(3) Provision of training, consultation, and technical assistance to schools, educational staff, and parents regarding children's mental health.

*o.* Provision of information and referral to families and others to address other service needs and promotion of communication with parents, guardians, and other caregivers.

*p.* Promotion of public awareness and provision of community education about children's mental health needs, issues, and resources.

**27.5(2) Reporting responsibilities.** Each local lead agency shall:

*a.* Have the capacity to collect, aggregate, and report data on the children and youth served as required by contract.

*b.* Have the capacity to bill Medicaid and private insurers.

*c.* Maintain and report data on children who are unable to obtain a needed community service. It is the agency's obligation to attempt all possible means to make that service available and to report the child's unmet need to the division.

**27.5(3) Funding.**

*a.* The local lead agency shall use the funding issued under this chapter to:

(1) Fulfill the duties and responsibilities established in this chapter;

(2) Address service gaps;

(3) Support services to children and youth who are uninsured or underinsured; and

(4) Otherwise fund necessary and appropriate community-based services and activities that are not funded through third-party reimbursement mechanisms.

*b.* Funds issued under this chapter may be used:

(1) For prevention of residential or institutional treatment or hospitalization;

(2) For necessary community treatment, services, and support following a residential or institutional placement or a hospitalization; and

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) For continued intensive care coordination throughout a residential or institutional service or hospitalization.

c. Funding issued under this chapter shall not be used to:

- (1) Supplant current activities or existing responsibilities; or
- (2) Provide residential or institutional services for children or youth, including but not limited to shelter care, detention, out-of-state residential placements, group homes, psychiatric medical institutions for children, voluntary or involuntary hospitalization, or care in a state facility.

These rules are intended to implement Iowa Code chapter 225C as amended by 2008 Iowa Acts, Senate File 2425, sections 53 to 56.

**ARC 7269B****HUMAN SERVICES DEPARTMENT[441]****Notice of Termination**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services terminates the rule making initiated by the Notice of Intended Action amending Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Iowa Administrative Code, which was published in the Iowa Administrative Bulletin on March 26, 2008, as **ARC 6669B**.

The proposed amendments affect the provider standards for home- and community-based habilitation services and for the seven home- and community-based services (HCBS) waivers (ill and handicapped, elderly, AIDS/HIV, mental retardation, brain injury, physical disability, and children's mental health). The Centers for Medicare and Medicaid Services (CMS) has approved amendments to Iowa's waivers to require a process for incident reporting and policies on restraints, restrictions, and behavioral interventions for all HCBS programs.

The Department received several comments on the Notice of Intended Action and needs more time to work out the issues presented and coordinate with other developments around standards for incident reporting and restraints. These amendments will be renoticed at a later date.

**ARC 7257B****IOWA FINANCE AUTHORITY[265]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.181 and Iowa Code Supplement section 16.5(1)"r," the Iowa Finance Authority hereby gives Notice of Intended Action to amend Chapter 19, "State Housing Trust Fund," Iowa Administrative Code.

The purpose of this amendment is to adopt an amended State Housing Trust Fund Allocation Plan for the project-based housing program.

Chapter 19 does not provide for waivers. Persons seeking waivers of a rule contained in Chapter 19 must petition the Authority for a waiver in the manner set forth under Chapter 18.

The Authority will receive written comments on the proposed amendment until 4:30 p.m. on October 28, 2008. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to Mark Thompson at [mark.thompson@iowa.gov](mailto:mark.thompson@iowa.gov). Persons who wish to comment orally should contact Mark Thompson at (515)725-4937.

## IOWA FINANCE AUTHORITY[265](cont'd)

This amendment is intended to implement Iowa Code Supplement section 16.5(1)“r” and Iowa Code section 16.181.

The following amendment is proposed.

Amend rule 265—19.1(16) as follows:

**265—19.1(16) Trust fund allocation plans.** The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Local Housing Trust Fund Program dated May 2008 shall be the allocation plan for the award, pursuant to the local housing trust fund program, of funds held within the state housing trust fund established in Iowa Code section 16.181. The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund ~~2008~~ Allocation Plan for the Project-Based Housing Program dated September 2008 shall be the allocation plan for the distribution, pursuant to the project-based housing program, of funds held within the state housing trust fund. The trust fund allocation plans for the local housing trust fund program and the project-based housing program include the plans, applications, and application instructions. The trust fund allocation plans for the local housing trust fund program and the project-based housing program are incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

**ARC 7254B**

**IOWA FINANCE AUTHORITY[265]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 17A.3(1)“b” and Iowa Code Supplement sections 16.5(1)“r” and 16.40, the Iowa Finance Authority proposes to adopt new Chapter 29, “Jump-Start Housing Assistance Program,” Iowa Administrative Code.

The purpose of these rules is to implement a program of housing assistance for persons affected by the natural disasters that occurred in Iowa in 2008.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers.

The Authority will receive written comments on the proposed rules until 4:30 p.m. on October 28, 2008. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to [mark.thompson@iowa.gov](mailto:mark.thompson@iowa.gov).

The Authority anticipates that it may make changes to the proposed rules based on comments received from the public.

On September 18, 2008, the Authority adopted these rules emergency, pursuant to Iowa Code section 17A.4(2), to be effective immediately upon filing with the Administrative Rules Coordinator. The Adopted and Filed Emergency rules are published herein as **ARC 7253B**. The content of that submission is incorporated by reference.

These rules are intended to implement Iowa Code Supplement sections 16.5(1)“r” and 16.40.

**ARC 7262B****IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]****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 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby gives Notice of Intended Action to amend Chapter 6, "Covered Wages," and Chapter 12, "Calculation of Monthly Retirement Benefits," Iowa Administrative Code.

IPERS proposes the following amendments: an amendment to the definition of covered wages, relating to 2008 legislation, that removes bonuses and allowances from the definition; an amendment providing that even if no longer included in the definition of covered wages, noncovered wage payments such as bonuses and allowances will be counted toward the retired reemployed member earnings limit; and an amendment providing retired reemployed members with more flexibility in choosing the amount of death benefits they wish to receive with respect to the reemployment period.

Waiver provisions are not included in the proposed amendments.

Any person may make written suggestions or comments on the proposed amendments on or before October 28, 2008. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-3081. Comments may also be submitted by fax to (515)281-0045 or by E-mail to [adminrule@ipers.org](mailto:adminrule@ipers.org).

A public hearing will be held on October 28, 2008, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Persons who attend the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

These amendments were prepared after consultation with IPERS administration, legal and benefits divisions, and various IPERS employers.

These amendments are intended to implement Iowa Code Supplement section 97B.4 as amended by 2008 Iowa Acts, Senate File 2424, and Iowa Code section 97B.15.

The following amendments are proposed.

ITEM 1. Renumber subrules **6.3(7)** to **6.3(10)** as **6.3(8)** to **6.3(11)**.

ITEM 2. Adopt the following **new** subrule 6.3(7):

**6.3(7) Covered wage treatment for supplemental payments.**

*a.* Payments excluded from covered wages as bonuses include the following:

- (1) Recruitment payments.
- (2) Retention payments.
- (3) Payments to members who achieve improvements in their employer's financial status or performance ratings.
- (4) Employee performance incentive payments.
- (5) Extraordinary job performance payments.
- (6) Payments for the possession, attainment, or maintenance of special skills or professional certifications (does not apply to advancements in a member's placement in wage or salary schedule, or placement in a higher tier wage or salary schedule).
- (7) Payments to members made in lieu of merit increases because the members' wage or salary scales are capped.

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

(8) Payments similar in substance to those enumerated above without regard to the payments' titles, tag lines, labels or classifications by employers.

*b.* Payments included in covered wages that are not to be treated as bonuses include the following:

(1) Payments authorized by statute and used to increase the general level of teacher pay, except as otherwise provided in this subrule (for example, when such moneys are used to pay retention bonuses).

(2) Payments for which additional, or new and different, job duties are required in order to receive the payment.

(3) Payments for employment longevity.

*c.* Payments that are otherwise to be treated as covered wages under paragraph "b" shall not be covered if IPERS determines that the payments are made for paragraph "a," subparagraphs (1) to (8), of this subrule or other subrules, including, but not limited to, recruitment or retention bonuses, retirement incentive and severance payments, reimbursements of business expenses, and payment of allowances.

*d.* IPERS shall have the final authority to determine if supplemental payments not described in paragraphs "a," "b" and "c" of this subrule should be treated as excluded bonus payments or covered wages. In making its determination, IPERS may consider, but is not limited to, such factors as the supplemental payments' similarity to payments described in paragraphs "a," "b" and "c" of this subrule, whether such payments are discretionary with the employer, and whether, on the one hand, the payments are regular and periodic over the working careers of a broad group of individuals or, on the other hand, are short-term, irregular, or ad hoc payments whose primary effect is to spike certain members' final average salaries.

ITEM 3. Rescind subrule 6.3(13) and adopt the following **new** subrule in lieu thereof:

**6.3(13)** *Employer payments treated as remuneration counted against the reemployment earnings limit.* All taxable or nontaxable compensation, regardless of the title, tag line, label, or classification attributed to that compensation paid by IPERS-covered employers to retired reemployed IPERS members, shall be considered remuneration when determining reemployment earnings limits and reductions as set forth under Iowa Code section 97B.48A and rule 495—12.8(97B). This rule shall apply whether the compensation is paid pursuant to individual contracts or otherwise, and regardless of whether it is considered covered or noncovered compensation under Iowa Code section 97B.1A(26) and the administrative rules thereunder, except for:

*a.* Contributions to health insurance plans and programs, and

*b.* Reimbursements of actual work-related expenses required by the retired reemployed members' jobs.

ITEM 4. Amend paragraph **12.8(4)“e”** as follows:

*e.* If a member previously elected IPERS Option 1, is eligible for an increase in the Option 1 monthly benefits, and elects to receive the increase in the member's monthly benefits, the member's Option 1 death benefit shall also be increased if the investment is at least \$1,000. The maximum amount of the increase shall be at least the same percentage of the maximum death benefit permitted with respect to the reemployment as the percentage of the maximum death benefit elected at the member's original retirement equal to the member's investment (reemployment contributions and interest). In determining the increase in Option 1 death benefits, IPERS shall round up to the nearest \$1,000. For example, if a member's investment for a period of reemployment is \$1,900 and the member elected at the member's original retirement to receive 50 percent of the Option 1 maximum death benefit, \$2,900, the maximum death benefit attributable to the reemployment shall be \$1,000 (50 percent times \$1,900, \$3,000 (\$2,900 rounded up to the nearest \$1,000). In the example above, the member may choose a death benefit increase of \$1,000, or \$2,000, or \$3,000, but must choose at least the \$1,000 increase. Notwithstanding the foregoing, if the member's investment for the period of reemployment is less than \$1,000, the benefit formula for a member who originally elected new IPERS Option 1 shall be calculated under IPERS Option 3.

**ARC 7217B****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 sections 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 45, "Boat Motor Regulations," Iowa Administrative Code.

This amendment is requested by the Adams County Conservation Board to eliminate the existing rule restriction of a 300 horsepower limit for motor boats on Lake Icaria in Adams County. Many modern boats have higher horsepower ratings (greater than 300) than older manufactured boats and, as a result, the existing horsepower limit has become outdated and is restricting many of the recently manufactured boats from legal use/access to Lake Icaria.

Any person may make written comments on this proposed amendment on or before October 28, 2008. Such comments and written material should be directed to the Law Enforcement Bureau, Wallace State Office Building, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034. Persons who wish to convey their comments orally should contact Steve Dermand of the Law Enforcement Bureau at (515)281-4515.

A public hearing will be held on October 28, 2008, at 9 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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.

This amendment is intended to implement Iowa Code section 462A.3.

The following amendment is proposed.

Amend paragraph **45.4(3)"b"** as follows:

*b.* Lake Icaria, Adams County—motorboats of outboard or inboard/outdrive type ~~with power not to exceed 300 horsepower~~. Vessels must be operated at a no-wake speed when within 50 feet of another vessel which is not underway or is operating at a no-wake speed. Additional speed and distance regulations apply as established in 571—40.20(462A).

**ARC 7215B****NURSING BOARD[655]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on July 30, 2008, as **ARC 7009B**, which proposed amendments to Chapter 6, "Nursing Practice for Registered Nurses/Licensed Practical Nurses," Iowa Administrative Code.

The Notice proposed to amend Chapter 6 by adding subrules prohibiting a registered nurse (RN) and an advanced registered nurse practitioner (ARNP), with the exception of a certified registered nurse anesthetist (CRNA), from administering anesthetic agents, e.g., Propofol, Brevitol, Ketamine and Etomidate, during any operative, invasive or diagnostic procedure in any type of setting. These

## NURSING BOARD[655](cont'd)

proposed amendments set forth the exceptions and requirements which allow an RN and an ARNP to administer anesthetic agents.

The Board is terminating the rule making commenced in **ARC 7009B** because public comment provided additional information.

**ARC 7230B****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 Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 2, "Pharmacist Licenses," Iowa Administrative Code.

These amendments were approved at the July 29, 2008, regular meeting of the Board of Pharmacy.

The proposed amendments clarify requirements for reactivation of a delinquent license to practice pharmacy in Iowa and the meaning of active license status. The amendments also reorganize subrule 2.12(1) to clearly identify provisions relating to exemption from continuing education requirements for individuals engaged in health-related graduate studies and relating to application for credit for nonaccredited programs. The amendments also expand the renewal period within which continuing education credits are to be obtained and define the continuing education penalty for failure to timely complete the required continuing education.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on October 28, 2008. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@iowa.gov).

These amendments are intended to implement Iowa Code sections 147.10, 147.11, 155A.11, and 272C.2.

The following amendments are proposed.

ITEM 1. Amend subrule 2.11(2) as follows:

**2.11(2) *Delinquent license.*** If a license is not renewed before its expiration date, the license is delinquent and the licensee may not practice pharmacy in the state of Iowa until the licensee reactivates the delinquent license. Reactivation of a delinquent license shall include submission of a completed application and appropriate fees and may include requirements relating to the reactivation of an inactive license pursuant to subrule 2.13(2). A pharmacist who continues to practice pharmacy in Iowa without a current license may be subject to disciplinary sanctions pursuant to the provisions of 657—subrule 36.1(4).

ITEM 2. Amend subrule 2.12(1) as follows:

**2.12(1) *Continuing education program attendance.*** Continuing education programs that carry the seal of an American Council on Pharmaceutical Education (ACPE) approved provider will automatically qualify for continuing education credit. Program attendance is mandated in order to receive credit unless it is a correspondence course that ACPE approved.

**a. *Non-ACPE provider program.*** 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.

## PHARMACY BOARD[657](cont'd)

*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.

ITEM 3. Amend subrule 2.12(2) as follows:

**2.12(2) Continuing education unit required.** The nationally accepted measurement of continuing education is referred to as CEU (continuing education unit), and the board of pharmacy employs that measurement. Ten contact hours of approved continuing education are equivalent to one CEU. The board of pharmacy will require 3.0 CEUs each renewal period. For purposes of this rule, "renewal period" means the 27-month period commencing April 1 prior to the previous license expiration and ending June 30, the date of current license expiration. A pharmacist who fails to complete the required CEUs within the renewal period shall be required to complete one and one-half times the number of delinquent CEUs prior to reactivation of the license. CEUs that are used to satisfy the continuing education requirement for one renewal period shall not be used to satisfy the requirement for a subsequent renewal period.

ITEM 4. Amend subrule 2.13(1) as follows:

**2.13(1) Active license.** Active license status applies to a pharmacist who has submitted the renewal application and fee and has met Iowa requirements for continuing education ~~or~~. Active license status also applies to a pharmacist who has submitted the renewal application and fee and who is a resident of another state, is licensed to practice pharmacy in that state, and has met the continuing education requirements of that state. A pharmacist who meets the continuing education requirements of another state shall provide documentation on the renewal application of the pharmacist's license status in that state. An Iowa licensee actively practicing in a state that does not require continuing education for license renewal shall be required to meet Iowa continuing education requirements. A pharmacist meeting the continuing education requirements of another state must provide documentation on the renewal application of the pharmacist's license status in that state.

**ARC 7241B**

**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 Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

This amendment was approved at the July 29, 2008, regular meeting of the Board of Pharmacy.

The proposed amendment eliminates the option of maintaining the name of the distributor of the actual drug product dispensed. The pharmacy's prescription dispensing record shall include either the National Drug Code or the name of the manufacturer of the actual drug product dispensed.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on October 28, 2008. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@iowa.gov).

This amendment is intended to implement Iowa Code sections 155A.32 and 155A.35.

The following amendment is proposed.

## PHARMACY BOARD[657](cont'd)

Amend rule 657—6.8(124,155A) as follows:

**657—6.8(124,155A) Prescription processing documentation.** All prescriptions shall be dated and assigned a unique identification number that shall be recorded on the original prescription. The original prescription, whether transmitted orally, electronically, or in writing, shall be retained by the pharmacy filling the prescription. Refill documentation shall include date of refill and the initials or other unique identification of the pharmacist. The name, strength, and either the manufacturer's or distributor's name or the National Drug Code (NDC) of the actual drug product dispensed shall be maintained and be readily retrievable.

**ARC 7228B**

**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 Iowa Code section 155A.13, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 7, "Hospital Pharmacy Practice," Iowa Administrative Code.

This amendment was approved at the July 29, 2008, regular meeting of the Board of Pharmacy.

The proposed amendment authorizes the use of the InstyMeds drug dispensing system in a hospital emergency department subject to the conditions and requirements specified in this rule. The system may not be utilized if the hospital is located within 15 miles of a pharmacy that provides 24-hour outpatient pharmacy services and, except for antimicrobials, dispensing quantities shall not exceed a 72-hour supply of the prescribed drug. New subrule 7.12(6) addresses requirements for patient counseling, patient freedom of choice of pharmacy services, patient identification, prescription labeling, policies and procedures, equipment placement and security, and retrospective review of drugs dispensed utilizing the InstyMeds system.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on October 28, 2008. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@iowa.gov).

This amendment is intended to implement Iowa Code section 155A.13, subsection 4.

The following amendment is proposed.

Amend rule 657—7.12(124,126,155A) as follows:

**657—7.12(124,126,155A) Drugs dispensed to patients as a result of an emergency room visit.** In those facilities with 24-hour pharmacy services, only a pharmacist or prescribing practitioner may dispense any drugs to an outpatient, including emergency department patients. In those facilities without 24-hour pharmacy services, or in those facilities without outpatient pharmacy services or when the facility's outpatient pharmacy is closed, the following procedures shall be observed in dispensing drugs:

**7.12(1) Patients examined in emergency room.** Drugs ~~may~~ shall be dispensed only to patients who have been examined in the emergency room.

**7.12(2) Accountability.** Drugs ~~may~~ shall be dispensed only in accordance with the system of control and accountability for drugs administered or dispensed from the emergency room.

## PHARMACY BOARD[657](cont'd)

a. The system shall be developed and supervised by the pharmacist in charge and the facility's emergency department committee, or a similar group or person responsible for policy in that department.

b. The system shall identify drugs of the nature and type to meet the immediate needs of emergency room patients.

c. Controlled substances maintained in the emergency room are kept for use by, or at the direction of, prescribers in the emergency room. In order to receive a controlled substance, a patient must be examined in the emergency room by a prescriber who shall determine the need for the drug. It is not permissible under state and federal requirements for a prescriber to see a patient outside the emergency room setting, or talk to the patient on the telephone, and then proceed to call the emergency room and order the administration of a stocked controlled substance upon the patient's arrival at the emergency room. A prescriber may authorize, without again examining the patient, the administration of additional doses of a previously authorized drug to a patient presenting to the emergency department within 24 hours of the patient's examination and treatment in the emergency department.

d. In an emergency situation when a health care practitioner authorized to prescribe controlled substances is not available on site and regardless of the provisions of paragraph "c," the emergency room nurse may examine the patient in the emergency room and contact the on-call prescriber. The on-call prescriber may then authorize the nurse to administer a controlled substance to the patient pending the arrival of the prescriber. As soon as possible, the prescriber shall examine the patient in the emergency room and determine the patient's further treatment needs.

e. The pharmacist in charge is responsible for maintaining accurate records of dispensing of drugs from the emergency room, and for ensuring the accuracy of prepackaged drugs and the complete and accurate labeling of prepackaged drugs pursuant to subrule 7.12(3).

f. Except as provided in subrule 7.12(6), a practitioner who authorizes dispensing to a patient of a prescription drug from the emergency department drug supply is responsible for the accuracy of the dispensed drug and for the accurate completion of label information pursuant to subrule 7.12(4).

**7.12(3) *Prepackaging.*** ~~Drugs~~ Except as provided in subrule 7.12(6), drugs dispensed in greater than a 24-hour supply may be dispensed only in prepackaged quantities not to exceed a 72-hour supply or the minimum prepackaged quantity in suitable containers. Prepackaged drugs shall be prepared pursuant to the requirements of 657—22.3(126). Drugs dispensed pursuant to this subrule shall be appropriately labeled as required in subrule 7.12(4), including necessary auxiliary labels.

**7.12(4) *Labeling.*** ~~At~~ Except as provided in subrule 7.12(6), at the time of delivery of the drug, the practitioner shall appropriately complete the label, such that the dispensing container bears a label with at least the following information:

- a. Name and address of the hospital;
- b. Date dispensed;
- c. Name of prescriber;
- d. Name of patient;
- e. Directions for use;
- f. Name and strength of drug.

**7.12(5) *Delivery of drug to patient.*** ~~The~~ Except as provided in subrule 7.12(6), the practitioner, or a licensed nurse under the supervision of the practitioner, shall give the appropriately labeled, prepackaged drug to the patient or patient's caregiver, and The practitioner, or a licensed nurse under the supervision of the practitioner, shall explain the correct use of the drug and shall explain to the patient that the dispensing is for an emergency or starter supply of the drug. If additional quantities of the drug are required to complete the needed course of treatment, the prescriber shall provide the patient with a prescription for the additional quantities.

**7.12(6) *Use of InstyMeds dispensing system.*** A hospital located in an area of the state where 24-hour outpatient pharmacy services are not available within 15 miles of the hospital may implement the InstyMeds dispensing system in the hospital emergency department only as provided by this subrule:

a. Access to the dispensing machine for the purposes of stocking, inventory, and monitoring shall be limited to pharmacists, pharmacy technicians, and pharmacist-interns.

## PHARMACY BOARD[657](cont'd)

b. The InstyMeds dispensing system shall be used only in the hospital emergency department for the benefit of patients examined or treated in the emergency department.

c. The dispensing machine shall be located in a secure and professionally appropriate environment.

d. The stock of drugs maintained and dispensed utilizing the InstyMeds dispensing system shall be limited to acute care drugs provided in appropriate quantities for a 72-hour supply or the minimum commercially available package size, except that antimicrobials may be dispensed in a quantity to provide the full course of therapy.

e. Drugs dispensed utilizing the InstyMeds dispensing system shall be appropriately labeled as provided in 657—subrule 6.10(1), paragraphs “a” through “g.”

f. Prior to authorizing the dispensing of a drug utilizing the InstyMeds dispensing system, the prescriber shall offer the patient the option of being provided a prescription that may be filled at the pharmacy of the patient’s choice.

g. When appropriate for an acute condition, the prescriber shall provide to the patient or the patient’s agent a prescription for the remainder of drug therapy beyond the supply available utilizing the InstyMeds dispensing system. During consultation with the patient or the patient’s agent, the prescriber shall clearly explain the appropriate use of the drug supplied, the need to have a prescription for any additional supply of the drug filled at a pharmacy of the patient’s choice, and the need to complete the full course of drug therapy.

h. The pharmacy shall, in conjunction with the hospital emergency department, implement policies and procedures to ensure that a patient utilizing the InstyMeds dispensing system has been positively identified.

i. The hospital pharmacist shall review the printout of drugs provided utilizing the InstyMeds dispensing system within 24 hours unless the pharmacy is closed, in which case the printout shall be reviewed during the first day the pharmacy is open following the provision of the drugs. The purpose of the review is to identify any dispensing errors, to determine dosage appropriateness, and to complete a retrospective drug use review of any antimicrobials dispensed in a quantity greater than a 72-hour supply. Any discrepancies found shall be addressed by the pharmacy’s continuous quality improvement program.

**ARC 7229B**

**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 Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 18, “Centralized Prescription Filling and Processing,” Iowa Administrative Code.

This amendment was approved at the July 29, 2008, regular meeting of the Board of Pharmacy.

The proposed amendment eliminates the requirement for a written authorization from a patient before the pharmacy outsources the filling or processing of a patient’s prescriptions. The amendment requires the pharmacy to display a sign and to provide written notice to patients prior to implementing a centralized filling or processing program or prior to providing pharmaceutical services to a new patient.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on October 28, 2008. Such written materials may be sent to Terry

## PHARMACY BOARD[657](cont'd)

Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@iowa.gov).

This amendment is intended to implement Iowa Code section 155A.13.

The following amendment is proposed.

Amend subrule 18.5(1) as follows:

**18.5(1) *Prior notification and authorization.*** A pharmacy that outsources prescription drug order filling or prescription drug order processing to another pharmacy shall, prior to outsourcing a patient's prescription:

*a.* Notify the patient or the patient's agent that prescription filling or processing may be outsourced to another pharmacy.

*b.* Provide the name of the pharmacy that will be filling or processing the prescription or, if the pharmacy is part of a network of pharmacies under common ownership and any of the network pharmacies may fill or process the prescription, the patient shall be notified of this fact. Notification ~~may~~ shall be provided through a ~~one-time written~~ notice to the patient or the patient's agent or through use by means of a sign prominently displayed in the originating pharmacy and through written notice provided to the patient or the patient's agent prior to implementation of the program or upon commencement of services to a new patient, as applicable.

~~*e.* Following patient notification and prior to outsourcing, the originating pharmacy shall receive written authorization from the patient to outsource the filling or processing of a patient's prescription drug order. If a patient does not so authorize the originating pharmacy, the pharmacy shall not outsource the filling or processing of the patient's prescription drug orders.~~

~~*c.*~~ *c.* If a patient provides the originating pharmacy with notification that the patient no longer authorizes the originating pharmacy to outsource the patient's prescription drug orders, the originating pharmacy shall discontinue outsourcing the filling or processing of the patient's prescription drug orders.

**ARC 7242B**

## 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 Iowa Code section 147.76 and 2008 Iowa Acts, Senate File 2428, section 14, the Board of Pharmacy hereby gives Notice of Intended Action to adopt Chapter 32, "Nonpayment of State Debt," and to amend Chapter 36, "Discipline," Iowa Administrative Code.

These amendments were approved at the July 29, 2008, regular meeting of the Board of Pharmacy.

Proposed Chapter 32 establishes the Board processes to be implemented upon receipt of a certificate of noncompliance from the centralized collection unit of the Department of Revenue pursuant to the procedures set forth in 2008 Iowa Acts, Senate File 2428, division II. The proposed rules define terms used throughout the chapter and establish procedures relating to the denial, suspension, or revocation of a license or registration including preparation and service of a notice, effective date of the Board's action, the responsibilities of the licensee or applicant, and reinstatement of a license. The proposed amendment to Chapter 36 establishes nonpayment of a state debt as evidenced by a certificate of noncompliance issued by the Department of Revenue as one of the grounds for disciplinary action by the Board.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on October 28, 2008. Such written materials may be sent to Terry

## PHARMACY BOARD[657](cont'd)

Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@iowa.gov).

These amendments are intended to implement 2008 Iowa Acts, Senate File 2428, division II.

The following amendments are proposed.

ITEM 1. Adopt the following **new** 657—Chapter 32:

CHAPTER 32  
NONPAYMENT OF STATE DEBT

**657—32.1(272D) Definitions.** For the purpose of this chapter, the following definitions shall apply:

“*Act*” means Iowa Code chapter 272D.

“*Board*” means the Iowa board of pharmacy.

“*Certificate*” means a document known as a certificate of noncompliance provided by the unit certifying that the named licensee has outstanding liability placed with the unit and has not entered into an approved payment plan to pay the liability.

“*Denial notice*” means a board notification denying an application for the issuance or renewal of a license as required by the Act.

“*Liability*” means a debt or obligation placed with the unit for collection that is greater than \$1000. For purposes of this chapter, “liability” does not include support payments collected pursuant to Iowa Code chapter 252J.

“*License*” means a license to practice pharmacy, a registration to practice as a pharmacist-intern, a registration to practice as a pharmacy technician, or a registration to possess, prescribe, dispense, administer, distribute, or otherwise handle controlled substances under Iowa Code chapter 124.

“*Licensee*” means an individual to whom a license has been issued or who is seeking the issuance of a license.

“*Revocation or suspension notice*” means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by the Act.

“*Unit*” means the centralized collection unit of the department of revenue.

“*Withdrawal certificate*” means a document known as a withdrawal of a certificate of noncompliance provided by the unit certifying that the certificate is withdrawn and that the board may proceed with issuance, reinstatement, or renewal of a license.

**657—32.2(272D) Issuance or renewal of a license—denial.** The board shall deny the issuance or renewal of a license upon receipt of a certificate from the unit according to the procedures set forth in the Act.

**32.2(1) Service of denial notice.** Notice shall be served upon the licensee by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

**32.2(2) Effective date of denial.** The effective date of the denial of issuance or renewal of a license, as specified in the notice, shall be 60 days following service of the notice upon the licensee.

**32.2(3) Preparation and service of denial notice.** The executive director of the board is authorized to prepare and serve the notice upon the licensee.

**32.2(4) Licensee responsible to inform board.** Licensees shall keep the board informed of all court actions and all unit actions taken under or in connection with the Act and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and any withdrawal certificates issued by the unit.

**32.2(5) Reinstatement following license denial.** All board fees required for application, license renewal, or license reinstatement shall be paid by the licensee and all continuing education requirements shall be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to the Act.

## PHARMACY BOARD[657](cont'd)

**32.2(6) *Effect of filing in district court.*** In the event a licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 272D.8 and 272D.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed by the court.

**32.2(7) *Final notification.*** The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license and shall similarly notify the licensee when the license is issued or renewed following the board's receipt of a withdrawal certificate.

**657—32.3(272D) Suspension or revocation of a license.** The board shall suspend or revoke a license upon receipt of a certificate from the unit according to the procedures set forth in the Act. This rule shall apply in addition to the procedures set forth in the Act.

**32.3(1) *Service of revocation or suspension notice.*** Notice shall be served upon the licensee by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

**32.3(2) *Effective date of revocation or suspension.*** The effective date of the revocation or suspension of a license, as specified in the notice, shall be 60 days following service of the notice upon the licensee.

**32.3(3) *Preparation and service of revocation or suspension notice.*** The executive director of the board is authorized to prepare and serve the notice upon the licensee and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event that the license is on suspension, the executive director shall notify the licensee of the board's intention to revoke the license.

**32.3(4) *Licensee responsible to inform board.*** Licensees shall keep the board informed of all court actions and all unit actions taken under or in connection with the Act and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and any withdrawal certificates issued by the unit.

**32.3(5) *Reinstatement following license suspension, revocation, or denial of renewal.*** All board fees required for license renewal or license reinstatement shall be paid by the licensee and all continuing education requirements shall be met before a license will be renewed or reinstated after the board has suspended a license pursuant to the Act. A licensee whose license to practice pharmacy has been revoked shall complete the examination components as indicated in rule 657—2.10(155A) and shall pay all required examination fees pursuant to rule 657—2.2(155A). A licensee whose registration to practice as a pharmacist-intern or as a pharmacy technician or whose registration to handle controlled substances under Iowa Code chapter 124 has been revoked shall complete an application and pay all board fees required for new registration.

**32.3(6) *Effect of filing in district court.*** In the event a licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 272D.8 and 272D.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed by the court.

**32.3(7) *Final notification.*** The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license and shall similarly notify the licensee when the license is reinstated following the board's receipt of a withdrawal certificate.

## PHARMACY BOARD[657](cont'd)

**657—32.4(17A,22,272D) Share information.** Notwithstanding any statutory confidentiality provision, the board may share information with the unit through manual or automated means for the sole purpose of identifying applicants or licensees subject to enforcement under the Act.

These rules are intended to implement Iowa Code chapter 272D.

ITEM 2. Adopt the following **new** paragraph **36.1(4)“ah”**:

*ah.* Nonpayment of a state debt as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 272D.

**ARC 7268B****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 Psychology hereby gives Notice of Intended Action to amend Chapter 5, “Fees,” Iowa Administrative Code.

This proposed amendment establishes a reactivation fee for certification as a health service provider to be consistent with the requirements for reactivation of the psychology license. The reactivation fee for certification as a health service provider shall be the same as the renewal fee for certification as a health service provider and will apply to psychologists wishing to reactivate a psychology license and certification as a health service provider.

Any interested person may make written comments on the proposed amendment no later than November 3, 2008, addressed to Sharon Dozier, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [sdozier@idph.state.ia.us](mailto:sdozier@idph.state.ia.us).

A public hearing will be held on November 3, 2008, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, 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 amendment.

This amendment is intended to implement Iowa Code chapters 17A, 147, 154B and 272C.

The following amendment is proposed.

Adopt the following **new** subrule 5.16(12):

**5.16(12)** Reactivation fee for certification as a certified health service provider in psychology is \$60.

**ARC 7221B****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 Cosmetology Arts and Sciences hereby gives Notice of Intended Action to rescind Chapter 59, “Administrative and Regulatory Authority for the Board of Cosmetology Arts and Sciences,” to amend Chapter 60, “Licensure of

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors of Cosmetology Arts and Sciences,” and Chapter 61, “Licensure of Salons and Schools of Cosmetology Arts and Sciences,” to rescind Chapter 62, “Fees,” and to amend Chapter 63, “Sanitation for Salons and Schools of Cosmetology Arts and Sciences,” Chapter 64, “Continuing Education for Cosmetology Arts and Sciences,” and Chapter 65, “Discipline for Cosmetology Arts and Sciences Licensees, Instructors, Salons, and Schools,” Iowa Administrative Code.

The proposed amendments rescind duplicative language found in 645—Chapters 4 and 5; clarify documentation requirements for licensure; update educational requirements for instructors to be consistent with educational programs available for instructor applicants; amend training requirements for certification in microdermabrasion, chemical peels, laser and intense pulsed light (IPL) based on public comments received following the adoption of amendments published as **ARC 6410B** in the November 21, 2007, issue of the Iowa Administrative Bulletin; reduce hours of continuing education required for license reactivation to be consistent with continuing education requirements for license renewal; clarify posting requirements for demonstrator permits, salons, and schools; and update rules to be consistent with legislative changes promulgated by 2008 Iowa Acts, House File 2212.

Any interested person may make written comments on the proposed amendments no later than November 4, 2008, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [ebaird@idph.state.ia.us](mailto:ebaird@idph.state.ia.us).

A public hearing will be held on Tuesday, November 4, 2008, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, 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, 157 and 272C.

The following amendments are proposed.

ITEM 1. Rescind and reserve **645—Chapter 59**.

ITEM 2. Amend paragraph **60.2(1)“b”** as follows:

*b.* Direct the educational program to submit to the board a diploma or an official transcript of grades in each practice discipline for which the applicant is requesting licensure. The transcript shall denote the date of completion of training at a school approved by the board. Any instances in which a transcript is unavailable due to documented loss or destruction of records or other extenuating circumstance shall be considered by the board on a case-by-case basis. If the applicant graduated from a school that is not licensed by the board, the applicant shall direct the school to provide an official transcript showing completion of a course of study that meets the requirements of rule 645—61.14(157). If educated outside the United States, the applicant shall attach an original evaluation of the applicant’s education from World Education Services (WES) or any other accredited evaluation service. An applicant may obtain an application for evaluation by contacting WES at (212)966-6311, or by writing to WES, P.O. Box 5087, Bowling Green Station, New York, New York 10274-5087.

ITEM 3. Amend paragraphs **60.2(2)“c”** and **“d”** as follows:

*c.* Provide documentation of completion of 1,000 hours of instructor’s training ~~with curriculum content to be determined by the board~~ or two years’ active practice in the field of cosmetology within six years prior to application;

*d.* Submit proof of ~~attendance at an advanced instructor’s institute prescribed by the board~~ completion of an instructor methods training course consisting of at least 16 hours;

ITEM 4. Amend subparagraph **60.4(1)“b”(1)** as follows:

(1) Complete 14 contact hours of education specific to the material or apparatus used for microdermabrasion. ~~If more than one machine is used or if the licensee changes equipment, the licensee is required to obtain an additional 14 hours of training specific to that equipment. Before an additional material or apparatus is utilized in the licensee’s practice, the licensee shall provide official certification of training on the material or apparatus.~~

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 5. Amend subparagraph **60.4(2)“c”(1)** as follows:

(1) Complete 21 hours of training specific to the process and products to be used for chemical peels. Before an additional process or product is utilized in the licensee’s practice, the licensee shall provide official certification of training on the new process or product.

ITEM 6. Amend subparagraph **60.4(3)“f”(1)** as follows:

(1) Complete 40 hours of training specific to each laser machine, model or device to be used for laser services. Before an additional machine, model or device is utilized in the licensee’s practice, the licensee shall submit official certification of training on the new machine, model or device.

ITEM 7. Amend subparagraph **60.4(4)“e”(1)** as follows:

(1) Complete 40 hours of training specific to each IPL machine, model or device to be used for IPL hair removal services. Before an additional machine, model or device is utilized in the licensee’s practice, the licensee shall submit official certification of training on the new machine, model or device.

ITEM 8. Amend rule 645—60.9(157) as follows:

**645—60.9(157) Temporary permits.** The board may issue a temporary permit for the purpose of demonstrating cosmetology arts and sciences services to the consuming public or for providing cosmetology arts and sciences services to the consuming public at not-for-profit events.

1. The permit shall be valid for (name of a specific event) for a salon, school, or person. The location, purpose and duration of the permit shall be stated on the permit. The permit shall be posted and visible to the public at the location where the services are provided.

2. to 6. No change.

ITEM 9. Rescind and reserve rules **645—60.12(147)**, **645—60.15(147)** and **645—60.16(272C)**.

ITEM 10. Amend subparagraph **60.17(3)“a”(2)** as follows:

(2) Verification of completion of ~~12~~ 8 hours of continuing education that meet the continuing education standards defined in rule 645—64.3(157,272C) within two years of application for reactivation.

ITEM 11. Amend subparagraph **60.17(3)“b”(2)** as follows:

(2) Verification of completion of ~~24~~ 16 hours of continuing education that meet the continuing education standards defined in rule 645—64.3(157,272C) within two years of application for reactivation.

ITEM 12. Amend subrule 61.5(3) as follows:

**61.5(3)** The original license certificate, duplicate certificate, or reissued certificate for each licensee working in the salon shall be visibly displayed in the reception area at eye level ~~for each licensee and temporary permit holder employed by the salon.~~

ITEM 13. Amend subrule 61.10(3) as follows:

**61.10(3)** The original license certificate, duplicate certificate, or reissued certificate for each instructor working at the school shall be visibly displayed ~~for each instructor employed by the school~~ in the reception area at eye level.

ITEM 14. Rescind and reserve rule **645—61.11(147)**.

ITEM 15. Rescind and reserve **645—Chapter 62**.

ITEM 16. Amend rule 645—63.8(157) as follows:

**645—63.8(157) Smoking.** All salons licensed by the board shall comply with the smokefree air Act, 2008 Iowa Acts, House File 2212.

~~**63.8(1)** No smoking by any licensee or student is allowed while the licensee or student is actively engaged in serving the public.~~

~~**63.8(2)** An entire salon may be designated by the salon owner or manager as a nonsmoking area.~~

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

~~63.8(3) The client service and dispensary areas of the salons shall be designated as nonsmoking areas.~~

~~63.8(4) No person shall smoke or carry lighted smoking material in a nonsmoking area.~~

~~63.8(5) Signs must be posted indicating smoking and nonsmoking areas.~~

ITEM 17. Rescind and reserve rules ~~645—64.4(157,272C)~~, ~~645—64.5(157,272C)~~, ~~645—64.6(157,272C)~~ and ~~645—64.9(157,272C)~~.

ITEM 18. Rescind and reserve rule ~~645—65.6(157)~~.

**ARC 7256B**

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 12, "Filing Returns, Payment of Tax, Penalty and Interest," Iowa Administrative Code.

This amendment is proposed as a result of 2008 Iowa Acts, Senate File 2428, section 23. The proposed amendment adds new rule 701—12.10(423) pertaining to the statute of limitations on sales and use tax transactions involving the furnishing of lawn care, landscaping, and tree trimming and removal services which occurred more than five years prior to the date of an audit.

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

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed rule may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 10, 2008, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before October 28, 2008. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 29, 2008.

This amendment is intended to implement Iowa Code section 423.31 as amended by 2008 Iowa Acts, Senate File 2428, section 23.

The following amendment is proposed.

REVENUE DEPARTMENT[701](cont'd)

Adopt the following **new** rule 701—12.10(423):

**701—12.10(423) Audit limitation for certain services.**

**12.10(1) Definitions.** For purposes of this rule, the following definitions shall govern:

“*Landscaping*” means the same as defined in rule 701—26.62(423).

“*Lawn care*” means the same as defined in rule 701—26.61(423).

“*Tree trimming and removal*” means the same as defined in rule 701—26.66(423).

**12.10(2) Audit limitation for lawn care, landscaping, and tree trimming and removal services.** Notwithstanding any other provision of the Iowa Code to the contrary, the department shall not attempt to collect delinquent sales tax or use tax on a transaction involving the furnishing of lawn care, landscaping, or tree trimming and removal services which occurred more than five years prior to the date of an audit. The date an audit will begin is when the department presents notification that the person is being contacted for an audit.

This rule is intended to implement Iowa Code section 423.31 as amended by 2008 Iowa Acts, Senate File 2428, section 23.

**ARC 7255B**

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code chapter 17A and sections 421.17, 437A.25, 476C.7, and 476D.4, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 70, “Replacement Tax and Statewide Property Tax,” and Chapter 80, “Property Tax Credits and Exemptions,” Iowa Administrative Code.

Item 1 amends subrule 70.12(1) to provide wind energy tax credits that may be applied against the replacement tax due for electric companies. Item 1 also amends subrule 70.12(2) to extend by one year the period of time for electric companies to claim a reimbursement of replacement tax paid for using soy-based transformer fluid in their operation.

Item 2 amends rule 701—80.5(427) to provide property tax exemptions on buildings and land used for speculative shell building purposes.

Item 3 amends rule 701—80.26(427) to provide property tax exemptions for web search portal businesses.

Item 4 amends 701—Chapter 80 by adding a new rule that requires privately owned libraries and art galleries to file a claim for property tax exemption.

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

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any. The Department has determined that these proposed amendments may have an impact on small business.

The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 10, 2008, to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the

## REVENUE DEPARTMENT[701](cont'd)

Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 28, 2008. Such written comments should be directed to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 29, 2008.

These amendments are intended to implement Iowa Code Supplement section 427.1 as amended by 2008 Iowa Acts, House File 2233, section 2; Supplement section 427.1(7) as amended by 2008 Iowa Acts, Senate File 2400; Supplement section 427.1(27) as amended by 2008 Iowa Acts, Senate File 2419; Supplement section 427.1(35); section 437A.17B as amended by 2008 Iowa Acts, Senate File 2405; section 437A.17C as amended by 2008 Iowa Acts, Senate File 572; chapter 476B as amended by 2008 Iowa Acts, Senate File 2405; and chapter 476D as amended by 2008 Iowa Acts, Senate File 572.

The following amendments are proposed.

ITEM 1. Amend subrules 70.12(1) and 70.12(2) as follows:

**70.12(1)** A person in possession of a renewable energy tax credit certificate issued pursuant to Iowa Code Supplement sections ~~476C.1 to 476C.7~~ chapter 476C or a wind energy tax credit issued pursuant to chapter 476B as amended by 2008 Iowa Acts, Senate File 2405, may apply to the director for a reimbursement of the amount of taxes imposed and paid by the person pursuant to Iowa Code chapter 437A in an amount not more than the person received in renewable energy tax credit certificates ~~pursuant to Iowa Code Supplement sections 476C.1 to 476C.7~~ or wind energy tax credit certificates. To obtain the reimbursement, the person shall attach to the return required under Iowa Code section 437A.8 the renewable energy tax credit certificates ~~issued to the person pursuant Iowa Code Supplement sections 476C.1 to 476C.7~~ or the wind energy tax credit certificates and provide any other information the director may require. The director shall direct that a warrant be issued to the person for an amount equal to the tax imposed and paid by the person. Any credit in excess of the person's tax liability may be claimed as a refund for the following seven years. Pursuant to Iowa Code section 437A.14, a taxpayer may file a claim for refund with the director within three years after the replacement tax became due. If the renewable energy or wind energy tax credit claim exceeds the replacement tax due in a year, the taxpayer has seven years to carry over the excess credit. Pursuant to Iowa Code section 476C.4(6), a person may not receive both a renewable energy tax credit and a wind energy tax credit. The reimbursement applies to a qualified facility placed in service on or after July 1, 2005, but before July 1, 2012. The utilities board shall notify the department of revenue of the amount of kilowatt hours of electricity purchased from a renewable energy facility or the amount of kilowatt hours generated and purchased from a qualified wind energy facility or generated and used on site by the qualified wind energy facility. The department of revenue shall calculate the amount of the tax credit and issue the tax credit certificate. Wind energy and renewable energy tax credit certificates may be transferred, and a replacement tax credit certificate may reflect a different type of tax than the type of tax noted on the original tax credit certificate.

**70.12(2)** A person in possession of a soy-based transformer fluid tax credit certificate issued pursuant to ~~2006 Iowa Acts, Senate File 2402, section 7,~~ Iowa Code chapter 476D may apply to the director for a reimbursement of the amount of taxes imposed and paid by the person pursuant to Iowa Code chapter 437A in an amount not more than the person received in soy-based transformer fluid tax credit certificates ~~issued pursuant to 2006 Iowa Acts, Senate File 2402, section 7.~~ To obtain the reimbursement, the person shall attach to the return required under section 437A.8 the soy-based transformer fluid tax credit certificates issued to the person ~~pursuant to 2006 Iowa Acts, Senate File 2402, section 7,~~ and provide any other information the director may require. The director shall direct a warrant to be issued to the person for an amount equal to the tax imposed and paid by the person pursuant to Iowa Code

## REVENUE DEPARTMENT[701](cont'd)

chapter 437A but for not more than the amount of the soy-based transformer fluid tax credit certificates attached to the return. This subrule is rescinded December 31, ~~2008~~ 2009.

ITEM 2. Amend rule **701—70.12(437A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code Supplement section 437A.17B and 2006 Iowa Acts, Senate File 2402, section 4, chapter 476B as amended by 2008 Iowa Acts, Senate File 2405, Iowa Code section 437A.17C and chapter 476D as amended by 2008 Iowa Acts, Senate File 572, and chapter 476C.

ITEM 3. Amend rule 701—80.5(427) as follows:

**701—80.5(427) Speculative shell buildings.**

**80.5(1) Authority of city council and board of supervisors.** A city council or county board of supervisors may enact an ordinance granting property tax exemptions for value added as a result of new construction, ~~reconstruction or renovation~~ of speculative shell buildings or additions to existing buildings or structures, or may exempt the value of an existing building or structure being reconstructed or renovated and the value of the land on which the building or structure is located, if the reconstruction or renovation constitutes complete replacement or refitting of an existing building or structure owned by community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499A, or for-profit entities. See Iowa Code Supplement section 427.1(27) as amended by 2008 Iowa Acts, Senate File 2419, for definitions. The value added exemption for new construction includes reconstruction and renovation constituting complete replacement or refitting of existing buildings and structures if the reconstruction or renovation is required due to economic obsolescence, or to implement industry standards in order to competitively manufacture or process products, or to market a building or structure as a speculative shell building. The exemption for reconstruction or renovation not constituting new construction does not have to meet these requirements but has to meet only the requirements set forth in the definition of a speculative shell building. The percentage of exemption and period of time over which the exemption may be allowed are established by the council or board in the ordinance authorizing the exemption, and the same exemption applies to all qualifying property within that jurisdiction shall specify if the exemption will be allowed to community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499B, or for-profit entities, and the length of time the exemption is to be allowed.

**80.5(2) Eligibility for exemption.** The value added by new construction, reconstruction, or renovation and first assessed prior to January 1 of the calendar year in which an ordinance authorizing a tax exemption becomes effective is not eligible for exemption. However, the value added as of January 1 of the calendar year in which the ordinance becomes effective is eligible for exemption if the ordinance is in effect on February 1 of that calendar year. This subrule does not apply to new construction projects having received prior approval. For reconstruction and renovation projects not constituting new construction, the ordinance authorizing the exemption must be in effect by February 1 of the year the project commences for the exemption to be allowable in the subsequent assessment year.

**80.5(3) Application for exemption.**

a. A community development organization, not-for-profit cooperative association, or for-profit entity must file an application for exemption with the assessor between January 1 and February 1, inclusive, of the year in which the value added for new construction is first assessed for the exemption to be allowable for that assessment year. For reconstruction and renovation projects not constituting new construction, an application for exemption must be filed by February 1 of the assessment year in which the project commences for the exemption to be allowable the following assessment year. If approved, no application for exemption is required to be filed in subsequent years for ~~that~~ the value added exemption or the reconstruction or renovation exemption not constituting new construction. An application cannot be filed if a valid ordinance has not been enacted. If an application is not filed by February 1 of the year in which the value added for new construction is first assessed, the organization, association, or entity cannot receive, in subsequent years, the exemption for that value added. However, if the organization, association, or entity has received prior approval, the application must be filed by February 1 of the year in which the total value added for the new construction is first assessed.

## REVENUE DEPARTMENT[701](cont'd)

b. ~~In the event that~~ If February 1 falls on either a Saturday or Sunday, applications for the exemption may be filed the following Monday.

c. Applications submitted by mail must be accepted if postmarked on or before February 1, or, ~~in the event that~~ if February 1 falls on either a Saturday or Sunday, a postmark date of the following Monday is acceptable.

**80.5(4) Prior approval.** To obtain prior approval for a project, the proposal of the organization, association, or entity must be approved by a specific ordinance addressing the proposal and passed by the city council or board of supervisors. The original ordinance providing for the exemption does not constitute the granting of prior approval for a project. If an organization, association, or entity has obtained a prior approval ordinance from a city council or board of supervisors, the exemption for new construction cannot be obtained until the year in which all value added for the completed project is first assessed. Reconstruction and renovation projects constituting new construction must receive prior approval to qualify for exemption. Reconstruction and renovation projects that do not constitute new construction need not receive prior approval.

**80.5(5) Termination of exemption.** The exemption continues until the property is leased or sold, the time period for the exemption specified in the ordinance elapses, or the exemption is terminated by ordinance of the city council or board of supervisors. If the ordinance authorizing the exemption is repealed, all existing exemptions continue until their expiration and any projects having received prior approval for exemption for new construction are to be granted an exemption upon completion of the project. If the shell building or any portion of the shell building is leased or sold, the exemption for new construction shall not be allowed on that portion of the shell building leased or sold in subsequent years. If the shell building or any portion of the shell building is leased or sold, the exemption for reconstruction or renovation not constituting new construction shall not be allowed on that portion of the shell building leased or sold and a proportionate share of the land on which the shell building is located in subsequent years.

This rule is intended to implement Iowa Code Supplement section 427.1(27) as amended by 2008 Iowa Acts, Senate File 2419.

ITEM 4. Amend rule 701—80.26(427) as follows:

**701—80.26(427) Web search portal property.** This exemption includes cooling systems, cooling towers, and other temperature control infrastructure; all power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of the web search portal, including but not limited to exterior dedicated business-owned substations; back-up power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the web search portal. The exemption does not apply to land, buildings, and improvements or power distribution systems subject to assessment under Iowa Code chapter 437A. The web search portal business must meet the requirements contained in Iowa Code section 423.3, subsection 92 or subsection 93, for the exemption to be allowable. The owner of the property must file a claim for exemption with the assessor by February 1 of the first year the exemption is claimed. Claims for exemption in successive years shall be required only for property additions.

This rule is intended to implement Iowa Code Supplement section 427.1 427.1(35) and as amended by 2007 2008 Iowa Acts, House File 912, section 3 2233, section 2.

ITEM 5. Adopt the following **new** rule 701—80.27(427):

**701—80.27(427) Privately owned libraries and art galleries.** Claims for exemption for libraries and art galleries owned and kept by private individuals, associations, or corporations for public use and not for private profit must be filed with the local assessor by February 1 of the first year the exemption is requested. Once the exemption is granted, the exemption shall continue to be granted for subsequent

## REVENUE DEPARTMENT[701](cont'd)

assessment years without further filing of claims as long as the property continues to be used as a library or art gallery for public use and not for private profit.

This rule is intended to implement Iowa Code Supplement section 427.1(7) as amended by 2008 Iowa Acts, Senate File 2400.

**ARC 7259B****REVENUE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 230, "Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing," Iowa Administrative Code.

The proposed amendment adds new rule 701—230.11(423) to implement Iowa Code Supplement section 423.3 as amended by 2008 Iowa Acts, House File 2233, section 1. Rule 701—230.11(423) provides a new exemption from sales and use tax on purchases made of specified property and services by a qualifying web search portal business.

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

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 10, 2008, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before October 28, 2008. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 29, 2008.

This amendment is intended to implement Iowa Code section 423.3 as amended by 2008 Iowa Acts, House File 2233, section 1.

The following amendment is proposed.

Adopt the following **new** rule 701—230.11(423):

**701—230.11(423) Web search portal business and its exemption.** Effective on or after July 1, 2008, a business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria can obtain an exemption from sales and use tax on specific purchases that are used in

## REVENUE DEPARTMENT[701](cont'd)

the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

**230.11(1) Definitions.** For the purpose of this exemption, the following definitions apply:

“*Affiliate*” means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

“*Control*” means any of the following:

1. In the case of a United States corporation, the ownership, directly or indirectly, of 50 percent or more of the voting power to elect directors.

2. In the case of a foreign corporation, if the voting power to elect the directors is less than 50 percent, the maximum amount allowed by applicable law.

3. In the case of an entity other than a corporation, 50 percent or more ownership interest in the entity, or the power to direct the management of the entity.

“*Web search portal business*” means an entity whose business among other businesses is to provide a search portal to organize information; to access, search, and navigate the Internet, including research and development to support capabilities to organize information; or to provide Internet access, navigation, or search functionalities.

**230.11(2) Criteria to claim exemption.** The following governs whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a web search portal business:

*a. Requirements.* All of the following requirements must be met by a web search portal business for the purpose of this exemption:

(1) The business, among other businesses, of the purchaser or lessee shall be as a provider of a web search portal.

(2) The web search portal business shall have a physical location in Iowa that is used for the operations and maintenance of the web search portal site on the Internet, including but not limited to research and development to support capabilities to organize information and to provide Internet access, navigation, and search functionality.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of \$200 million within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

*b. Aggregation to meet requirements.* A web search portal business that is seeking an exemption from sales and use tax under this exemption may meet the requirements found in subparagraphs 230.11(2)“a”(1) to (4) by aggregating various Iowa investments and other requirements with its business affiliates.

*c. Failure to meet investment qualifications.* If a web search portal business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the web search portal business, the web search portal business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the web search portal business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

**230.11(3) Exempt purchases.** Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

*a.* Computers and equipment that are necessary for the maintenance and operation of the web search portal business;

## REVENUE DEPARTMENT[701](cont'd)

- b.* All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal business;
- c.* All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph “*b*”;
- d.* All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal business;
- e.* All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal business. This equipment includes, but is not limited to exterior dedicated business-owned power substations; and back-up power generation systems, battery systems, and related infrastructure;
- f.* All equipment used in the racking system, including cabling and trays;
- g.* Fuel purchased by the web search portal business that is used in the back-up power generation system and in all items listed in paragraphs “*a*” to “*f*.” This includes the fuel used in the back-up generators that may be located outside the building and that are used if power is interrupted to ensure the web search portal business continues operation; and
- h.* Electricity purchased for use in operating the web search portal business.

**230.11(4) Limitation of exemption.** The purchases or lease of the items listed in subrule 230.11(3) are only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example, the purchase of electricity for use in the office portion of the web search portal facility would not be exempt. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. The purchase of a dishwasher is the purchase of tangible personal property. However, upon installation, the dishwasher becomes part of the building and realty and is not exempt from Iowa sales or use tax.

**230.11(5) Initial date of exemption.** The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying web search portal business.

This rule is intended to implement Iowa Code section 423.3 as amended by 2008 Iowa Acts, House File 2233, section 1.

**ARC 7209B**

**SECRETARY OF STATE[721]**

**Notice of Termination**

Pursuant to the authority of Iowa Code section 17A.3(1)“b,” the Secretary of State terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on July 30, 2008, as **ARC 7046B** amending Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

The proposed amendment to Chapter 21 was also Adopted and Filed Emergency as **ARC 7047B**. The period for comments has passed without any comments being submitted. The Secretary of State finds no further need to proceed with rule making for **ARC 7046B**.

**ARC 7266B****SECRETARY OF STATE[721]****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 47.1 and 17A.3, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 22, "Voting Systems," Iowa Administrative Code.

These proposed amendments remove obsolete requirements for the use and testing of voting machines no longer authorized for use under Iowa Code Supplement section 52.2 as amended by 2008 Iowa Acts, Senate File 2347. The amendments also expand the ability of county auditors to use electronic ballot marking devices with additional optical scan voting systems as required by 2008 Iowa Acts, Senate File 2347, and as certified for use in Iowa by the Iowa Board of Examiners for Voting Systems on June 27, 2008.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 28, 2008. Written suggestions or comments should be directed to Sarah Reisetter, Elections Director, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State's office by telephone at (515)242-5071 or in person at the Secretary of State's offices on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by October 28, 2008.

These proposed amendments were also Adopted and Filed Emergency and are published herein as **ARC 7264B**. The content of that submission is incorporated by reference.

These amendments are intended to implement 2008 Iowa Acts, Senate File 2347.

**USURY**

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

October 1, 2007 — October 31, 2007	6.75%
November 1, 2007 — November 30, 2007	6.50%
December 1, 2007 — December 31, 2007	6.50%
January 1, 2008 — January 31, 2008	6.25%
February 1, 2008 — February 29, 2008	6.00%
March 1, 2008 — March 31, 2008	5.75%
April 1, 2008 — April 30, 2008	5.75%
May 1, 2008 — May 31, 2008	5.50%
June 1, 2008 — June 30, 2008	5.75%
July 1, 2008 — July 31, 2008	6.00%
August 1, 2008 — August 31, 2008	6.00%
September 1, 2008 — September 30, 2008	6.00%
October 1, 2008 — October 31, 2008	6.00%

## ARC 7235B

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts new Chapter 78, “Small Business Disaster Recovery Financial Assistance Program,” Iowa Administrative Code.

These rules implement a new program to provide financial assistance to businesses that sustained physical damage or economic loss due to the 2008 natural disasters. The rules establish eligibility requirements, describe the application process, and identify the types and amounts of assistance available.

The Iowa Economic Development Board adopted these rules on September 18, 2008.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to the public interest because there is an immediate need to provide funding to eligible businesses in the areas of the state that suffered damage due to this year’s natural disasters. The public interest in having a program in effect to distribute needed state funds outweighs the benefit of a comment period.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the rules should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator on September 18, 2008. These rules confer a benefit on the public by ensuring that the financial assistance available through this program is distributed as quickly as possible. Distributing funds promptly will promote the recovery efforts and benefit businesses in the impacted areas.

These rules are also published herein under Notice of Intended Action as **ARC 7236B** to allow for public comment.

These rules became effective on September 18, 2008.

These rules are intended to implement Iowa Code section 15.109.

The following amendment is adopted.

Adopt the following **new** 261—Chapter 78:

## CHAPTER 78

## SMALL BUSINESS DISASTER RECOVERY FINANCIAL ASSISTANCE PROGRAM

**261—78.1(15) Purpose.** The purpose of the small business disaster recovery financial assistance program is to provide financial assistance to businesses that sustained physical damage or economic loss due to the 2008 natural disasters. Financial assistance in the form of working capital to help ensure businesses’ survival and capital for acquisition of energy-efficient equipment is available to businesses that suffered physical damage or economic loss due to the 2008 natural disasters.

**261—78.2(15) Definitions.**

“*Administrative entity*” means (1) selected cities that administer local disaster recovery programs, and (2) councils of government (COGs) established by Iowa Code chapter 28H.

“*Department*” or “*IDED*” means the Iowa department of economic development.

“*Economic development corporation*” means a local economic development corporation that provides disaster recovery loans to businesses.

“*Financial institution*” means a state bank as defined in Iowa Code section 524.103, subsection 33; a state bank chartered under the laws of any other state; a national banking association; a trust company; a federally chartered savings and loan association; an out-of-state state-chartered savings bank; a financial institution chartered by the federal home loan bank board; a non-Iowa chartered savings and loan association; an association incorporated or authorized to do business under Iowa Code chapter 534; a production credit association; a credit union; or such other financial institution as defined by the department for purposes of this chapter.

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

“SBA” means the U.S. Small Business Administration.

**261—78.3(15) Distribution of funds to administrative entities.**

**78.3(1) Allocation of funds.** IDED will disburse funds in the form of a grant to administrative entities. The grant shall be used to provide financial assistance to eligible businesses in the form of forgivable loans and reimbursement for acquisition of energy-efficient equipment. Funds will be allocated to administrative entities on the basis of the percentage of SBA disaster loans awarded to businesses located within the city’s or COG’s jurisdiction.

**78.3(2) Application process.** To apply for funding, an administrative entity shall submit a letter to IDED stating its interest in receiving an allocation from the small business disaster recovery financial assistance program. Letters shall be sent to: Business Finance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

**78.3(3) Redistribution of unobligated funds.** By April 30, 2009, if a local administrative entity has not obligated funds to eligible businesses for allowable activities, the department will reallocate funds to administrative entities that have demonstrated additional unmet need for financial assistance. Funds for this program shall be available through June 30, 2009.

**261—78.4(15) Eligible business.** An eligible business is one that meets the following requirements:

**78.4(1)** The business has sustained physical damage or economic loss due to the 2008 natural disasters, and

**78.4(2)** The business has received a disaster loan from SBA, a financial institution, or an economic development corporation.

**261—78.5(15) Eligible program activities; maximum amount of assistance.**

**78.5(1) Program funds available for working capital.** An eligible business may apply for funding for working capital to ensure the business’s survival. The maximum amount of program funds available for working capital to ensure the business’s survival is 25 percent of the business’s SBA loan up to a maximum of \$50,000.

**78.5(2) Program funds available for energy-efficient purchases.** The amount of \$5,000 per eligible business is available to reimburse the business for the full cost of purchasing energy-efficient furnaces and boilers, appliances, air conditioners, hot water heaters, windows, and insulation. To receive reimbursement, the eligible business shall provide documentation to verify that the energy-efficient equipment meets the standards established by the Iowa office of energy independence.

**78.5(3) Total program assistance capped at \$50,000.** An eligible business shall not receive more than \$50,000, including the program funds available for energy-efficient purchases (maximum of \$5,000) through this small business disaster recovery financial assistance program.

**261—78.6(15) Allowable types of assistance to eligible businesses.** An administrative entity shall provide financial assistance from this program to eligible businesses in compliance with the terms and conditions described in this rule. An administrative entity may award funds in the form of a forgivable loan to businesses that have received a disaster loan from the SBA, a financial institution, or an economic development corporation. A forgivable loan is a loan that will be forgiven if the business reopens within 12 months of the award date and, if applicable, upon receipt of documentation that the business has purchased and installed the energy-efficient equipment.

**261—78.7(15) Program administration and reporting.** Each local administrative entity shall enter into a contract with an eligible business to provide assistance under this program. The contract shall include terms and conditions that meet the requirements of these rules as well as provisions to require repayment if funds are not used in compliance with the program. Each local administrative entity shall provide oversight and contract administration to ensure that the recipients of program funds are meeting

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

contract requirements. Each local administrative entity shall collect data and submit reports to IDED about the program in the form and content required by IDED.

These rules are intended to implement Iowa Code section 15.109.

[Filed Emergency 9/18/08, effective 9/18/08]

[Published 10/8/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/08.

## ARC 7245B

### ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

#### Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 107, "Targeted Industries Networking Fund," Iowa Administrative Code.

These amendments redefine the formats allowed for networking events, add the requirement of specified topics for discussion, open the events to participation by venture capitalists and community colleges, and increase the maximum award to \$5,000 per event.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 16, 2008, as **ARC 6941B**. A public hearing was held on August 6, 2008, to receive comments about the proposed amendments. There were no comments received. The final amendments are identical to the proposed amendments.

The Iowa Economic Development Board adopted these amendments on September 18, 2008.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments, 35 days after publication, should be waived and the rules be made effective on September 18, 2008. These amendments confer a benefit on the public by making the Targeted Industries Networking Fund, which is currently underutilized, more accessible to eligible applicants.

The Agency is taking the following steps to notify potentially affected parties of the effective date of the amendments: publishing the final rule making in the Iowa Administrative Bulletin, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

These amendments became effective on September 18, 2008.

These amendments are intended to implement 2007 Iowa Acts, chapter 122, section 7(7).

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 [107.1 to 107.8] is being omitted. These amendments are identical to those published under Notice as **ARC 6941B**, IAB 7/16/08.

[Filed Emergency After Notice 9/18/08, effective 9/18/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

## ARC 7243B

### ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

#### Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts new Chapter 110, "Lean Manufacturing Institute Program," Chapter 111, "Supplier Capacity and Product Database Program," and Chapter 112, "Management Talent Recruitment Program," Iowa Administrative Code.

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

The new rules implement programs authorized by 2007 Iowa Acts, chapter 122, sections 7(1), 7(2), and 7(8). The rules describe the purpose of the programs; the application submittal, review, and approval procedures; and the contract administration provisions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 16, 2008, as **ARC 6940B**.

A public hearing was held on August 8, 2008, to receive comments about the proposed amendments. The following comments were received:

- Steven T. Carter, President, Iowa State University Research Park Corporation, Ames, Iowa, suggested adding “management talent wages and salaries” to subrule 112.4(2) as an eligible use of funds. The impact of this change would be to allow the funds to be used to pay direct wages and salaries. The Department recognizes this as an appropriate use of the funds and the subrule has been changed accordingly. Subrule 112.4(2) now reads as follows:

“**112.4(2)** Funds shall be used for the identification of potential management talent, participation in human resource-business opportunity matching events, marketing materials, preparation of organized information (e.g., database, Internet applications, networks, talent profiles), and management talent wages, salaries, and relocation expenses. Funds shall not be used for human resource recruitment, search, or placement service expenses or to purchase equipment.”

- Carter also suggested that in reviewing and scoring the applications, the selection criteria stipulated in subrule 119.9(6) (i.e., management team, management expertise, and background including education, training, work experience, and other factors) should be the focus of the application and should provide a majority of the points awarded. The impact of this change would be to fund applications that demonstrate clear and convincing management expertise. The Department concurs with this suggestion and will develop the application to award more points using the criteria listed in subrule 119.9(6).

- Ronald A. Cox, Director, Center for Industrial Research and Service, Iowa State University, Ames, Iowa, provided a correction for the official name of the U.S. Department of Commerce/NIST manufacturing extension partnership in Iowa (MEP). The Department has revised subrules 110.6(2) and 111.6(2) to correct the official name of a desired eligible applicant.

- Michele Walker, Future Health, Inc., Carroll, Iowa, suggested an alternative definition for “early-stage company” to mean a company that is “three or four years from the date of the first dollar of sales revenue” rather than “a company with three or fewer years of operating experience” as defined in the proposed rule. The impact of this change would be to increase applications from “lifestyle” or “hobby” businesses that may be in existence but that do not have sales and job creation as a primary motivation. The Department did not change the definition in the adopted rules. The proposed definition of an “early-stage company” is consistent with how that definition is used in established Department financial assistance programs; furthermore, the date of formation of a company is easy to verify, whereas tracking the first date of sales revenue may not be verifiable and is subject to interpretation.

The Iowa Economic Development Board adopted these amendments on September 18, 2008.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendments, 35 days after publication, should be waived and the amendments be made effective on September 18, 2008. The Department requests emergency implementation of these amendments because they confer a benefit on the public. The earlier effective date will make funds accessible for the quality projects which are currently under development by eligible applicants for the Lean Manufacturing Institute Program, Supplier Capacity and Product Database Program, and Management Talent Recruitment Program. With the amendments implemented, projects could be funded at an earlier time frame, encouraging critical collaborations in the targeted industries.

These amendments became effective on September 18, 2008.

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

These amendments are intended to implement 2007 Iowa Acts, chapter 122, sections 7(1), 7(2) and 7(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 [Chs 110 to 112] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 6940B**, IAB 7/16/08.

[Filed Emergency After Notice 9/18/08, effective 9/18/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

## **ARC 7244B**

### **ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

#### **Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 211, "Community Attraction and Tourism Development Program," and Chapter 212, "Vision Iowa Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 16, 2008, as **ARC 6939B**.

The final amendments incorporate the new River Enhancement Community Attraction and Tourism Fund established by 2008 Iowa Acts, Senate File 2430, section 5, update statutory references, and incorporate the legislation enacted by 2008 Iowa Acts, House File 2450, which allows the Director of IDED to appoint a designee to the Vision Iowa Board.

The Department held a public hearing on Thursday, August 7, 2008, to receive comments on the amendments. There were no comments received. On September 10, 2008, the Vision Iowa Board voted to recommend to the Iowa Economic Development Board the filing of the final amendments. The final amendments are identical to the proposed amendments.

The Iowa Economic Development Board adopted these amendments on September 18, 2008.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments, 35 days after publication, should be waived and the amendments be made effective on September 18, 2008. These amendments confer a benefit on the public by allowing the Vision Iowa Board to begin accepting and reviewing applications for funding immediately upon filing of the final amendments.

The Department is taking the following steps to notify potentially affected parties of the effective date of the amendments: publishing the rule making in the Iowa Administrative Bulletin, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

These amendments are intended to implement Iowa Code chapter 15F as amended by 2008 Iowa Acts, Senate File 2430 and House File 2450.

These amendments became effective on September 18, 2008.

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 Chs 211, 212] is being omitted. These amendments are identical to those published under Notice as **ARC 6939B**, IAB 7/16/08.

[Filed Emergency After Notice 9/18/08, effective 9/18/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

**ARC 7210B**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 455C.19, the Environmental Protection Commission hereby amends Chapter 107, "Beverage Container Deposits," Iowa Administrative Code.

This amendment establishes criteria for awarding grants to independent redemption centers for making improvements to such centers. The grant program is the result of recently passed legislation, 2008 Iowa Acts, House File 2700, sections 78 and 88, that dedicates \$1 million from the general fund of the state to an independent redemption center grant fund for improvements to independent redemption centers in existence prior to July 1, 2008. Up to 3.5 percent of the fund can be used to pay administrative costs relating to the management of the grant program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 30, 2008, as **ARC 7038B**. This amendment is identical to that published under Notice of Intended Action.

A public hearing was held on August 19, 2008, at which time eight persons attended and six of them spoke about their views on the proposed rule. Comments received from the public are summarized in the Responsiveness Summary which may be found at [http://www.iowadnr.com/waste/recycling/files/resp\\_summary.pdf](http://www.iowadnr.com/waste/recycling/files/resp_summary.pdf).

The Department finds that this amendment confers a benefit on the public, which will benefit by having independent redemption centers obtain, as quickly as possible, grant funds for improving their sustainability, convenience, and accessibility. Independent redemption centers have been operating under general financial hardship for many years, and the sooner they can institute improvements through this grant program, the sooner the public will benefit from those improvements. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment is intended to implement 2008 Iowa Acts, House File 2700, sections 78 and 88.

This amendment became effective upon filing with the Administrative Rules Coordinator on September 10, 2008.

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 amendment [107.16] is being omitted. This amendment is identical to that published under Notice as **ARC 7038B**, IAB 7/30/08.

[Filed Emergency After Notice 9/10/08, effective 9/10/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

**ARC 7261B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 426B.5(2)(f), the Department of Human Services amends Chapter 25, "Disability Services Management," Iowa Administrative Code.

These amendments update provisions for operations of the Risk Pool Board to conform to changes enacted in 2008 Iowa Acts, House File 2423. The amendments provide that the Department will convene the Risk Pool Board earlier in the year and will accept and process risk pool applications from counties earlier. These changes will result in risk pool decisions and warrant distribution earlier in the year, which will make risk pool funds available to counties earlier. In order to accomplish this, the threshold for eligibility for risk pool funds must be based on the county budget and expenditures for the fiscal year that began two years before the fiscal year in which the risk pool funds are distributed.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations. The Department does not have authority to waive statutory provisions.

The Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission adopted these amendments on September 18, 2008.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments merely conform the rules to the provisions of 2008 Iowa Acts, House File 2423.

The Department finds that these amendments confer a benefit by clarifying instructions to counties seeking risk pool funding. 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 426B.5 as amended by 2008 Iowa Acts, House File 2423.

These amendments became effective October 1, 2008.

The following amendments are adopted.

ITEM 1. Rescind the definitions of “Preapproval application” and “Regular application” in rule **441—25.61(426B)**.

ITEM 2. Amend subrule 25.62(5) as follows:

**25.62(5) Board meetings.**

a. The board shall meet in ~~February~~ November of each year and may hold special meetings at the call of the chairperson or at the request of a majority of the voting members.

b. Any county making application for risk pool funds must be represented at the board meeting for awarding funds when that request is considered.

(1) The division shall notify the county of the date, time and location of the meeting.

(2) Any other persons with questions about the date, time or location of the meeting may contact the Administrator, Division of Mental Health and Disability Services, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50309-0114, telephone ~~(515)242-5994~~ (515)281-7277.

c. No change.

ITEM 3. Amend subparagraph **25.63(1)“a”(3)** as follows:

(3) ~~At the close of~~ In the fiscal year that ~~immediately preceded~~ commenced two years before the fiscal year of ~~application~~ distribution, the county’s services fund ending balance under generally accepted accounting principles was equal to or less than 20 percent of the county’s actual gross expenditures for that fiscal year.

ITEM 4. Amend paragraphs **25.63(2)“b”** and **“e”** as follows:

b. *Deadline.* The division must receive the application no later than 4:30 p.m. on ~~January 25~~ October 31 of each year; or, if ~~January 25~~ October 31 is a holiday, Saturday or Sunday, the division must receive the application no later than 4:30 p.m. on the first working day thereafter. ~~An application received before January 11 shall be considered a preapproval application and shall receive an initial decision on eligibility before the funding decision is made.~~

e. *Content.* ~~The~~ In addition to Form 470-3723, Risk Pool Application, the application package shall include the following forms for the fiscal year that commenced two years before the fiscal year of distribution:

~~(1) Form 470-3723, Risk Pool Application.~~

~~(2)~~ (1) Form 634C, Service Area 4 Supporting Detail (pages 1 to 8).

~~(3)~~ (2) Form 638R, Statement of Revenues, Expenditures, and Changes in Fund Balance—Actual and Budget (pages 1 and 2).

~~(4)~~ (3) If the budget has been amended, Form 653A-R, Record of Hearing and Determination on the Amendment to County Budget (sheet 2), ~~for both the current fiscal year budget, as last amended, and the prior fiscal year gross services fund expenditures.~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 5. Amend subrule 25.63(3) as follows:

**25.63(3) Request for additional information.** Staff shall review all applications for completeness. If an application is not complete, staff of the division shall contact the county within four working days after ~~January 25~~ October 31 or the first working day thereafter, if ~~January 25~~ October 31 is a holiday, Saturday or Sunday, to request the information needed to complete the application. The county shall submit the required information within five working days from the date of the division's request for the additional information.

ITEM 6. Amend rule 441—25.64(426B), introductory paragraph, as follows:

**441—25.64(426B) Methodology for awarding risk pool funding.** The risk pool board shall make an eligibility decision on each application within 45 days after receiving the application and shall make a funding decision no later than ~~February 25~~ December 15.

ITEM 7. Amend paragraph **25.65(1)“b”** as follows:

b. An amount such that the fund balance after refund will not exceed 5 percent of the ~~year-end balance~~ expenditures for the year - ~~Fund balances shall be as~~ determined on a modified accrual basis.

[Filed Emergency 9/19/08, effective 10/1/08]

[Published 10/8/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/08.

**ARC 7225B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 170, “Child Care Services,” Iowa Administrative Code.

This amendment updates the Child Care Assistance provider reimbursement rate ceiling charts to reflect a 2 percent increase for licensed child care centers and registered child development homes, as mandated by legislation. Providers will have the opportunity to submit new child care agreements for an adjusted rate if their private-pay rate for child care is higher than their current Child Care Assistance rate.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on July 16, 2008, as **ARC 6930B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice.

This amendment does not provide for waivers in specified situations. 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 September 17, 2008.

The Department finds that this amendment confers a benefit on child care providers by increasing Child Care Assistance reimbursement. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of the amendment is waived.

This amendment is intended to implement Iowa Code section 273A.13 and 2008 Iowa Acts, Senate File 2425, section 32(11).

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment became effective on October 1, 2008.

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 amendment [170.4(7)“a”] is being omitted. This amendment is identical to that published under Notice as **ARC 6930B**, IAB 7/16/08.

[Filed Emergency After Notice 9/17/08, effective 10/1/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

**ARC 7253B**

## **IOWA FINANCE AUTHORITY[265]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and Iowa Code Supplement sections 16.5(1)“r” and 16.40, the Iowa Finance Authority hereby adopts new Chapter 29, “Jump-Start Housing Assistance Program,” Iowa Administrative Code.

The purpose of these rules is to implement a program of housing assistance for persons affected by the natural disasters that occurred in Iowa in 2008.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers.

The Authority finds that notice and public participation are impracticable and contrary to the public interest in that assistance to the victims of the natural disasters is needed immediately and the normal notice and public participation process would delay implementation of the program.

The Authority finds that these rules confer a benefit on persons adversely affected by the natural disasters, in that the rules provide assistance and ease and speed the administration of an important program benefiting those persons and should be implemented as soon as feasible in order to facilitate the provision of assistance under the program. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these rules is waived.

The Authority adopted these rules on September 18, 2008.

Notice of Intended Action for these rules is also published herein as **ARC 7254B** to allow for public comment.

These rules became effective September 19, 2008.

These rules are intended to implement Iowa Code Supplement sections 16.5(1)“r” and 16.40.

The following amendment is adopted.

Adopt the following **new** 265—Chapter 29:

### CHAPTER 29

#### JUMP-START HOUSING ASSISTANCE PROGRAM

**265—29.1(16) Purpose.** This chapter defines and structures the jump-start housing assistance program to aid individuals whose homes, located in parts of Iowa declared by the President of the United States to be disaster areas, were destroyed or damaged by the natural disasters of 2008. Under the program, the authority may grant funds in accordance with this chapter to local government participants, including certain Iowa councils of governments, cities, and counties. The local government participants shall, in turn, loan funds to eligible residents under the conditions specified in this chapter to assist those eligible residents in purchasing homes generally comparable to those they lived in prior to the occurrence of the natural disasters of 2008, in repairing or rehabilitating disaster-affected homes, and in making mortgage payments and paying for other eligible property-carrying costs while the eligible residents await a property acquisition of their disaster-affected homes.

IOWA FINANCE AUTHORITY[265](cont'd)

**265—29.2(16) Definitions.** For purposes of this chapter, the following definitions apply.

“*Authority*” means the Iowa finance authority.

“*COG*” means an Iowa council of governments as identified by Iowa Code chapter 28H.

“*Disaster-affected home*” means a primary residence that was destroyed or damaged by the natural disasters of 2008.

“*Disaster compensation*” means moneys received by an eligible resident as a result of damage caused to the eligible resident’s disaster-affected home by the natural disasters of 2008 from any of the following sources: (1) FEMA, (2) any other governmental assistance, or (3) proceeds of any insurance policy. “Disaster compensation” shall not include rental assistance received from FEMA or other sources.

“*Eligible energy-efficient home appliances and improvements*” means energy-efficient furnaces, boilers, appliances, air conditioners, hot water heaters, windows, and insulation that meet standards set by the office of energy independence.

“*Eligible property-carrying costs*” means the following expenses associated with the ownership of a disaster-affected home: liability insurance premiums, flood insurance premiums, property tax payments, installment payments on a real estate purchase contract for the disaster-affected home provided that the real estate purchase contract was executed prior to the first date on which the disaster-affected home sustained damage as a result of the natural disasters of 2008, and special assessments.

“*Eligible repair expenses*” means the reasonable cost of repairing damage to a disaster-affected home necessitated by the natural disasters of 2008. “Eligible repair expenses” shall not include additions to or expansions of a disaster-affected home or the purchase or installation of luxury items that were not part of the disaster-affected home prior to the natural disasters of 2008.

“*Eligible resident*” means an individual or family who resided in a disaster-affected home at the time of the natural disasters of 2008 and who:

1. Is the owner of record of a right, title or interest in the disaster-affected home; and
2. Has been approved by FEMA for housing assistance as a result of the natural disasters of 2008.

In cases where multiple persons own a disaster-affected home together, such as by a tenancy in common or joint tenancy, such persons will generally be deemed collectively to be the “eligible resident,” provided the requirements set forth above are met. In the event that multiple persons assert inconsistent claims as to who the owner of a disaster-affected home is, the local government participant shall review the facts and, if necessary, make an allocation among the various applicants.

“*FEMA*” means the Federal Emergency Management Agency.

“*Forgivable loan*” means a loan made to an eligible resident pursuant to the requirements of this chapter.

“*Local government participant*” means:

1. Any of the following Iowa cities: Ames, Cedar Falls, Cedar Rapids, Council Bluffs, Davenport, Des Moines, Dubuque, Iowa City, Waterloo, and West Des Moines;
2. Any COG whose territory encompasses one or more Iowa counties that have been declared by the President of the United States to be disaster areas; and
3. Any county that is not part of any Iowa council of governments and has been declared by the President of the United States to be a disaster area.

“*Natural disasters of 2008*” means the severe storms, tornadoes, and flooding that occurred in Iowa between May 25, 2008, and August 13, 2008, and designated by FEMA as FEMA-1763-DR.

“*Program*” means the jump-start housing assistance program described in this chapter.

“*Retention agreement*” means an agreement, to be recorded as a lien against the property for which assistance is provided, requiring that if an eligible resident sells a home that was purchased or repaired or for which a mortgage loan was paid with the assistance of a loan made under this chapter, then that portion of the original principal amount that has not been forgiven, if any, shall be repaid.

**265—29.3(16) Grants to local government participants.**

**29.3(1) Initial allocation, loans to local government participants.** The authority shall make an initial allocation of the funds made available for the program to the local government participants

## IOWA FINANCE AUTHORITY[265](cont'd)

pro rata based on the funds awarded by FEMA under its housing assistance program to each local government participant's jurisdiction as a percentage of the total amount of funds awarded as a result of the natural disasters of 2008. The authority shall enter into a grant agreement with each local government participant, pursuant to which the authority may disburse funds to the local government participant for the purposes described in this chapter. The grant agreement shall be prepared by the authority and may contain such terms and conditions, in addition to those specified in this chapter, as the executive director may deem to be necessary and convenient to the administration of the program and to the efficient and responsible use of the granted funds.

**29.3(2) *Review of requests for assistance.*** The local government participant shall accept and review each request for assistance and shall determine whether the requesting party is an eligible resident. If the requesting party is determined an eligible resident, the local government participant shall determine whether the funds are being requested for a use permitted under the program and the amount available to the eligible resident under the terms of the program.

**29.3(3) *Coordination with the jump-start business assistance program.*** For presidentially declared disaster areas outside a COG region, counties may elect to apply singly, join with other counties, or join with an adjacent COG region. Likewise, a city named in the definition of "local government participant" in rule 265—29.2(16) may join with a COG, county, or multicounty entity. To the extent local government participants act jointly or cooperatively in their participation in the small business disaster recovery financial assistance program administered by the Iowa department of economic development pursuant to 261—Chapter 78, Iowa Administrative Code, the authority may require the local government participants to similarly act jointly or cooperatively in their participation under this chapter.

**29.3(4) *Reallocation of unused funds.*** Following one year, or following any three-month period during which a local government participant has requested no draws, the authority may reallocate all or part of any remaining portion of funds allocated to that local government participant to another local government participant with a demonstrated need for program funds.

**29.3(5) *Administrative fees.*** Each local government participant shall be entitled to receive an administrative fee in an amount not to exceed 5 percent of the funds loaned by such local government participant to eligible residents. A local government participant shall be entitled to an administrative fee only to the extent it makes forgivable loans. The administrative fee shall be paid from the allocation made to each such local government participant by the authority pursuant to subrule 29.3(1).

**29.3(6) *Proceeds of repayments.*** All loan amounts repaid to a local government participant by an eligible resident pursuant to this chapter shall be returned to the authority's housing assistance fund created by Iowa Code Supplement section 16.40.

**265—29.4** Reserved.

**265—29.5(16) Eligible uses.**

**29.5(1) *Forgivable loans.*** Local government participants may make forgivable loans, pursuant to the conditions set forth in rule 265—29.7(16), to eligible residents for the following eligible uses:

*a. Down payment assistance.* An eligible resident whose disaster-affected home was destroyed or damaged beyond reasonable repair may be provided down payment assistance for the purchase of replacement housing located within the local government participant's jurisdiction and, if necessary, for the cost of making reasonable repairs to the home being purchased to make it safe, decent, and habitable. The amount of down payment assistance available to an eligible resident shall generally not exceed 25 percent of the purchase price of the home being purchased and, in no event, shall the down payment assistance and any amount allowed for repairs collectively exceed \$50,000.

(1) For purposes of calculating the amount of down payment assistance available to the eligible resident, the amount of the down payment assistance shall be reduced by the amount of any disaster compensation received by the eligible resident in excess of any amount necessary to pay off a mortgage or real estate purchase contract on the disaster-affected home.

## IOWA FINANCE AUTHORITY[265](cont'd)

(2) As a condition of receiving down payment assistance, the eligible resident shall agree that any disaster compensation received subsequent to the closing of the forgivable loan, if not applied toward repayment of a mortgage on the disaster-affected home, shall be used by the eligible resident to pay down the balance of the forgivable loan outstanding at the time the eligible resident receives such disaster compensation.

(3) Down payment assistance shall be allowed only for the purchase of a primary residence by means of a fully amortized mortgage loan from a regulated lender featuring a rate of interest that is fixed for at least 5 years and that has a term not to exceed 30 years.

(4) Eligible residents who receive down payment assistance under this subrule may also receive the assistance available under subrule 29.5(2), but not the assistance available under paragraph 29.5(1) "b."

(5) An eligible resident shall not use the assistance allowed under this subrule for the purchase of more than one home.

*b. Housing repair or rehabilitation.* An eligible resident whose disaster-affected home is not proposed, or located in an area proposed, by a municipality or county to the Iowa homeland security and emergency management division for property acquisition under the hazard mitigation grant program set forth in Iowa Code chapter 29C (or under any other comparable program implemented in whole or in part to assist in recovery from the natural disasters of 2008) may receive financial assistance to pay for eligible repair expenses up to an amount not to exceed the lesser of \$50,000 or 60 percent of the latest available assessed value of the disaster-affected home, not including the assessed value of the land on which it is situated, dated prior to the natural disasters of 2008. The eligible resident shall establish the necessity and reasonable cost of the repairs or rehabilitation to the reasonable satisfaction of the local government participant.

(1) For purposes of calculating the amount of assistance available to the eligible resident pursuant to this paragraph, the cost of repairs to, or rehabilitation of, the disaster-affected home shall be reduced by the amount of any disaster compensation received.

(2) As a condition of receiving assistance pursuant to this paragraph, the eligible resident shall agree that any disaster compensation received subsequent to the closing of the forgivable loan shall be used by the eligible resident to pay down the balance of the forgivable loan outstanding at the time the eligible resident receives such disaster compensation.

(3) An eligible resident who receives assistance pursuant to this paragraph shall not be eligible for assistance under either paragraph 29.5(1) "a" or subrule 29.5(2).

**29.5(2) Interim mortgage assistance loans.** An eligible resident whose disaster-affected home is proposed, or is located in an area proposed, by a municipality or county to the Iowa homeland security and emergency management division for property acquisition under the hazard mitigation grant program set forth in Iowa Code chapter 29C (or any other comparable program implemented in whole or in part to assist in recovery from the natural disasters of 2008) may receive financial assistance equivalent to an amount of up to \$1,000 per month for the purpose of paying mortgage payments and other eligible property-carrying costs for the disaster-affected home for a period not to exceed 12 months. An eligible resident who receives assistance pursuant to this subrule shall not be eligible for assistance under paragraph 29.5(1) "a." If, however, it subsequently is determined by the Iowa homeland security and emergency management division that the disaster-affected home of the eligible resident will not be acquired under the hazard mitigation grant program, then the eligible resident shall be eligible for assistance under paragraph 29.5(1) "a" on the condition that the amount of assistance available under that paragraph shall be reduced by the amount of assistance received by the eligible resident under subrule 29.5(2). Financial assistance provided pursuant to this subrule shall not be in the form of a forgivable loan, but rather in the form of a nonforgivable loan secured by a retention agreement. The nonforgivable loan shall be payable in full upon the acquisition of the disaster-affected home pursuant to the hazard mitigation grant program or sale of the disaster-affected home by the eligible resident.

**29.5(3) Energy efficiency assistance.** An eligible resident who receives either down payment assistance pursuant to paragraph 29.5(1) "a" or housing repair or rehabilitation assistance pursuant to paragraph 29.5(1) "b" shall also be eligible to receive an additional loan amount, up to a maximum of \$10,000, as reimbursement for the purchase and installation costs for eligible energy-efficient home

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appliances and improvements. Any amount allowed pursuant to this subrule shall be added to the principal balance of the forgivable loan. Amounts loaned pursuant to this subrule may be loaned either at the time the forgivable loan is first made or subsequent thereto within three months.

**29.5(4) Expenses incurred prior to September 19, 2008.** In the event an eligible resident purchased a home, made or caused to be made repairs to a disaster-affected home, or made mortgage payments (or paid for other eligible property-carrying costs) for a disaster-affected home located within the jurisdiction of a local government participant prior to September 19, 2008 (the effective date of this chapter), the eligible resident shall be eligible for reimbursement therefor under this chapter as though the purchase, repairs, or payments had taken place following September 19, 2008.

**29.5(5) Applications for assistance.** To apply for down payment assistance or down payment assistance plus interim mortgage assistance, the eligible resident shall apply to the local government participant in whose jurisdiction the home being purchased is located. To apply for assistance for repair or rehabilitation of a disaster-affected home, the eligible resident shall apply to the local government participant in whose jurisdiction the disaster-affected home is located. To apply for interim mortgage assistance only, the eligible resident shall apply to the local government participant in whose jurisdiction the disaster-affected home is located.

**265—29.6(16) Loan terms.** Loans made under the program shall, at a minimum, contain the following terms:

**29.6(1) Forgivability.** Forgivable loans made pursuant to the program shall be forgivable over a ten-year period. One-tenth of the total principal amount loaned shall be forgiven following each full year the eligible resident owns the home for which the loan was made, beginning on the date of the final disbursement of forgivable loan proceeds.

**29.6(2) Zero percent interest.** Loans made pursuant to the program shall bear no interest.

**29.6(3) Ten-year term.** All loans made pursuant to the program shall be for a term of ten years.

**29.6(4) Repayment due upon sale of home.** Any principal of a forgivable loan that has not yet been forgiven at the time the home for which the forgivable loan was made is sold by the eligible resident (including property acquisitions) shall be due and payable upon such sale.

**29.6(5) Retention agreement.** Each loan made pursuant to this program shall be secured by a retention agreement which shall constitute a lien on the title of the real property for which the forgivable loan is made until such time as the forgivable loan has either been fully forgiven or paid in full.

**265—29.7(16) Financial assistance subject to availability of funding.** All financial assistance authorized pursuant to this chapter shall be subject to funds being made available to the authority for the purposes set forth herein.

These rules are intended to implement Iowa Code Supplement sections 16.5(1) “r” and 16.40.

[Filed Emergency 9/19/08, effective 9/19/08]

[Published 10/8/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/08.

**ARC 7264B**

## **SECRETARY OF STATE[721]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State hereby adopts amendments to Chapter 22, “Voting Systems,” Iowa Administrative Code.

These amendments remove obsolete requirements for the use and testing of voting machines no longer authorized for use under Iowa law pursuant to Iowa Code Supplement section 52.2 as amended by 2008 Iowa Acts, Senate File 2347, effective April 1, 2008. These amendments also expand the ability of county auditors to use electronic ballot marking devices with additional optical scan voting systems as

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required by 2008 Iowa Acts, Senate File 2347, and as certified for use in Iowa by the Iowa Board of Examiners for Voting Systems on June 27, 2008.

In compliance with Iowa Code section 17A.4(2), the Secretary finds that notice and public participation are contrary to the public interest because the use of direct recording electronic voting devices in Iowa elections is no longer allowed under Iowa law beginning November 4, 2008, and county auditors are currently in the process of preparing optical scan voting systems for the November 4, 2008, general election.

The Secretary also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator because the law’s prohibition on further use of direct recording electronic voting devices goes into effect beginning with the November 4, 2008, general election and county auditors are currently in the process of preparing optical scan voting systems for use in that election. These amendments expand the use of electronic ballot marking devices to include additional optical scan voting systems as certified for use in Iowa by the Iowa Board of Examiners for Voting Systems on June 27, 2008. The adopted amendments are of immediate importance to the election process and confer a benefit to the voters of Iowa.

These amendments are also published herein under Notice of Intended Action as **ARC 7266B** in order to solicit public comment.

The Secretary of State adopted these amendments on September 19, 2008.

These amendments became effective September 19, 2008.

These amendments are intended to implement 2008 Iowa Acts, Senate File 2347.

The following amendments are adopted.

ITEM 1. Rescind and reserve rule **721—22.39(52)**.

ITEM 2. Amend rule 721—22.41(52) as follows:

**721—22.41(52) Testing Public testing of optical scan systems.** ~~As a part of preparation for use for each election, the commissioner shall thoroughly test all automatic tabulating equipment (including equipment that will be used for counting absentee ballots) as required by Iowa Code section 52.35. All automatic tabulating equipment (including equipment used to tabulate absentee ballots) shall be tested before use at any election, as required by Iowa Code section 52.35.~~ As a part of preparation for use for each election, the commissioner shall thoroughly test all automatic tabulating equipment (including equipment that will be used for counting absentee ballots) as required by Iowa Code section 52.35. All automatic tabulating equipment (including equipment used to tabulate absentee ballots) shall be tested before use at any election, as required by Iowa Code section 52.35. The process and results of the test shall be carefully documented and shall be available for inspection.

**22.41(1)** Each automatic tabulating device (including equipment that will be used for counting absentee ballots) shall be tested to determine the following:

*a. to c.* No change.

*d.* The voter may cast as many write-in votes for each office on the ballot as there are positions to be filled, and the write-in votes are ~~reported~~ tallied correctly.

*e. and f.* No change.

**22.41(2)** No change.

ITEM 3. Amend rule 721—22.42(52) as follows:

**721—22.42(52) Preparing test decks.** The commissioner shall prepare test decks from all ballots printed for use in the election, including those for use at the polling places and for absentee balloting. ~~Test ballots for optical scan voting equipment shall test the reporting of votes for every office and public measure on the ballot at the election.~~ Each of the following test decks shall be prepared for every precinct and ballot style in the election. Commissioners may use additional test methods to supplement the process described in this rule.

**22.42(1)** *Requirements for all test decks prepared by the commissioner and used in public testing.* The commissioner shall:

*a.* ~~The commissioner shall:~~ Replace ballots spoiled during the marking process instead of attempting to correct errors.

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~~(1) — Never erase errors and never use correction fluid or correction tape to cover errors. Replace the ballot instead.~~

~~(2) b. Fill in each oval completely using the recommended pen or pencil or AutoMARK VAT.~~

~~(3) c. Mark each ballot “Test Ballot,” and label each ballot to indicate whether it is from the systematic test deck, the overvote and blank ballot test deck or the straight party test deck.~~

~~b. — In counties where the AutoMARK VAT is used, the commissioner may prepare some test ballots using the AutoMARK VAT.~~

~~e. — Hand-marked ballots that include folds, erasures, marginal or extra marks shall not be used in the test decks described in this rule. An additional set of test ballots may be prepared to test election day conditions, particularly for folded absentee ballots.~~

**22.42(2) Test Required test method.** The commissioner shall:

~~a. Prepare a test plan showing the planned number of votes, including undervotes and overvotes for each oval on the ballot. This plan includes ovals associated with candidates, write-in lines, judges and public measures and straight party voting. Follow the instructions in subrules 22.42(3) through 22.42(6) 22.42(5) in preparing the test decks.~~

~~b. to f. No change.~~

~~22.42(3) Systematic test deck. The commissioner shall use this deck to test each oval on the ballot. The commissioner shall determine a unique number of votes for each candidate in each office, such as one vote for each write-in oval for the office, two votes for the first candidate listed (or “NO” votes on public measures and judges), three votes for the second candidate, etc. It is not necessary to have a different number of votes for each write-in oval for offices for which the voter may select more than one candidate. However, the write-in oval shall have a different number of votes marked than any candidate for the office. The commissioner shall:~~

~~a. to d. No change.~~

~~22.42(4) System-specific testing requirements. Separate tests are prescribed for each certified voting system.~~

~~a. No change.~~

~~b. Diebold Election Systems Premier Election Solutions.~~

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

**22.42(5)** No change.

~~22.42(6) Combining test decks. The commissioner may tabulate the combined test decks after separately testing each one.~~

ITEM 4. Amend rule 721—22.43(52) as follows:

~~721—22.43(52) Public testing of optical scan systems Conducting the public test. All automatic tabulating equipment (including equipment used to tabulate absentee ballots) shall be tested before use at any election, as required by Iowa Code section 52.35.~~

**22.43(1)** The equipment shall be inspected to determine whether it has been prepared properly for the election at which it will be used. The following information shall be verified:

~~a. The correct program cartridge or memory card is in place for the election and the precinct or precincts in which it will be used.~~

~~b. — The appropriate ballots are available for the test of each automatic tabulating device to be used in the election.~~

~~e. b. All counters are set at zero before the test is begun.~~

~~22.43(2) Each automatic tabulating device shall be tested to determine that the device and its programs will accurately tabulate votes for each candidate and question on the ballot.~~

**22.43(3) 22.43(2)** The commissioner shall conclude the test not later than 12 hours before the polls open on election day. Following the test, the tabulating equipment shall be inspected to determine that:

~~a. to c. No change.~~

The results tape from each scanner produced during the public test shall be signed by the person conducting the test and by any observers present at the test. The signers shall write their signatures at the end of the tape where it will be detached from the machine. The tape shall be torn or cut across the

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signatures, so that a portion of the signature is on the tape remaining on the tabulating device. The test results tape, including a part of the tester’s signature, shall be retained with the appropriate test deck for the period of time required by Iowa Code section 50.19.

~~22.43(4)~~ **22.43(3)** Test deck submitted by observers. Any person who is present at the public test may mark ballots to be used to test the voting equipment. The following conditions apply:

- a. Not more than ten ballots may be submitted by any person.
- b. Only official ballots provided by the commissioner at the test shall be used. ~~The commissioner shall provide sample ballots or photocopies of sample ballots to anyone upon request.~~
- c. ~~The preparer~~ observer submitting the test shall provide a written tally of the test deck.
- d. The results of the machine tabulation shall be printed and compared with the ~~preparer’s~~ observer’s tally. If there are differences, the cause of the discrepancy shall be determined. If the cause of the discrepancy cannot be determined and corrected, the program or equipment shall not be used at the election.
- e. The test decks, the ~~preparer’s~~ tally, and the printed results of the test shall be kept with the records of the election and preserved as required by Iowa Code section 50.19.

ITEM 5. Amend subrule 22.50(3) as follows:

**22.50(3) Evacuation.** If it is necessary to evacuate the election office, a satellite absentee voting station or a polling place, the precinct election staff or the election officials shall immediately attempt to notify the commissioner and take the following actions:

- a. Keep people safe. ~~The officials shall make sure that all voters and other persons are safely out of the polling place.~~
- b. Protect ~~If possible, gather and secure voted ballots, election equipment and critical election documents and materials. After the safety of the voters and others has been secured, the officials shall remove or secure the following:~~
  - (1) ~~The ballot box or electronic voting device containing voted ballots.~~
  - (2) ~~The keys to the voting equipment and any memory cards, cartridges or other data storage devices containing the election information.~~
  - (3) ~~All unvoted ballots.~~
  - (4) ~~The precinct election register.~~
  - (5) ~~Signed declarations of eligibility.~~
  - (6) ~~The tabulating device.~~

ITEM 6. Amend subrule 22.51(1) as follows:

**22.51(1) Serial number.** Each memory card shall have a serial number printed on a readily visible ~~permanent~~ label. The label shall include the name of the county.

ITEM 7. Amend paragraphs **22.51(8)“a”** to **“c”** as follows:

- a. Seal numbers from the voting equipment; and
- ~~b. — Keys provided for the voting equipment; and~~
- ~~e. b.~~ Condition of seals on ballot containers.

ITEM 8. Amend subrules 22.51(10) and 22.51(11) as follows:

**22.51(10) Return of memory cards.** If the precinct election officials remove the memory cards from the voting equipment on election night, they shall return to the commissioner the memory cards and the seals used to secure them in a sealed envelope or other container. All officials of the precinct shall witness the statement on the envelope or other container. The label on the envelope or other container shall be in substantially the following form:

### Memory Cards

Election Date: \_\_\_\_\_

Precinct: \_\_\_\_\_

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This envelope contains Memory Cards and memory card access seals from this precinct.

Machine Number	Memory Card #	Memory Card Seal #

[Signatures of all precinct election officials: shall be included on the label.]

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

**22.51(11) Storage.** If the memory cards are returned inside the voting equipment to the commissioner, the machine serial numbers and the seal numbers shall be verified against the verification log described in subrule 22.51(8). ~~The memory card audit log shall be printed before the memory cards are removed.~~ When the memory cards are removed, their serial numbers shall also be verified against the verification log returned by the precinct’s elections officials. The memory card audit log shall be retained for the time period required by Iowa Code section 50.19.

ITEM 9. Rescind and reserve rule **721—22.100(52)**.

ITEM 10. Amend rule **721—22.101(52)**, definitions of “Optical scan voting system” and “Tabulating device,” as follows:

“*Optical scan voting system*” means a system employing ~~paper~~ optical scan ballots under which votes are cast by voters by marking ~~paper~~ the optical scan ballots with a ballot marking device and thereafter counted by use of automatic tabulating equipment.

“*Tabulating device*” means the portable apparatus which ~~removes the optical scan ballot from the secrecy envelope,~~ examines and counts the votes recorded on the optical scan ballot, and produces a paper printout of the results of the voting.

ITEM 11. Amend rule 721—22.102(52) as follows:

**721—22.102(52) Optical scan ballots.** The optical scan ballots shall be printed pursuant to Iowa Code chapters 43 and 49 and by any relevant provisions of any statutes which specify the form of ballots for special elections, so far as possible within the constraints of the physical characteristics of the system.

**22.102(1)** The optical scan ballots may be printed on both sides of a sheet of paper. If both sides are used, the words “Turn the ballot over” shall be clearly printed ~~in at least 24 point type (1/4” high)~~ on the front and the back of the optical scan ballot, at the bottom.

**22.102(2)** Printed at the top of the front side of the optical scan ballot shall be the name and date of the election; the words “Official Ballot”; a designation of the ballot ~~rotation~~ style or precinct, if any; and a facsimile of the commissioner’s signature.

**22.102(3)** The voting target shall be printed opposite each candidate’s name and write-in line on the optical scan ballot, and opposite the “yes” and “no” for each public measure and judge. ~~Whenever possible, the~~ The voting target shall be printed on the left side of the name or “yes” and “no”. The voting target shall be an oval unless the voting system requires a target with a different shape.

**22.102(4) to 22.102(6)** No change.

**22.102(7)** Ballots shall be coded as necessary to allow the tabulation program to identify the appropriate ballots for the precinct. Ballots shall be coded so the tabulating device can identify by precinct the votes cast for each office and question on the ballot by precinct. The votes from the absentee and special voters precinct shall be reported as a single precinct except in general elections pursuant to Iowa Code section 53.20 as amended by 2008 Iowa Acts, House File 2367. Identical ballots shall not be coded to identify groups of voters within a precinct.

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**22.102(8)** No office, ~~including a judicial office~~, or public measure on any ballot shall be divided to appear in more than one column or on more than one page of a ballot. If the full text of a public measure will not fit on a single column of the ballot, the commissioner shall prepare a summary for the ballot and post the full text in the voting booth as required by Iowa Code section 52.25.

**22.102(9)** No change.

ITEM 12. Amend subrules 22.261(2) and 22.261(3) as follows:

**22.261(2)** *Configuration choices.* The following selections are mandatory for all elections:

*a.* No change.

~~*b.* —Ballot format. The voting target shall be printed on the left side of the candidate's name and on the left side of each "yes" and "no" choice for public measures and judges. The voting target shape shall be an oval.~~

~~*c.*~~ *b.* Ballot control. In an official election, the commissioner shall never program the Model 100 for unconditional acceptance of all ballots; shall not divert blank ballots to the write-in bin; and shall always accept undervoted ballots. The system shall be programmed to query the voter in each of the following situations:

(1) to (3) No change.

~~*d.*~~ *c.* Unit control. The commissioner shall not select automatic transmission of election results by modem. The precinct officials must print the official results at the polling place before transmitting them.

~~*e.*~~ *d.* Reports. The following are required reports:

(1) to (3) No change.

~~*f.*~~ *e.* Reopen polls. The commissioner shall enable this option, but protect it against unauthorized use. If it is necessary to reopen the polls, the chairperson of the precinct board shall contact the commissioner for the password.

~~*g.* —The commissioner shall not authorize automatic transmission of the election results immediately after closing the polls. The results shall be printed first.~~

**22.261(3)** *Ballot printing.* ~~The voting target shall be an oval printed on the left side of the candidate's name and the "yes" and "no" choices for judges and public measures.~~

*a. Format.* The office title, instructions about the maximum number of choices the voter can make for the office, the candidate names and all write-in lines associated with each office on the ballot shall be printed in a single column on the same side of the ballot. All text and the "yes" and "no" choices for each public measure and for each individual judge on a ballot shall be printed in a single column on the same side of the ballot. No office or public measure ~~or judicial office~~ on any ballot shall be divided to appear in more than one column or on more than one page of a ballot.

*b.* No change.

ITEM 13. Rescind subrule **22.261(5)**.

ITEM 14. Renumber subrule **22.261(6)** as **22.261(5)**.

ITEM 15. Rescind subrules **22.261(7)** and **22.261(20)**.

ITEM 16. Amend rule **721—22.262(52)**, catchwords, as follows:

**721—22.262(52) Diebold Election Systems' Premier Election Solutions' AccuVote OS and AccuVote OSX precinct count device devices.**

ITEM 17. Amend subrules 22.262(3) to 22.262(5) as follows:

**22.262(3)** *Zero totals reports.*

~~*a.*~~ Long form zero totals reports showing all counters at zero shall be printed following memory card programming, before counting ballots in the Pre-Election Mode and as the ballot reader is opened on election day.

~~*b.* —The election day zero totals report shall be printed twice. The first copy shall be posted in the polling place for public inspection as required by 721—subrule 22.201(2). The second copy shall remain inside the ballot scanner and form a continuous record of the election with the election results report.~~

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**22.262(4) Ballot printing.** Although the ~~Diebold Election Systems'~~ Premier Election Solutions' GEMS voting system software includes choices for variations in ballot layout, all ballots shall be prepared according to the requirements of Iowa Code sections 43.26 through 43.29 and 49.30 through 49.48. For all elections the voting target shall be an oval printed on the left side of each choice on the ballot.

**22.262(5) Preelection testing.** All voting equipment shall be tested pursuant to the provisions of Iowa Code section 52.30 and rule 721—22.42(52) and ~~721—subrule 22.201(2)~~. At the commissioner's discretion, the commissioner may conduct additional tests.

ITEM 18. Rescind subrule **22.262(6)**.

ITEM 19. Adopt the following new rule 721—22.263(52):

**721—22.263(52) AutoMARK Voter Assist Terminal (VAT).**

**22.263(1) Acceptance testing.** Upon receipt of the equipment from the vendor, the commissioner shall subject each AutoMARK VAT to an acceptance test. The test shall be in addition to any testing provided by the vendor and shall include a demonstration of all functionalities of the device.

**22.263(2) Audio ballot preparation.** Each candidate shall have the opportunity to provide a record of the proper pronunciation of the candidate's name. The same voice shall be used for recording the entire ballot including instructions, office titles, candidate names and the full text of all public measures.

**22.263(3) Preelection testing.** Each AutoMARK VAT shall be tested before each election in which it will be used. The commissioner may use the AutoMARK VAT to prepare some ballots for test decks required by rule 721—22.42(52). In addition, the commissioner shall:

- a. Perform the test ballot print, then review the ballot to be sure that all ovals are darkened and the appropriate names are printed on each line.
- b. Calibrate the touchscreen.
- c. Select, then deselect each voting position in each race.
- d. Verify that the overvote and undervote functions are programmed correctly.
- e. Test the write-in function for each office on one ballot, and test all of the letters in the alphabet.
- f. Use the audio ballot function to mark one ballot.
- g. Tabulate the marked ballots from this test on the appropriate optical scanner.
- h. Ensure that the AutoMARK VAT is available for demonstration at public tests.

**22.263(4) Compact flash memory cartridge or memory card.** The compact flash memory cartridge shall be installed before the AutoMARK VAT is locked, sealed and shipped to the polling place for election day. In addition to locking the memory cartridge access door, the commissioner shall seal the door with a numbered seal, record the seal number, and provide the number to the precinct election officials as required by rule 721—22.51(52). From the time the AutoMARK VAT is delivered to the polling place until the time the precinct election officials arrive, the AutoMARK VAT shall be stored securely to prevent tampering. On election day, the precinct election officials shall inspect the seal and verify that the original numbered seal is present and undamaged.

**22.263(5) Calibration testing.** The commissioner may provide for printer and touchscreen calibration testing after delivery of the AutoMARK VAT to the polling place. If calibration testing is performed at the polling place, the delivery staff shall complete the testing before the polls open on election day and shall keep a log for each AutoMARK VAT and record the machine serial number, the precinct name or number, the date and time of the test, the name of the person performing the test, and the lifetime printer counter number at the completion of the test. The ballot to be used in the calibration test shall be provided to the tester and shall be labeled with the precinct name and election date. The completed calibration test ballot shall be returned to the commissioner and kept with the election records.

**22.263(6) AutoMARK VAT keys.** Possession of the AutoMARK VAT keys shall be restricted to precinct election officials and authorized members of the commissioner's staff.

**22.263(7) Table.** The table used to support the AutoMARK VAT shall meet the following requirements: The table shall be sturdy enough to hold the 40-pound AutoMARK VAT safely. Clearance

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shall be at least 27 inches high, 30 inches wide, and 26 inches deep. The top of the table shall be from 28 inches to 34 inches above the floor.

**22.263(8) Privacy.** The commissioner may provide each AutoMARK VAT with a privacy shield to protect the secrecy of each voter's ballot. The commissioner shall instruct the precinct election officials to position the AutoMARK VAT to provide maximum access for voters (especially voters who use wheelchairs) as well as privacy.

**22.263(9) Abandoned ballots.** If a voter or precinct election official discovers that a voter has left the AutoMARK VAT without printing the voter's ballot, the two precinct election officials designated to assist voters shall print the ballot without reviewing the ballot or making any changes, enclose the ballot in a secrecy folder, and immediately deposit the ballot in the tabulating device.

ITEM 20. Rescind and reserve rules **721—22.350(52)** and **721—22.351(52)**.

ITEM 21. Rescind and reserve rules **721—22.431(52)** to **721—22.434(52)**.

ITEM 22. Rescind and reserve rules **721—22.463(52)** and **721—22.464(52)**.

ITEM 23. Rescind and reserve rule **721—22.500(52)**.

[Filed Emergency 9/19/08, effective 9/19/08]

[Published 10/8/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/08.

**ARC 7231B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 23, "Iowa Community Development Block Grant Program," Chapter 61, "Physical Infrastructure Assistance Program (PIAP)," and Chapter 174, "Wage, Benefit, and Investment Requirements," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 13, 2008, as **ARC 7069B**. The Department held a public hearing on Monday, September 8, 2008, to receive comments on these amendments. No comments were received. The final amendments are identical to the proposed amendments.

The amendments to Chapter 23 include a cross reference to Chapter 174. The amendments allow the Department to allocate up to \$5 million from the Iowa Values Fund each fiscal year to the PIAP program for projects that do not directly create or retain jobs, but include activities that encourage future job creation. The amendments revise program eligibility requirements to allow such projects to receive PIAP funds and allow the Department to establish performance measures for projects receiving funds under this allocation. The amendments waive the required wage threshold and revise collateral requirements for PIAP projects funded through this allocation of funds. The amendments change the Economic Development Set Aside (EDSA) program wage threshold to reflect requirements in Chapter 23.

The Iowa Economic Development Board adopted these amendments on September 18, 2008.

These amendments will become effective on November 12, 2008.

These amendments are intended to implement Iowa Code section 15.108(1)"a" and 2008 Iowa Acts, Senate File 2325.

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 [23.7(1), 61.1(2), 61.3(1), 61.4(2), 61.5, 61.7(2), 174.3(5)] is being omitted. These amendments are identical to those published under Notice as **ARC 7069B**, IAB 8/13/08.

[Filed 9/18/08, effective 11/12/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

**ARC 7232B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 25, "Housing Fund," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 16, 2008, as **ARC 6943B**.

The amendments add a number of new definitions; incorporate new "green development" standards and criteria into the housing program; add a new eligible activity, "development subsidy," to cover some of the additional costs of green development; increase the maximum award amounts for several of the housing activity categories; and include a number of other clarifying revisions.

The Department held a public hearing on Monday, August 11, 2008, to receive comments on the amendments.

Three comments were received on the proposed amendments. Two comments were received in relation to the amendment to subrule 25.8(7). Both comments recommended an increase to the proposed limit on technical services costs, as described in the subrule. As originally proposed, the maximum

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

allowable cost for the provision of technical services was \$3,750 per unit (single-family activities involving rehabilitation). In response to the comments, subrule 25.8(7) has been revised to increase the per-unit limitation on technical services costs to \$4,500 per unit. Subrule 25.8(7) now reads as follows:

**“25.8(7) Single-family per unit subsidies.**

*“a.* The maximum per unit subsidy for all single-family activities involving rehabilitation is \$37,500. The \$37,500 per unit limit includes all applicable costs including, but not limited to, the hard costs of rehabilitation or the acquisition subsidy or both; home ownership assistance activities; technical services costs, including lead hazard reduction or abatement carrying costs; lead hazard reduction or abatement costs; and temporary relocation. All applicable technical services costs, including any lead hazard reduction or abatement carrying costs, are limited to \$4,500 per unit.

*“b.* Assistance for single-family activities providing acquisition assistance for newly constructed housing (mortgage buy-down, downpayment or closing costs assistance or both, or combinations thereof) is limited to \$35,000 per unit, inclusive of all costs, including technical services costs.

*“c.* Assistance for single-family activities providing development subsidies for newly constructed housing is limited to \$20,000 per unit. Development subsidies may be provided in addition to acquisition assistance activities.”

The third comment questioned the requirements of the Iowa Green Streets Criteria and noted the following six specific requirements that the commenter felt were unnecessary or not cost-effective: the requirement to hire a Home Energy Rating System (HERS) Program rater during building construction, mandatory installation of exhaust fans in kitchens, mandatory insulation of cold and hot water piping for PEX tubing, and the type of radon control required for multifamily developments. No changes have been made in response to this comment. However, the Department will reexamine the Iowa Green Streets Criteria as a result of the comment, and may make appropriate revisions to those criteria in the future.

In addition, the existing definition of “technical services” has been rescinded in new Item 2 and the proposed definition of the same term is adopted as published under Notice. Subsequent items have been renumbered accordingly.

The Iowa Economic Development Board adopted these amendments on September 18, 2008.

These amendments will become effective on November 12, 2008.

These amendments are intended to implement Iowa Code section 15.108(9)“b.”

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 25] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 6943B**, IAB 7/16/08.

[Filed 9/18/08, effective 11/12/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

**ARC 7247B**

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 36, “Film, Television, and Video Project Promotion Program,” Iowa Administrative Code.

These amendments add definitions for “commercial domicile” and “Iowa-based business”; allow tax credit certificates to be transferred regardless of the amount; and stipulate that the Department will accept an alternative format for expenditure submissions provided that the alternative format is agreed upon by the producer/production company and the Department prior to the start of production.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 18, 2008, as **ARC 6841B**. In addition, these amendments were simultaneously Adopted and Filed Emergency as **ARC 6840B**.

A public hearing was held on July 10, 2008, to receive comments on the proposed amendments. No comments were received. The final amendments are identical to the proposed amendments.

The Iowa Economic Development Board adopted these amendments on September 18, 2008.

These amendments will become effective on November 12, 2008, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code Supplement sections 15.391 to 15.393.

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 [36.1 to 36.9] is being omitted. These amendments are identical to those published under Notice as **ARC 6841B** and Adopted and Filed Emergency as **ARC 6840B**, IAB 6/18/08.

[Filed 9/18/08, effective 11/12/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

**ARC 7237B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 38, "Regional Sports Authority Districts," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 16, 2008, as **ARC 6942B**.

These amendments make it possible for applications to be accepted and reviewed on an annual basis, rather than for one year only. The amendments also clarify that the certification of a district is good for only one fiscal year and that IDEED will certify no more than ten districts each year.

The Department held a public hearing on Thursday, August 7, 2008, to receive comments on the amendments. The Department received ten written comments, plus one oral comment at the public hearing. All of the comments related to the application deadline. Some of the commenters requested an earlier deadline, while the majority of the commenters requested keeping the deadline the same. The Department has decided to keep the same October 1 deadline for this round of funding as in the past. These amendments are identical to those published under Notice of Intended Action.

The Iowa Economic Development Board adopted these amendments on September 18, 2008.

These amendments will become effective on November 12, 2008.

These amendments are intended to implement 2008 Iowa Acts, Senate File 2432, section 1(5)"c."

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 [38.1 to 38.8] is being omitted. These amendments are identical to those published under Notice as **ARC 6942B**, IAB 7/16/08.

[Filed 9/18/08, effective 11/12/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

**ARC 7234B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 103, "Information Technology Training Program," Iowa Administrative Code.

These amendments correct misidentified Standard Occupational Classifications, limit the funding to companies within the targeted industries, and modify the required application information.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 13, 2008, as **ARC 7067B**. A public hearing was held on September 8, 2008, to receive comments about the proposed amendments. There were no comments received. The final amendments are identical to the proposed amendments.

The Iowa Economic Development Board adopted these amendments on September 18, 2008.

These amendments will become effective on November 12, 2008.

These amendments are intended to implement Iowa Code Supplement section 15.411(5).

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 [103.1 to 103.13] is being omitted. These amendments are identical to those published under Notice as **ARC 7067B**, IAB 8/13/08.

[Filed 9/18/08, effective 11/12/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

**ARC 7233B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 108, "Targeted Industries Student Competition Fund," Iowa Administrative Code.

These amendments provide additional detail about the application process, including information about the minimum score required for an application to be considered for funding.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 13, 2008, as **ARC 7065B**. A public hearing was held on September 3, 2008, to receive comments about the proposed amendments. No comments were received. The final amendments are identical to the proposed amendments.

The Iowa Economic Development Board adopted these amendments on September 18, 2008.

These amendments will become effective on November 12, 2008.

These amendments are intended to implement 2007 Iowa Acts, chapter 122.

The following amendments are adopted.

ITEM 1. Strike "HF829" wherever it appears in **261—Chapter 108** and insert "ch122" in lieu thereof.

ITEM 2. Adopt the following **new** subrule 108.7(6):

**108.7(6) Review.** Applications will be reviewed in the order received by the department. The board may approve, defer or deny each application for financial assistance, based on the availability of funds. To be considered for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules.

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

ITEM 3. Amend **261—Chapter 108**, implementation sentence, as follows:  
These rules are intended to implement 2007 Iowa Acts, ~~House File 829~~ chapter 122.

[Filed 9/18/08, effective 11/12/08]

[Published 10/8/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/08.

## ARC 7246B

### ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 109, "Targeted Industries Career Awareness Fund," Iowa Administrative Code.

These amendments expand the definition of eligible applicants and provide additional details about the application review process, including information about the minimum score required for an application to be considered for funding.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 13, 2008, as **ARC 7066B**. A public hearing was held on September 3, 2008, to receive comments about the proposed amendments. No comments were received. The final amendments are identical to the proposed amendments.

The Iowa Economic Development Board adopted these amendments on September 18, 2008.

These amendments will become effective on November 12, 2008.

These amendments are intended to implement 2007 Iowa Acts, chapter 122.

The following amendments are adopted.

ITEM 1. Strike "HF829" wherever it appears in **261—Chapter 109** and insert "ch122" in lieu thereof.

ITEM 2. Amend rule 261—109.6(82GA,ch122) as follows:

**261—109.6(82GA,ch122) Eligible applicants.** Eligible applicants must be industry ~~association groups~~ associations, educational institutions or associations and their industry partners in the targeted industries with efforts or initiatives for a statewide ~~educational and public~~ educational/public awareness campaign campaign(s) to inform students, parents and educators about career opportunities within the targeted industries.

ITEM 3. Adopt the following new subrule 109.8(8):

**109.8(8) Review.** Applications will be reviewed in the order received by the department. The board may approve, defer or deny each application for financial assistance, based on the availability of funds. To be considered for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules.

ITEM 4. Amend **261—Chapter 109**, implementation sentence, as follows:

These rules are intended to implement 2007 Iowa Acts, ~~House File 829~~ chapter 122.

[Filed 9/18/08, effective 11/12/08]

[Published 10/8/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/08.

**ARC 7250B****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 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

This amendment more clearly defines administrative experience for the superintendent endorsement.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 4, 2008, as **ARC 6812B**. A public hearing on the amendments was held on Wednesday, June 25, 2008. No one attended the public hearing, and no written comments were received. This amendment has been changed from that published under Notice. The word "districtwide" is stricken from 14.142(4)"c"(1), but the other language stricken in the Notice has been retained.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective November 12, 2008.

The following amendment is adopted.

Amend paragraph **14.142(4)"c"** as follows:

*c. ~~Other~~ Administrative experience.*

(1) The applicant must have had three years of experience as a building principal or other PK-12 districtwide or area education agency administrative experience.

(2) Other administrative experience: PK-12 or area education agency administrative experience is acceptable if the applicant acquires the three years' experience while holding a valid administrator license.

[Filed 9/19/08, effective 11/12/08]

[Published 10/8/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/08.

**ARC 7212B****EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education amends Chapter 103, "Corporal Punishment Ban," Iowa Administrative Code.

Iowa Code section 280.21 requires the State Board of Education to adopt rules to implement the general statutory ban on corporal punishment and the exceptions. Chapter 103 has not been reviewed since 1991. In recent years, there has been much research regarding seclusion ("time out" rooms) and restraint of students. These amendments provide more detail than is presently in the current rule (103.6(280)) regarding allowable parameters when a student is physically restrained or confined and detained.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 18, 2008, as **ARC 6838B**. Twenty-one written public comments were received, and five persons made oral comments at the public hearing (which originated in the ICN Room on the second floor of the Grimes Sate Office Building and was narrowcast at nine remote ICN sites across the state) held on July 8, 2008. Public comments were allowed until close of business on July 8, 2008. Comments were received in favor and support of the proposed rule making. Many commenters supported most of the rule making, but had concerns or reservations about particular portions of the rule making; therefore, these amendments have been changed since the Notice of Intended Action.

Several commenters expressed concern that the proposed amendments would restrict such practices as seat detention and in-school suspension. That not being the intent of the Board, the amendments have

EDUCATION DEPARTMENT[281](cont'd)

been revised to add a definition for “physical confinement and detention” and to clarify the chapter’s application to physical confinement and detention.

In response to commenters who requested clarification of the term “dangerous instrument,” the language has been revised to indicate that the dangerousness of an instrument is based on the facts of each instance of physical confinement and detention. Other commenters requested clarification of other words in the proposed rule making, such as “reasonable” and “adequate.” Because “reasonableness” is embedded as a constant theme in the underlying statute, it is impractical to attempt the requested further definition. What is reasonable or adequate shall be determined based on the facts at hand.

Several commenters requested that requirements about assessing the need for continued physical confinement and detention be added, suggesting that a school nurse or a person designated in a student’s Individualized Education Program (IEP) be responsible for such assessment. While a school nurse may provide useful information concerning such continued need, there is no data suggesting a school nurse is the sole professional capable of making such an assessment. Furthermore, while an IEP may name a person or position responsible for monitoring an eligible individual’s physical confinement and detention, the Board considers it essential that an administrator or designee be involved in decisions about lengthy restraint. No change has been made to the amendments in response to this comment.

The proposed training requirement received much favorable comment. One commenter suggested adding debriefing of students and staff as a training topic. The Board concurs in this suggestion. Debriefing may be an essential means by which future physical confinement and detention or restraint is avoided. The same commenter requested that any documentation include results of student and staff debriefing. For the same reasons, the Board concurs in this suggestion. The text of the rule making has been changed accordingly.

Several commenters asserted that the notification requirement should be amended to provide notice to parents on the day of the instance of restraint or of physical confinement and detention. The rationales advanced by the commenters are convincing. The text of the rule making has been amended to require school officials to attempt to notify parents on the day of the instance, with written documentation to be provided within three days.

Several commenters suggested that time limits imposed on physical confinement and detention be shortened. The Board has concluded that the limits contained in the rule making strike an appropriate balance between student safety and the safe and effective operation of schools. No changes have been made in this regard. One commenter requested that the rule making include a specific time in which contact with an administrator (or designee) must be made. The Board has concluded that such an addition is unnecessary. The time at which an administrator is contacted is left to the discretion of the local entity, so long as approval is obtained prior to the expiration of 60 minutes or a typical class period, whichever is shorter.

One commenter asked the Board to require videotaping of all periods of physical confinement and detention. While videotaping may be prudent and certainly within the discretion of a local entity, the Board does not view this proposed requirement as necessary to protect the interests of students and education entities.

Several commenters requested a ban on all seclusion and restraint. These requests are inconsistent with the enabling statute; therefore, no changes have been made.

Several commenters expressed concern about the proposed ban on prone restraints. While not opposing the ban, the commenters expressed reservations about the ban’s interplay with the immunity provision contained in the underlying statute. To address these concerns, the Board has modified proposed rule 103.8(256B,280) to account for these concerns. Based on the expressed concern that the rule prohibiting any practice that “otherwise impairs breathing” is too broad, the Board has deleted that language. The amendment prohibiting any restraint that obstructs the airway of a child accounts for the harm to be addressed by the proposed rule, but leaves other restraints subject to the reasonableness standard currently contained in Chapter 103.

Based on technical assistance received from the Iowa Department of Public Safety and in light of fire code concerns, all references to key-operated locking mechanisms have been removed from the adopted amendments.

## EDUCATION DEPARTMENT[281](cont'd)

All other suggested changes are inconsistent with the underlying statute, are inconsistent with other state and federal education laws, or are adequately addressed by the text of the rule making.

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

These amendments are intended to implement Iowa Code sections 256B.3 and 280.21.

These amendments shall become effective November 12, 2008.

The following amendments are adopted.

ITEM 1. Amend **281—Chapter 103**, title, as follows:  
**CORPORAL PUNISHMENT BAN; RESTRAINT; PHYSICAL CONFINEMENT AND DETENTION**

ITEM 2. Strike “(280)” wherever it appears in **281—Chapter 103** and insert “(256B,280)” in lieu thereof.

ITEM 3. Amend rule 281—103.1(256B,280) as follows:

**281—103.1(256B,280) Purpose.** In conjunction with Iowa Code ~~Supplement~~ section 280.21, the purpose of this chapter is to define and exemplify generally the limitations placed on employees of public schools, accredited nonpublic schools, and area education agencies in applying physical contact or force to enrolled students, and to require that any such force or contact is reasonable and necessary under the circumstances. These rules also provide requirements for administrators and staff of public schools, accredited nonpublic schools, and area education agencies regarding the use of physical restraints and physical confinement and detention. The applicability of this chapter to physical restraint or physical confinement and detention does not depend on the terminology employed by the organization to describe physical restraint or physical confinement and detention.

ITEM 4. Amend rule 281—103.3(256B,280) as follows:

**281—103.3(256B,280) Exclusions.** Corporal punishment does not include the following:

1. Verbal recrimination or chastisement directed toward a student;
2. Reasonable requests or requirements of a student engaged in activities associated with physical education class or extracurricular athletics;
3. Actions consistent with and included in an individualized ~~educational~~ education program developed under the ~~Education for All Handicapped Children Act and Individuals with Disabilities Education Act, as reauthorized,~~ Iowa Code chapter 256B, and 281—Chapter 41; however, under no circumstance shall an individualized education program violate the provisions of this chapter;
4. ~~Detention~~ Reasonable periods of detention, not in excess of school hours, or brief periods of before- and after-school detention, in a seat, classroom or other part of a school facility, unless the detention is accomplished by the use of material restraints applied to the person; If detention meets this chapter’s definition of “physical confinement and detention,” the provisions of this chapter on physical confinement and detention must be followed. For purposes of this chapter, material restraints do not include devices, objects, or techniques required or ordered for reasons of safety (e.g., safety harnesses on school buses) or for therapeutic or medical treatment (e.g., devices used for physical or occupational therapy), provided those devices, objects, or techniques are so used, and used for no other purpose;
5. Actions by an employee subject to these rules toward a person who is not a student of the school or receiving the services of an area education agency employing or utilizing the services of the employee.

ITEM 5. Amend rule 281—103.6(256B,280) as follows:

**281—103.6(256B,280) Physical confinement and detention.** If a student is physically confined ~~or~~ and detained in a portion of a school facility, the following conditions shall be observed; For the purposes of this chapter, “physical confinement and detention” means the confinement of a student in a time-out room or some other enclosure, whether within or outside the classroom, from which the student’s egress is restricted.

1. The area of confinement and detention shall be of reasonable dimensions; and shall be free from hazards and dangerous objects or instruments, considering the age, size, and physical and mental condition of the student subject to confinement and detention;

## EDUCATION DEPARTMENT[281](cont'd)

2. There shall be sufficient light and adequate ventilation for human habitation;
3. A comfortable temperature shall be maintained, consistent with the facility that includes the confinement and detention or confinement area;
4. Reasonable break periods shall be afforded the student to attend to bodily needs. However, sleep shall not be considered a “bodily need” for purposes of this subrule;
5. The period of detention or and confinement is reasonable, considering the age, size, and physical and mental condition of the student subject to confinement and detention, and not in excess of the hours in a school day as defined by local board policy or rule. However, however, reasonable periods of before- and after-school detention are permissible. If a period of physical confinement and detention exceeds the shorter of 60 minutes or the school’s typical class period, staff members shall evaluate the continued need for physical confinement and detention, shall obtain administrator (or designee) approval for any continued confinement and detention beyond the initial periodic reevaluation, and shall comply with any administrator (or designee) directives concerning any continued confinement and detention;
6. Adequate and continuous adult supervision is provided;
7. Material restraints applied to the person are not used to effect confinement;
8. If a room or enclosure used for physical confinement and detention has a locking mechanism, such room and mechanism shall comply with all applicable building code requirements and the following additional requirements:
  - If a locking mechanism is used, it shall be constructed so it will engage only when a handle, knob, or other device is held in position by a person, unless the mechanism is electrically or electronically controlled and automatically releases when the building’s fire alarm system is activated, the building’s severe weather warning system is activated, or electrical power to the mechanism is interrupted.
  - When the locking mechanism is released, the door must be able to be readily opened from the inside.
  - If a locking mechanism requires a handle, knob, or other device to be held in position by a person before the mechanism is engaged, no person shall take any action, or cause such action to be taken, or employ any object, device, or instrument, or cause such to be employed, that disables the handle, knob, or other device such that the locking mechanism engages or remains engaged without the handle, knob, or other device being held in position by a person.

ITEM 6. Adopt the following new rule 281—103.7(256B,280):

**281—103.7(256B,280) Additional minimum mandatory procedures.** If a public school, accredited nonpublic school, or area education agency seeks to use physical restraint or physical confinement and detention, or both, it shall do so in compliance with the minimum requirements of this chapter. The board of a public school, accredited nonpublic school, or area education agency may adopt policies and procedures regarding the use of physical restraint or physical confinement and detention, or both, that exceed the minimum requirements contained in this chapter. Additional minimum mandatory procedures are as follows:

1. Physical restraint and physical confinement and detention shall not be used as discipline for minor infractions and may be used only after other disciplinary techniques have been attempted, if reasonable under the circumstances;
2. All school employees, before using physical restraint or physical confinement and detention, shall receive adequate and periodic training, which shall be documented and which shall include training on these rules and the employer’s policies and procedures; positive behavior interventions and supports; disciplinary alternatives to seclusion and restraint; crisis prevention, crisis intervention, and crisis de-escalation techniques; student and staff debriefing; and the safe and effective use of physical restraint and physical confinement and detention;
3. Parents and students are notified at least annually of the provisions of this chapter and of any additional policies and procedures of the public school, accredited nonpublic school, or area education agency on physical restraint and physical confinement and detention;
4. Any physical restraint shall be reasonable and necessary in duration, in light of the provisions of this chapter;

## EDUCATION DEPARTMENT[281](cont'd)

5. If a student is subjected to physical restraint or physical confinement and detention, the public school, accredited nonpublic school, or area education agency shall maintain documentation for each such occurrence, which shall contain at least the following information:

- The names of the student and the employees involved in the restraint, confinement, or detention, as well as the administrator who authorizes any additional periods of confinement or detention pursuant to numbered paragraph “5” of rule 103.6(256B,280);
- The date, time, and duration of the occurrence;
- The actions of the student before, during, and after the occurrence;
- The actions of the employees involved in the occurrence before, during, and after the occurrence, including student and staff debriefing;
- The alternatives to physical restraint or physical confinement and detention attempted before the occurrence;
- A description of any injuries (whether to the student or others) and any property damage;
- A description of future approaches to the student’s behavior;

6. The public school, accredited nonpublic school, or area education agency shall attempt to notify a child’s parent or guardian on the same day the child is subjected to physical restraint or physical confinement and detention; and

7. The student’s parent or guardian must be provided a written copy of the documentation required by numbered paragraph “5” of this rule, which shall be postmarked within three school days of the occurrence. The student’s parent or guardian may elect, in writing, to receive the communication required by this numbered paragraph via electronic mail or facsimile transmission.

ITEM 7. Adopt the following **new** rule 281—103.8(256B,280):

**281—103.8(256B,280) Additional provisions concerning physical restraint.** If an employee of a public school, accredited nonpublic school, or area education agency employs physical restraint, the following provisions shall apply:

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;

2. No employee shall use any restraint that obstructs the airway of any child;

3. If an employee physically restrains a student who uses sign language or an augmentative mode of communication as the student’s primary mode of communication, the student shall be permitted to have the student’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;

4. Nothing in this rule shall be construed as limiting or eliminating any immunity conferred by Iowa Code section 280.21 or any other provision of law.

ITEM 8. Amend **281—Chapter 103**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement section~~ sections 256B.3 and 280.21 ~~and 1990 Iowa Acts, chapter 1218.~~

[Filed 9/11/08, effective 11/12/08]

[Published 10/8/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/08.

**ARC 7218B**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, “Water Quality Standards,” Iowa Administrative Code.

This amendment provides water quality certification pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Section 1341) for the reissued Regional Permit 7 (RP 7).

Notice of Intended Action was published July 30, 2008, as **ARC 7039B**. A public hearing was held on August 19, 2008. No comments were received at the public hearing or during the public comment period which ended on August 19, 2008. No changes were made to the Notice of Intended Action.

Section 404 of the Clean Water Act requires a permit from the Corps of Engineers (Corps) for the discharge of dredged or fill materials into the nation’s waters. Section 401 of the Act requires that, before the Corps can issue a Section 404 permit, the state water quality agency must certify that the proposed activity will not violate state water quality standards.

Section 404 authorizes the Corps to issue general permits on a state, regional or nationwide basis for categories of activities where such activities will have minimal adverse effects. The Corps has used its general permit authority to issue a number of general permits on a nationwide basis. General permits, including regional permits, can be issued for a period not exceeding five years, and a state water quality agency must provide Section 401 certification for a Section 404 general permit before the general permit is valid for that particular state. The Commission previously provided Section 401 certification for RP 7. These permits are referenced in 567—paragraph 61.2(2)“h.”

The Corps issued the Public Notice for the reissuance of RP 7 on February 4, 2008, and it expired on March 4, 2008. This amendment provides Section 401 certification for the modified RP 7.

This amendment is intended to implement Iowa Code chapter 455B, division III, part 1.

This amendment shall become effective on November 12, 2008.

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 amendment [61.2(2)“h”] is being omitted. This amendment is identical to that published under Notice as **ARC 7039B**, IAB 7/30/08.

[Filed 9/15/08, effective 11/12/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

**ARC 7223B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services rescinds Chapter 53, “Rent Subsidy Program,” Iowa Administrative Code.

Beginning with 2001 Iowa Acts, chapter 191, the Iowa General Assembly directed that a portion of the funding allocated for State Supplementary Assistance be set aside for a rent subsidy program for persons who were receiving assistance under a Medicaid home- and community-based services waiver and were recently discharged from a medical institution or were at risk of institutional placement. Effective with 2005 Iowa Acts, chapter 175, these funds are no longer appropriated to the Department of Human Services but are appropriated to the Iowa Finance Authority.

The Iowa Finance Authority has promulgated rules to administer the Home- and Community-Based Services Rent Subsidy Program at 265—Chapter 24, Iowa Administrative Code. Those rules became effective on November 2, 2005. The rules promulgated by the Department of Human Services no

## HUMAN SERVICES DEPARTMENT[441](cont'd)

longer apply. The program is still available to waiver recipients under essentially similar terms through application to the Iowa Finance Authority.

This amendment does not provide for waivers in specified situations, since the Department no longer has funding or authority to administer the rent subsidy program.

The Council on Human Services adopted this amendment on September 17, 2008.

The Department finds that notice and public participation are unnecessary because this amendment simply recognizes legislative action taken several years ago. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

This amendment is intended to implement 2005 Iowa Acts, chapter 175.

This amendment shall become effective on November 12, 2008.

The following amendment is adopted.

Rescind and reserve **441—Chapter 53**.

[Filed Without Notice 9/17/08, effective 11/12/08]

[Published 10/8/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/08.

**ARC 7224B**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2008 Iowa Acts, Senate File 2425, section 32(13), 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 83, "Medicaid Waiver Services," Iowa Administrative Code.

These amendments reflect the following changes in Medicaid reimbursement rates enacted in 2008 Iowa Acts, Senate File 2425:

- Rate limits for the following provider categories are increased by 1 percent: advanced registered nurse practitioner, ambulance, ambulatory surgical center, audiologist, birth center, chiropractor, clinic, dentist, durable medical equipment and supply dealer, family planning clinic, hearing aid dispenser, home- and community-based habilitation services, home health agency, lead inspection agency, maternal health center, optician, optometrist, orthopedic shoe dealer, physical therapist, podiatrist, physician, psychologist, remedial services, and screening center.

- Rates for hospital inpatient and outpatient services (other than at critical access hospitals) are increased by 1 percent. The 1 percent increase has been incorporated into the new ambulatory payment classification rates and hospital outpatient fee schedule adopted in **ARC 6889B**, published in the Iowa Administrative Bulletin on July 2, 2008. Funds for hospital reimbursement for direct and indirect medical education and disproportionate share payments are also increased by 1 percent to provide a 1 percent increase in reimbursement.

- The maximum reimbursement rate for inpatient care in a psychiatric medical institution for children is raised to \$167.19 per day. Rates for outpatient day treatment are increased by 1 percent.

- The dispensing fee for drugs is raised to \$4.57.

- Rates for the following home- and community-based waiver services are increased by 1 percent: adult day care, assistive devices, behavioral programming, case management (except for the elderly waiver), chore service, counseling, day habilitation, emergency response system, family and community support, family counseling, financial management, home-delivered meals, home health aide, homemaker, independent support broker, in-home family therapy, interim medical monitoring and treatment, nursing care, nutrition counseling, prevocational services, respite care, senior companion, supported community living, and supported employment. Elderly waiver case management reimbursement is defined in a different section of the Department's appropriations bill and is not included in the 1 percent increase.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- Consumer-directed attendant care providers under the waivers have a rate increase of 3 percent.
- Monthly caps on waiver services are increased by 3 percent to accommodate the increase in provider rates.
- Annual or lifetime caps on waiver home and vehicle modification and specialized medical equipment are increased by 1 percent.

Some language revisions have been made to clarify current policy for air ambulance services, home health aides, nursing care, home health agencies (including respite care and interim medical monitoring and treatment), and outpatient hospital care.

These amendments do not provide for waivers in specified situations, since a rate increase benefits the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were previously Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on July 2, 2008, as **ARC 6900B**. Notice of Intended Action to solicit comments on these amendments was published in the Iowa Administrative Bulletin on the same date as **ARC 6901B**. The Department received no comments on the Notice of Intended Action.

The Department has made the following changes in the rules as noticed and previously adopted emergency:

- To allow payment of the entire benefits for home and vehicle modification, Items 1, 2, 4, 11, 14, and 15 are changed to raise the monthly encumbrance by 1 percent to \$505. Subparagraph 83.2(2)"b"(2) did not appear when these amendments were Adopted and Filed Emergency in the July 2, 2008, Iowa Administrative Bulletin. Because it is now being amended, the text of this subparagraph appears as follows:

"(2) If more than \$505 is paid for home and vehicle modification services, the service worker shall encumber up to \$505 per month within the monthly dollar cap allowed for the consumer until the total amount of the modification is reached within a 12-month period."

- To correct an error in the rate for day habilitation services, in Item 7, under "home- and community-based habilitation services," the third column of numbered paragraph "3," Day habilitation, is changed to read "\$13.21 per hour, \$32.15 per half-day, or \$64.29 per day." This half-day limit matches the published limit for day habilitation services provided under a home- and community-based services waiver.

The Council on Human Services adopted these amendments on September 17, 2008.

These amendments are intended to implement Iowa Code section 249A.4 and 2008 Iowa Acts, Senate File 2425, section 32, subsections 1, 8, and 10.

These amendments shall become effective November 12, 2008, at which time the Adopted and Filed Emergency rules are rescinded.

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 Chs 78, 79, 83] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 6901B** and Adopted and Filed Emergency as **ARC 6900B**, IAB 7/2/08.

[Filed 9/17/08, effective 11/12/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

**ARC 7227B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services amends Chapter 109, "Child Care Centers," and Chapter 110, "Child Development Homes," Iowa Administrative Code.

These amendments implement changes in the licensing standards for child care centers and the registration standards for child development homes as required by the Smokefree Air Act enacted by the 82nd General Assembly in 2008 Iowa Acts, House File 2212. Under this legislation, child care centers and homes are defined as a "public place," and smoking is completely prohibited. The law also requires posting of "no smoking" signs on the premises. The expected benefits from these amendments are fewer smoke-related health issues for children, child-care providers, and other family members in child development homes.

The Department of Public Health has adopted administrative rules to implement 2008 Iowa Acts, House File 2212; the rules were published in the Iowa Administrative Bulletin on July 30, 2008, as **ARC 6989B**. The Department of Public Health has an Internet Web site ([www.iowasmokefreeair.gov](http://www.iowasmokefreeair.gov)) devoted to helping affected businesses understand the law through links to resources and examples of signage.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on July 16, 2008, as **ARC 6928B**. The Department received comments on the Notice of Intended Action from 23 persons. Six comments were related to the requirements for signage not being appropriate for private homes and vehicles, and 19 were about the state's infringement on private property rights by regulating use of the home when the child care business was not operating.

The requirements for signage and the complete ban on smoking in the facility and vehicles are contained in the legislation, so the Department has no authority to change them.

However, since the proposed amendments were published, the Department of Public Health has determined that it does not interpret outdoor play areas in child care facilities to be specifically included in the definition of "public place." Therefore, the Department of Human Services has made changes in both Item 1 and Item 2 to clarify that the complete ban on smoking applies to facilities and vehicles, based on the new legislation, but the current rules on outdoor play space are unchanged. Smoking is permitted in the outdoor play space when the child care facility is not operating.

These amendments do not provide for waivers in specified situations because the Department does not have the authority to waive statutory provisions.

The Council on Human Services adopted these amendments on September 17, 2008.

These amendments are intended to implement Iowa Code chapter 237A as amended by 2008 Iowa Acts, House File 2212, sections 12 and 13.

These amendments shall become effective on December 1, 2008.

The following amendments are adopted.

ITEM 1. Amend subrule 109.10(11) as follows:

**109.10(11) Smoking.** Smoking and the use of tobacco products shall be prohibited at all times in the center, outdoor play area and in the center-operated every vehicle used to transport children. Smoking and the use of tobacco products shall be prohibited in the outdoor play area during hours of operation of the center. Nonsmoking signs shall be posted at every entrance of the child care center and in every vehicle used to transport children. All signs shall include:

a. The telephone number for reporting complaints, and

b. The Internet address of the department of public health ([www.iowasmokefreeair.gov](http://www.iowasmokefreeair.gov)).

ITEM 2. Amend paragraph **110.5(1)"o"** as follows:

o. Smoking and the use of tobacco products shall be prohibited at all times in areas that may be used by children receiving care in the home, in the outdoor play area, and in any every vehicle in which children receiving care in the home are transported. Smoking and the use of tobacco products shall be

HUMAN SERVICES DEPARTMENT[441](cont'd)

prohibited in the outdoor play area during the home's hours of operation. Nonsmoking signs shall be posted at every entrance of the child care home and in every vehicle used to transport children. All signs shall include:

- (1) The telephone number for reporting complaints, and
- (2) The Internet address of the department of public health (www.iowasmokefreeair.gov).

[Filed 9/17/08, effective 12/1/08]

[Published 10/8/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/08.

**ARC 7226B**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 234.6, the Department of Human Services amends Chapter 202, "Foster Care Services," Iowa Administrative Code.

These amendments make the rule on the Department's responsibility to visit children in foster care consistent with federal expectations based on Title IV-B of the Social Security Act and correct a cross reference.

The amendments require the assigned Department service worker to visit each child in out-of-home placement at least monthly, usually in the place where the child lives. During the visit, the worker shall address the safety, permanency, and well-being of the child, including the child's needs, services to the child, and achievement of the case permanency plan goals. Current rules allow less frequent visits if the Department is purchasing supervision from another agency or if caseloads are high.

The Department is making this change to strengthen its commitment to uniform practice directed toward maintaining the safety, permanency, and well-being of children in out-of-home care. Assuring safety for children in out-of-home care is one of the outcomes measured in the federal Child and Family Services Review. The provision of monthly visits to children in out-of-home care is a condition of the state plan to receive funding under Title IV-B of the Social Security Act. Failure to meet the benchmarks set in Iowa's Title IV-B child and family service plan and program improvement plan for Child and Family Services Review could result in a reduction of federal funding.

These amendments do not provide for waivers in specified situations because visits provide protection to children in out-of-home care.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on July 2, 2008, as **ARC 6914B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on September 17, 2008.

These amendments are intended to implement Iowa Code Supplement section 234.6(6).

These amendments shall become effective on December 1, 2008.

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 [202.3(3), 202.11] is being omitted. These amendments are identical to those published under Notice as **ARC 6914B**, IAB 7/2/08.

[Filed 9/17/08, effective 12/1/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

**ARC 7240B****MEDICINE BOARD[653]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medicine hereby amends Chapter 1, "Administrative and Regulatory Authority," Chapter 2, "Public Records and Fair Information Practices," Chapter 3, "Waivers and Variances," Chapter 8, "Fees," Chapter 9, "Permanent Physician Licensure," Chapter 10, "Resident, Special and Temporary Physician Licensure," Chapter 11, "Continuing Education and Mandatory Training for Identifying and Reporting Abuse," Chapter 13, "Standards of Practice and Principles of Medical Ethics," Chapter 16, "Student Loan Default or Noncompliance," Chapter 17, "Licensure of Acupuncturists," Chapter 23, "Grounds for Discipline," and Chapter 26, "Reinstatement After Disciplinary Action," Iowa Administrative Code.

These amendments are intended to update the citations in the Board's rules as a result of the enactment of 2008 Iowa Acts, Senate File 2338.

The Board approved these amendments during a telephone conference call on September 17, 2008.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on August 13, 2008, as **ARC 7049B**. No public comment was received. The proposed rules were adopted as Noticed.

These amendments are intended to implement 2008 Iowa Acts, Senate File 2338.

These amendments shall become effective on November 12, 2008.

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 Chs 1 to 3, 8 to 11, 13, 16, 17, 23, 26] is being omitted. These amendments are identical to those published under Notice as **ARC 7049B**, IAB 8/13/08.

[Filed 9/18/08, effective 11/12/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

**ARC 7239B****MEDICINE BOARD[653]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medicine hereby amends Chapter 9, "Permanent Physician Licensure," Iowa Administrative Code.

These amendments are intended to define an observer and what an observer may do in a clinical setting and what is expected of the physician supervisor of an observer in a clinical setting.

The Board approved the amendment to Chapter 9 during a telephone conference call on September 17, 2008.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on August 13, 2008, as **ARC 7048B**. The Board amended the Noticed rules to address questions the University of Iowa raised on the definition and role of the observer. In addition, the Board made a clarification in paragraph 9.2(2)"a" and eliminated reference to Iowa Code chapters 150 and 150A which were removed upon enactment of 2008 Iowa Acts, Senate File 2338.

These amendments are intended to implement Iowa Code chapters 148 and 272C and 2008 Iowa Acts, Senate File 2338.

These amendments shall become effective on November 12, 2008.

The following amendments are adopted.

## MEDICINE BOARD[653](cont'd)

ITEM 1. Adopt the following **new** definition of “Observer” in rule **653—9.1(147,148)**:

“*Observer*” means a person who is not enrolled in an Iowa medical school or osteopathic medical school, who observes care to patients in Iowa for a defined period of time and for a noncredit experience, and who is supervised and accompanied by an Iowa-licensed physician as defined in 9.2(3). An observer shall not provide or direct hands-on patient care, regardless of the observer’s level of training or supervision. The supervising physician may authorize an observer to read a chart, observe a patient interview or examination, or witness procedures, including surgery. An observer shall not chart; touch a patient as part of an examination; conduct an interview; order, prescribe or administer medications; make decisions that affect patient care; direct others in providing patient care; or conduct procedures, including surgery. Any of these activities requires licensure to practice in Iowa. An unlicensed physician observer or a medical student observer may touch a patient to verify a physical finding in the immediate presence of a physician but shall not conduct a more inclusive physical examination.

An unlicensed physician observer may:

1. Participate in discussions regarding the care of individual patients, including offering suggestions about diagnosis or treatment, provided the unlicensed physician observer does not direct the care; and
2. Elicit information from a patient provided the unlicensed physician observer does not actually perform a physical examination or otherwise touch the patient.

ITEM 2. Amend paragraph **9.2(2)“a”** as follows:

a. Those persons described in Iowa Code sections 148.2(1) to 148.2(5), ~~150.3, and 150A.2(1) to (5)~~.

(1) A medical student or osteopathic medical student in an international medical school may not take on the role of a medical student in the patient care setting unless enrolling in the University of Iowa’s Carver College of Medicine or in Des Moines University’s College of Osteopathic Medicine; however, an international medical student not enrolled at either of these institutions may be an observer as defined in rule 9.1(147,148).

(2) A graduate of an international medical school shall not practice medicine without an Iowa medical license; however, the graduate may be an observer as defined in rule 9.1(147,148).

ITEM 3. Adopt the following **new** subrule 9.2(3):

**9.2(3) *Supervision of an observer:*** An Iowa-licensed physician who supervises an observer shall accompany the observer and solicit consent from each patient, where feasible, for the observation. The physician shall inform the patient of the observer’s background, e.g., high school student considering a medical career, a medical graduate who is working on licensure. The supervising physician shall ensure that the observer remains within the scope of an observer as defined in rule 9.1(147,148).

[Filed 9/18/08, effective 11/12/08]

[Published 10/8/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/08.

**ARC 7238B**

**MEDICINE BOARD[653]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 148E.7, the Board of Medicine hereby adopts new Chapter 12, “Nonpayment of State Debt,” and amends Chapter 23, “Grounds for Discipline,” Iowa Administrative Code.

Chapter 12 establishes that the Board may deny an application for the issuance or renewal of a medical or osteopathic medical license or acupuncture license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit of the Department of Revenue according to the procedures set forth in 2008 Iowa Acts, Senate File 2428, division II. The adopted rules spell out

MEDICINE BOARD[653](cont'd)

the procedures related to preparation and service of a denial notice, effective date of denial, responsibility of licensees and applicants to inform the Board of all actions related to the certificate of noncompliance, reinstatement following action against a license for state debt, effect of filing in district court, and final notification.

Amendments to Chapter 23 address grounds for discipline related to state debt. The Board approved the adoption of Chapter 12 and amendments to Chapter 23 during a telephone conference call on September 17, 2008.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on August 13, 2008, as **ARC 7050B**. No public comment was received. The rules were adopted as Noticed.

These amendments are intended to implement Iowa Code chapters 148 and 272C and 2008 Iowa Acts, Senate File 2428, division II.

These amendments shall become effective on November 12, 2008.

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 [Ch 12, 23.1] is being omitted. These amendments are identical to those published under Notice as **ARC 7050B**, IAB 8/13/08.

[Filed 9/18/08, effective 11/12/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

## **ARC 7216B**

### **NATURAL RESOURCE COMMISSION[571]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby amends Chapter 15, "General License Regulations," Iowa Administrative Code.

This amendment to subparagraph 15.6(3)"a"(22) is required as a result of the enactment of 2008 Iowa Acts, House File 2612, section 21, which amends Iowa Code Supplement section 716.8. This legislation requires that the Department establish a violation point value for a violation and conviction of 2008 Iowa Acts, House File 2612, section 21, for a person who is convicted of trespass while hunting deer.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 30, 2008, as **ARC 7037B**. A public hearing was held on August 19, 2008. No comments were received during the comment period or at the hearing. No changes have been made to the Notice of Intended Action.

This amendment is intended to implement Iowa Code section 481A.38.

This amendment will become effective November 12, 2008.

The following amendment is adopted.

Amend subparagraph **15.6(3)"a"(22)** as follows:

(22) Any violation of Iowa Code Supplement section ~~716.7~~ 716.8 as amended by 2008 Iowa Acts, House File 2612, section 21, while hunting deer.

[Filed 9/15/08, effective 11/12/08]

[Published 10/8/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/08.

**ARC 7213B**

**PROFESSIONAL LICENSING AND REGULATION BUREAU[193]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 546.2, the Professional Licensing and Regulation Bureau hereby amends Chapter 7, “Contested Cases,” and Chapter 8, “Denial of Issuance or Renewal of License for Nonpayment of Child Support or Student Loan,” Iowa Administrative Code.

These amendments implement changes required by the passage of 2008 Iowa Acts, Senate File 2428, which was signed by the Governor on May 15, 2008. Additional changes update citations to the Rules of Civil Procedure and change the use of the terms “registrant” to “licensee” and “certificate of registration” to “license.”

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 30, 2008, as **ARC 6993B**. No comments were received. The Bureau adopted these amendments on September 11, 2008. These amendments are identical to those published under Notice.

These amendments are intended to implement 2008 Iowa Acts, Senate File 2428.

These amendments shall become effective November 12, 2008.

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 [7.43 to 7.45, 8.1(1), 8.2(1), 8.3] is being omitted. These amendments are identical to those published under Notice as **ARC 6993B**, IAB 7/30/08.

[Filed 9/11/08, effective 11/12/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

**ARC 7214B**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science hereby rescinds Chapter 99, “Administrative and Regulatory Authority for the Board of Mortuary Science,” amends Chapter 100, “Practice of Funeral Directors, Funeral Establishments, and Cremation Establishments,” Chapter 101, “Licensure of Funeral Directors, Funeral Establishments, and Cremation Establishments,” Chapter 102, “Continuing Education for Funeral Directors,” and Chapter 103, “Disciplinary Proceedings,” and rescinds Chapter 105, “Fees,” Iowa Administrative Code.

These amendments rescind duplicative language found in 645—Chapters 4 and 5; amend the definition of “authorized person” to be consistent with 2008 Iowa Acts, Senate File 473; specify criteria for exception authorized by Iowa Code section 156.4(1) by making an allowance for an Iowa-licensed funeral director to provide funeral services from an establishment licensed in another jurisdiction; clarify that every funeral and cremation establishment must hold a license issued by the Board; and update the discipline chapter to be consistent with legislative changes in 2008 Iowa Acts, House File 2212, and Iowa Code Supplement section 156.9.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 30, 2008, as **ARC 6997B**. A public hearing was held on August 19, 2008, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. The Board received one comment on subrule 103.4(6) referencing the Smokefree Air Act. The concern regarded the liability of a funeral establishment if an individual visiting the funeral establishment violates the Act even though the funeral establishment displayed all the required signage. The Board discussed the issue at the September 11 board meeting, but made no changes to noticed subrule 103.4(6) because the subrule reflects the Smokefree Air Act (2008 Iowa Acts, House File 2212) that was passed during the 2008 General Assembly.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

No changes have been made to the amendments published under Notice of Intended Action. These amendments were adopted by the Board of Mortuary Science on September 11, 2008. These amendments will become effective on November 12, 2008. These amendments are intended to implement Iowa Code chapters 21, 147, 156 and 272C, and 2008 Iowa Acts, Senate File 473 and House File 2212.

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 Chs 99, 105; amend Chs 100 to 103] is being omitted. These amendments are identical to those published under Notice as **ARC 6997B**, IAB 7/30/08.

[Filed 9/12/08, effective 11/12/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]

**ARC 7258B****PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Massage Therapy hereby rescinds Chapter 130, "Administrative and Regulatory Authority for the Board of Massage Therapy," amends Chapter 131, "Licensure of Massage Therapists," Chapter 133, "Continuing Education for Massage Therapists," and Chapter 134, "Discipline for Massage Therapists," and rescinds Chapter 135, "Fees," Iowa Administrative Code.

These amendments rescind chapters and rules that duplicate existing rules in 645—Chapters 4 and 5.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 13, 2008, as **ARC 7063B**.

A public hearing was held on September 2, 2008, from 2 to 2:30 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. The adopted rules are identical to those published under Notice.

The amendments were adopted by the Board of Massage Therapy on September 17, 2008.

These amendments will become effective November 12, 2008.

These amendments are intended to implement Iowa Code chapters 21, 147, 152C and 272C.

The following amendments are adopted.

ITEM 1. Rescind and reserve **645—Chapter 130**.

ITEM 2. Rescind and reserve rules **645—131.7(152C)**, **645—131.11(147)**, **645—131.12(147)** and **645—131.13(17A,147,272C)**.

ITEM 3. Rescind and reserve rules **645—133.4(152C,272C)**, **645—133.5(152C,272C)**, **645—133.6(152C,272C)** and **645—133.7(152C,272C)**.

ITEM 4. Rescind and reserve rule **645—134.6(152C)**.

ITEM 5. Rescind and reserve **645—Chapter 135**.

[Filed 9/19/08, effective 11/12/08]

[Published 10/8/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/08.

**ARC 7222B**

**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 35A.5 and 2008 Iowa Acts, Senate File 2289, the Department of Veterans Affairs hereby amends Chapter 9, "War Orphans Educational Assistance Fund," Iowa Administrative Code.

The amendments to Chapter 9 are intended to comply with changes made during the 2008 Legislative Session. Changes to Chapter 9 include modifying the residency requirements so that benefits may be provided to a war orphan of a deceased veteran who lived in this state; requiring that a war orphan begin utilizing the education benefits before reaching the age of 26 and finish schooling before reaching the age of 31; establishing that this assistance is for tuition costs only and will be paid directly to the institution; setting minimum academic standards that students must meet in order to receive funding; allowing these funds to be used at any postsecondary institution in Iowa; and establishing a maximum funding amount that equals five times the highest resident undergraduate tuition rate of the three regent universities.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 13, 2008, as **ARC 7083B**. A public hearing was held on September 2, 2008. No public comment was received on these amendments. These amendments are identical to those published under Notice of Intended Action.

The Iowa Department of Veterans Affairs adopted these amendments on September 19, 2008.

These amendments shall become effective November 12, 2008.

No fiscal impact is anticipated.

These amendments are intended to implement Iowa Code sections 35.8 and 35.9 as amended by 2008 Iowa Acts, Senate File 2289.

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 [9.3, 9.4, 9.5(1)"b"] is being omitted. These amendments are identical to those published under Notice as **ARC 7083B**, IAB 8/13/08.

[Filed 9/17/08, effective 11/12/08]

[Published 10/8/08]

[For replacement pages for IAC, see IAC Supplement 10/8/08.]