



# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXII

NUMBER 16

February 9, 2000

Pages 1189 to 1304

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Iowa State Law Library  
 State House  
 Des Moines, Iowa 50319  
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## PREFACE

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

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

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

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

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Fax: (515)242-5974

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Hoover State Office Building, Level A  
Des Moines, IA 50319  
Telephone: (515)242-5120**

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Dec. 24 '99	Jan. 12 '00	Feb. 1 '00	Feb. 16 '00	Feb. 18 '00	Mar. 8 '00	Apr. 12 '00	July 10 '00
Jan. 7	Jan. 26	Feb. 15	Mar. 1	Mar. 3	Mar. 22	Apr. 26	July 24
Jan. 21	Feb. 9	Feb. 29	Mar. 15	Mar. 17	Apr. 5	May 10	Aug. 7
Feb. 4	Feb. 23	Mar. 14	Mar. 29	Mar. 31	Apr. 19	May 24	Aug. 21
Feb. 18	Mar. 8	Mar. 28	Apr. 12	Apr. 14	May 3	June 7	Sept. 4
Mar. 3	Mar. 22	Apr. 11	Apr. 26	Apr. 28	May 17	June 21	Sept. 18
Mar. 17	Apr. 5	Apr. 25	May 10	May 12	May 31	July 5	Oct. 2
Mar. 31	Apr. 19	May 9	May 24	May 26	June 14	July 19	Oct. 16
Apr. 14	May 3	May 23	June 7	June 9	June 28	Aug. 2	Oct. 30
Apr. 28	May 17	June 6	June 21	June 23	July 12	Aug. 16	Nov. 13
May 12	May 31	June 20	July 5	July 7	July 26	Aug. 30	Nov. 27
May 26	June 14	July 4	July 19	July 21	Aug. 9	Sept. 13	Dec. 11
June 9	June 28	July 18	Aug. 2	Aug. 4	Aug. 23	Sept. 27	Dec. 25
June 23	July 12	Aug. 1	Aug. 16	Aug. 18	Sept. 6	Oct. 11	Jan. 8 '01
July 7	July 26	Aug. 15	Aug. 30	Sept. 1	Sept. 20	Oct. 25	Jan. 22 '01
July 21	Aug. 9	Aug. 29	Sept. 13	Sept. 15	Oct. 4	Nov. 8	Feb. 5 '01
Aug. 4	Aug. 23	Sept. 12	Sept. 27	Sept. 29	Oct. 18	Nov. 22	Feb. 19 '01
Aug. 18	Sept. 6	Sept. 26	Oct. 11	Oct. 13	Nov. 1	Dec. 6	Mar. 5 '01
Sept. 1	Sept. 20	Oct. 10	Oct. 25	Oct. 27	Nov. 15	Dec. 20	Mar. 19 '01
Sept. 15	Oct. 4	Oct. 24	Nov. 8	Nov. 10	Nov. 29	Jan. 3 '01	Apr. 2 '01
Sept. 29	Oct. 18	Nov. 7	Nov. 22	Nov. 24	Dec. 13	Jan. 17 '01	Apr. 16 '01
Oct. 13	Nov. 1	Nov. 21	Dec. 6	Dec. 8	Dec. 27	Jan. 31 '01	Apr. 30 '01
Oct. 27	Nov. 15	Dec. 5	Dec. 20	Dec. 22	Jan. 10 '01	Feb. 14 '01	May 14 '01
Nov. 10	Nov. 29	Dec. 19	Jan. 3 '01	Jan. 5 '01	Jan. 24 '01	Feb. 28 '01	May 28 '01
Nov. 24	Dec. 13	Jan. 2 '01	Jan. 17 '01	Jan. 19 '01	Feb. 7 '01	Mar. 14 '01	June 11 '01
Dec. 8	Dec. 27	Jan. 16 '01	Jan. 31 '01	Feb. 2 '01	Feb. 21 '01	Mar. 28 '01	June 25 '01
Dec. 22	Jan. 10 '01	Jan. 30 '01	Feb. 14 '01	Feb. 16 '01	Mar. 7 '01	Apr. 11 '01	July 9 '01
Jan. 5 '01	Jan. 24 '01	Feb. 13 '01	Feb. 28 '01	Mar. 2 '01	Mar. 21 '01	Apr. 25 '01	July 23 '01

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
18	Friday, February 18, 2000	March 8, 2000
19	Friday, March 3, 2000	March 22, 2000
20	Friday, March 17, 2000	April 5, 2000

**PLEASE NOTE:**

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

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

## PUBLICATION PROCEDURES

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

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

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

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

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

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

To All Agencies:

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

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

Housing fund, 25.8(3) IAB 2/9/00 ARC 9684A	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	February 29, 2000 1:30 p.m.
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#### EDUCATIONAL EXAMINERS BOARD[282]

Uniform waiver and variance rules, ch 6 IAB 2/9/00 ARC 9674A	Conference Room 2 South—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	March 16, 2000 11 a.m.
Initial applicants—state and federal background checks, 14.1 IAB 2/9/00 ARC 9672A	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	March 14, 2000 3 p.m.
Alternative preparation license, 14.10, 14.33 IAB 2/9/00 ARC 9666A	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	March 14, 2000 1 p.m.
Substitute teaching—two-year exchange license, 14.17(3) IAB 2/9/00 ARC 9670A	Conference Room 2 South—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	March 16, 2000 9 a.m.
Staff development units for licensure renewal, 16.3(3), 16.5(1) IAB 2/9/00 ARC 9673A	Conference Room 2 South—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	March 16, 2000 10 a.m.

#### EDUCATION DEPARTMENT[281]

Uniform waiver rules, ch 4 IAB 2/9/00 ARC 9641A	State Board Room Grimes State Office Bldg. Des Moines, Iowa	February 29, 2000 1 p.m.
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#### EMERGENCY MANAGEMENT DIVISION[605]

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#### HUMAN SERVICES DEPARTMENT[441]

Accreditation of providers of services to persons with mental illness, mental retardation, and developmental disabilities, ch 24 IAB 2/9/00 ARC 9643A	Conference Room—6th Floor Iowa Bldg., Suite 600 411 3rd St. SE Cedar Rapids, Iowa	March 3, 2000 10 a.m.
	Administrative Conference Room 417 E. Kaneshville Blvd. Council Bluffs, Iowa	March 1, 2000 10 a.m.

**HUMAN SERVICES DEPARTMENT[441] (Cont'd)**

Large Conference Room Bicentennial Bldg.—5th Floor 428 Western Davenport, Iowa	March 1, 2000 10 a.m.
Conference Room 102 City View Plaza 1200 University Des Moines, Iowa	March 2, 2000 10 a.m.
Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	March 1, 2000 10 am.
Conference Room 3 120 E. Main Ottumwa, Iowa	March 1, 2000 10 a.m.
Fifth Floor 520 Nebraska St. Sioux City, Iowa	March 1, 2000 10 a.m.
Conference Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	March 1, 2000 10 a.m.

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

Freedom of choice of physician and pharmacy, 57.19(1), 58.51 IAB 2/9/00 ARC 9657A	Director's Conference Room Second Floor Lucas State Office Bldg. Des Moines, Iowa	February 29, 2000 9 a.m.
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**LABOR SERVICES DIVISION[875]**

Waivers from administrative rules, 1.101 to 1.109 IAB 1/26/00 ARC 9631A	Division of Labor Services 1000 E. Grand Ave. Des Moines, Iowa	February 15, 2000 1:30 p.m. (If requested)
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**LOTTERY DIVISION[705]**

Waiver or variance of rules, 1.30 IAB 2/9/00 ARC 9650A	2015 Grand Ave. Des Moines, Iowa	February 29, 2000 2 p.m.
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**MEDICAL EXAMINERS BOARD[653]**

Supervision of pharmacists who administer prescription drugs, 13.3 IAB 1/26/00 ARC 9618A	Auditorium State Historical Building 600 E. Locust St. Des Moines, Iowa	February 15, 2000 1 p.m.
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**NURSING BOARD[655]**

Examinations, 2.10 IAB 1/12/00 <b>ARC 9607A</b>	Ballroom Kirkwood Civic Center Hotel 4th and Walnut Des Moines, Iowa	March 1, 2000 7 p.m.
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**PERSONNEL DEPARTMENT[581]**

Uniform rules for waivers and variances, ch 32 IAB 1/26/00 <b>ARC 9626A</b>	IPERS 600 E. Court Ave. Des Moines, Iowa	February 15, 2000 9 a.m.
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**PUBLIC HEALTH DEPARTMENT[641]**

Radiation, amendments to chs 38 to 42, 45, 46 IAB 1/26/00 <b>ARC 9629A</b>	Conference Room—5th Floor South Side 1 Lucas State Office Bldg. Des Moines, Iowa	February 29, 2000 8:30 a.m.
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WIC program, 73.5, 73.8, 73.9, 73.12(1), 73.19, 73.20 IAB 1/26/00 <b>ARC 9623A</b> (ICN Network)	ICN Classroom 1, Room 0210 Scott Community College 500 Belmont Rd. Bettendorf, Iowa	February 15, 2000 12 noon to 1 p.m.
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ICN Classroom National Guard Armory 2500 Summer St. Burlington, Iowa	February 15, 2000 12 noon to 1 p.m.
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Schindler Education Center 130A UNI Hudson Rd. and 23rd St. Cedar Falls, Iowa	February 15, 2000 12 noon to 1 p.m.
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Jefferson High School 1243 20th St. SW Cedar Rapids, Iowa	February 15, 2000 12 noon to 1 p.m.
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ICN Classroom Clear Lake High School 125 N. 20th St. Clear Lake, Iowa	February 15, 2000 12 noon to 1 p.m.
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ICN Classroom 1 Southwestern Community College 1501 W. Townline Rd. Creston, Iowa	February 15, 2000 12 noon to 1 p.m.
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Room 115, Trade Industry Bldg. Northeast Iowa Community College 1625 Hwy. 150 Calmar, Iowa	February 15, 2000 12 noon to 1 p.m.
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Conference Room—6th Floor Lucas State Office Bldg. Des Moines, Iowa	February 15, 2000 12 noon to 1 p.m.
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**PUBLIC HEALTH DEPARTMENT[641] (ICN Network) (Cont'd)**

Room 22, Library Bldg. Iowa Lakes Community College 300 S. 18th St. Estherville, Iowa	February 15, 2000 12 noon to 1 p.m.
Army Aviation Support Facility 1649 Nelson Ave. Fort Dodge, Iowa	February 15, 2000 12 noon to 1 p.m.
ICN Room National Guard Armory 2858 N. Court Rd. Ottumwa, Iowa	February 15, 2000 12 noon to 1 p.m.
Forum Bldg.—2nd Floor Dubuque Community School District 2300 Chaney Dubuque, Iowa	February 15, 2000 12 noon to 1 p.m.
Individual Learning Center Central Campus 1121 Jackson St. Sioux City, Iowa	February 15, 2000 12 noon to 1 p.m.

**RACING AND GAMING COMMISSION[491]**

Trifecta wagering; grounds for denial; suspension or revocation of license; labor organization registration, 8.2(13), 13.10(8), 13.14 IAB 2/9/00 <b>ARC 9647A</b>	Suite B 717 E. Court Ave. Des Moines, Iowa	February 29, 2000 9 a.m.
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**SCHOOL BUDGET REVIEW COMMITTEE[289]**

Uniform waiver rules, ch 8 IAB 2/9/00 <b>ARC 9642A</b>	State Board Room Grimes State Office Bldg. Des Moines, Iowa	February 29, 2000 2 p.m.
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**TRANSPORTATION DEPARTMENT[761]**

Waiver of rules, 10.1(2), ch 11, 112.1(2), 115.1(2), 524.2(2), 529.3 IAB 1/26/00 <b>ARC 9617A</b>	Commission Conference Room 800 Lincoln Way Ames, Iowa	February 17, 2000 1 p.m. (If requested)
Flashing lights and warning devices on slow-moving vehicles, ch 452 IAB 1/26/00 <b>ARC 9622A</b>	Commission Conference Room 800 Lincoln Way Ames, Iowa	February 17, 2000 2 p.m. (If requested)

**TREASURER OF STATE[781]**

Waiver of administrative rules, ch 19 IAB 2/9/00 <b>ARC 9677A</b>	Room 114 State Capitol Bldg. Des Moines, Iowa	March 3, 2000 10 a.m.
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**WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]**

Workforce development board, 1.1(2), 1.4 to 1.6 IAB 2/9/00 ARC 9687A	Labor Conference Room Third Floor West 1000 E. Grand Ave. Des Moines, Iowa	February 29, 2000 1 p.m.
Iowa workforce investment act program, ch 7 IAB 2/9/00 ARC 9688A	Labor Conference Room Third Floor West 1000 E. Grand Ave. Des Moines, Iowa	February 29, 2000 1 p.m.

**WORKFORCE DEVELOPMENT DEPARTMENT[871]**

Request for waiver of administrative rule, 23.40(2), ch 41 IAB 1/26/00 ARC 9630A	Unemployment Insurance Svcs. Div. 1000 E. Grand Ave. Des Moines, Iowa	February 15, 2000 9:30 a.m.
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**CITATION of Administrative Rules**

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

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

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

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

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

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

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

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

The following list will be updated as changes occur:

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        Workforce Development Center Administration Division[877]

## ARC 9652A

## BANKING DIVISION[187]

## 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 524.213 and Executive Order Number 11, the Banking Division of the Commerce Department hereby gives Notice of Intended Action to adopt Chapter 12, "Uniform Waiver and Variance Rules," Iowa Administrative Code.

These rules describe the procedures for applying for, issuing, or denying waivers and variances from Division rules. The purpose of these rules is to comply with Executive Order Number 11 which requires state agencies to adopt uniform waiver rules.

Public comments concerning the proposed rules will be accepted until 4:30 p.m. on February 29, 2000. Interested persons may submit written or oral comments to the Superintendent of Banking, Banking Division, Department of Commerce, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827; telephone (515)281-4014.

These rules are intended to implement Executive Order Number 11.

The following new chapter is proposed.

## CHAPTER 12

## UNIFORM WAIVER AND VARIANCE RULES

**187—12.1(ExecOrd11) Applicability.** This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the banking division.

**12.1(1) Banking division authority.** A waiver or variance from rules adopted by the banking division may be granted in accordance with this chapter if: (1) the division has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

**12.1(2) Interpretive rules.** These uniform waiver and variance rules shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the division does not possess delegated authority to bind the courts to any extent with its definition.

**187—12.2(ExecOrd11) Compliance with statute.** No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

**187—12.3(ExecOrd11) Criteria for waiver or variance.** The division may issue an order, in response to a completed petition or on its own motion, granting a waiver or variance from a rule adopted by the division, in whole or in part, as applied to the circumstances of a specified person if the division finds that:

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

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

3. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person.

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

**12.3(1) Division discretion.** The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the division, upon consideration of all relevant factors.

**12.3(2) Mandatory waivers or variances.** In response to the timely filing of a completed petition requesting a waiver or variance, the division shall grant a waiver or variance from a rule, in whole or in part, as applied to the particular circumstances of a specified person, if the division finds that the application of all of the rule or a portion thereof to the circumstances of that specified person would not, to any extent, advance or serve any of the purposes of the rule.

**12.3(3) Burden of persuasion.** The petitioner shall assume the burden of persuasion when a petition is filed for a waiver or variance from a division rule.

**12.3(4) Special waiver or variance rules not precluded.** These uniform waiver and variance rules shall not preclude the division from granting waivers or variances in other contexts or on the basis of other standards if a statute or other division rule authorizes the division to do so and the division deems it appropriate to do so.

**12.3(5) Administrative deadlines.** When the rule from which a waiver or variance is sought establishes administrative deadlines, the division shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees.

**187—12.4(ExecOrd11) Filing of petition.** A petition for a waiver or variance must be submitted in writing to the division as follows:

**12.4(1) License application.** If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

**12.4(2) Contested cases.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding.

**12.4(3) Other.** If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the division's administrator.

**187—12.5(ExecOrd11) Content of petition.** A petition for waiver or variance shall include the following information where applicable and known to the requester:

**12.5(1)** The name, address, and telephone number of the person or entity for whom a waiver or variance is being requested and the case number of any related contested case.

**12.5(2)** A description and citation of the specific rule from which a waiver or variance is requested.

**12.5(3)** The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.

**12.5(4)** The relevant facts that the petitioner believes would justify a waiver or variance. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement

## BANKING DIVISION[187](cont'd)

of reasons that the petitioner believes will justify a waiver or variance.

**12.5(5)** A history of any prior contacts between the division and the petitioner relating to the regulated activity or license affected by the proposed waiver or variance, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

**12.5(6)** Any information known to the requester regarding the division's treatment of similar cases.

**12.5(7)** The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the grant of a waiver or variance.

**12.5(8)** The name, address, and telephone number of any person or entity that would be adversely affected by the grant of a petition.

**12.5(9)** The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.

**12.5(10)** Signed releases of information authorizing persons with knowledge regarding the request to furnish the division with information relevant to the waiver or variance.

**187—12.6(ExecOrd11) Additional information.** Prior to issuing an order granting or denying a waiver or variance, the division may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the superintendent of banking or the division's administrator.

**187—12.7(ExecOrd11) Notice.** The division shall acknowledge a petition upon receipt. The division shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the agency may give notice to other persons. To accomplish this notice provision, the division may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the agency attesting that notice has been provided.

**187—12.8(ExecOrd11) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver or variance of rule filed within a contested case and shall otherwise apply to division proceedings for a waiver or variance only when the division so provides by rule or order or is required to do so by statute.

**187—12.9(ExecOrd11) Ruling.** An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver, if one is issued.

**12.9(1) Conditions.** The division may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**12.9(2) Time for ruling.** The division shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless

the petitioner agrees to a later date. However, if a petition is filed in a contested case, the division shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**12.9(3)** When deemed denied. Failure of the division to grant or deny a petition within the time periods shall be deemed a denial of that petition by the division.

**12.9(4)** Service of order. Within seven days of its issuance, any order issued under these uniform rules shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

**187—12.10(ExecOrd11) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1)"e," the division shall maintain a record of all orders granting and denying waivers or variances under these uniform rules. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the division office.

**187—12.11(ExecOrd11) Voiding or cancellation.** A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The division may at any time cancel a waiver or variance upon appropriate notice and hearing if the division finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

**187—12.12(ExecOrd11) Violations.** Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

**187—12.13(ExecOrd11) Defense.** After the division issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**187—12.14(ExecOrd11) Appeals.** Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A and division rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

These rules are intended to implement Executive Order Number 11.

**ARC 9658A**

## 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 sections 261.3 and 261.37(5), the College Student Aid Commission proposes to

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

rescind Chapter 5, "Due Process," and adopt a new Chapter 5, "Uniform Rules for Waivers," Iowa Administrative Code.

Due process is currently addressed in Chapter 4, "Contested Cases," and need not be included in the separate chapter recommended to be rescinded. The new chapter provides uniform rules governing petitions for waiver from provisions in Commission rules as required by Executive Order Number 11. Executive Order Number 11 directs state rule-making authorities to adopt uniform rules governing waivers from published rules.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309, telephone (515)281-3501, by 4:30 p.m. February 29, 2000.

This amendment is intended to implement Executive Order Number 11.

The following amendment is proposed.

Rescind 283—Chapter 5 and adopt the following new chapter in lieu thereof:

CHAPTER 5  
UNIFORM RULES FOR WAIVERS

**283—5.1(261,ExecOrd11) Waiver process.** This chapter outlines a uniform process for granting waivers from rules adopted by the commission.

**5.1(1) Commission authority.** A waiver from rules adopted by the commission may be granted in accordance with this chapter if:

a. The commission has exclusive rule-making authority to promulgate the rule from which a waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and

b. No statute or rule otherwise controls the granting of a waiver from the rule for which a waiver is requested.

**5.1(2) Interpretive rules.** These uniform waiver rules shall not apply to rules defining a statute or other provisions of law or precedent if the commission does not have delegated authority to bind the courts with its definition.

**5.1(3) Compliance with statute.** No waiver shall be granted from a requirement that is imposed by statute. Any waiver must be consistent with statute.

**283—5.2(261,ExecOrd11) Criteria for waiver.** The commission may issue an order, in response to a completed petition or on its own motion, granting a waiver from a rule adopted by the commission, in whole or in part, as applied to the circumstances of a specified person if the commission finds that:

**5.2(1)** Application of the rule to the person at issue would result in hardship or injustice to that person; and

**5.2(2)** A waiver of the rule on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

**5.2(3)** A waiver of the rule in the specific case would not prejudice the substantial legal rights of any person.

**283—5.3(261,ExecOrd11) Commission discretion.** The decision as to whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the commission's executive director, upon consideration of all relevant facts.

**283—5.4(261,ExecOrd11) Mandatory waivers.** In response to the timely filing of a completed petition requesting a waiver, the commission shall grant a waiver from a rule, in whole or in part, as applied to the particular circumstances of

a specified person, if the commission finds that the application of all or a portion of the circumstances of that specified person would not, to any extent, advance or serve any of the purposes of the rule.

**283—5.5(261,ExecOrd11) Burden of persuasion.** The petitioner shall assume the burden of persuasion when a petition is filed for a waiver from a commission rule.

**283—5.6(261,ExecOrd11) Special waiver rule not precluded.** This uniform waiver rule shall not preclude the commission from granting waivers in other contexts or on the basis of other standards if a statute or other commission rule authorizes the commission to do so and the commission deems it appropriate to do so.

**283—5.7(261,ExecOrd11) Administrative deadlines.** When the rule from which a waiver is sought establishes administrative deadlines, deadlines in bidding documents, deadlines in applications or otherwise, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons participating in a particular program offered by the commission.

**283—5.8(261,ExecOrd11) Filing of petition.** A petition for a waiver must be submitted in writing to the commission's executive director at 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309.

**283—5.9(261,ExecOrd11) Contents of petition.** A petition for waiver shall include the following information where applicable and known to the petitioner:

**5.9(1)** The name, address, telephone number, and social security number of the person or entity for whom a waiver is being requested and the case number of any related contested case, whether pending or closed.

**5.9(2)** A description and citation of the specific rule from which a waiver is requested.

**5.9(3)** The specific waiver requested, including the precise scope and operative period that the waiver will extend.

**5.9(4)** The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

**5.9(5)** A history of any prior contacts between the commission and the petitioner. The historical summary shall include:

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

b. A description of each of the affected programs or contracts of the commission in which the petitioner has participated or from which the petitioner has benefited, including but not limited to allocations, grants, or loans held by the petitioner, any notices of noncompliance, other administrative events, whether federal or state, contested case hearings, or investigative reports relating to the program, allocation, grant, or loan.

**5.9(6)** Any information known to the petitioner about the commission's treatment of similar cases.

**5.9(7)** The name, address, and telephone number of any person or entity, inside or outside state government, who would be adversely affected by the granting of a petition.

**5.9(8)** The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

**5.9(9)** Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information pertaining to the waiver.

**283—5.10(261,ExecOrd11) Additional information.** If the petition for waiver is not filed in a contested case and prior to issuing an order granting or denying a waiver, the executive director may request additional information from the petitioner relative to the petition and circumstances relating to the request for waiver. The request may be in the form of written questions or oral interview. The executive director may interview or direct written questions to other persons in connection with the waiver requested. If the petition was not filed in a contested case, the commission, or its executive director, may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the commission's executive director, a committee of the commission's staff, or a quorum or committee of the commission's board to consider the petition for waiver.

**283—5.11(261,ExecOrd11) Notice.** The commission shall acknowledge a petition upon receipt. The commission shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the commission may give notice to other persons. To accomplish this notice provision, the commission may require the petitioner to serve the notice on all persons to whom notice is required and provide a written statement that notice has been provided.

**283—5.12(261,ExecOrd11) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A apply to commission proceedings for a waiver of a rule only when the commission so provides by rule or order or is required by statute to do so.

**283—5.13(261,ExecOrd11) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to that particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**283—5.14(261,ExecOrd11) Conditions.** The commission may condition the granting of a waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**283—5.15(261,ExecOrd11) Timing for ruling.** The commission shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case proceeding, the commission shall grant or deny the petition no later than the time at which the final decision in the contested case is issued.

**283—5.16(261,ExecOrd11) When deemed denied.** Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission.

**283—5.17(261,ExecOrd11) Service of order.** Within seven days of its issuance, any order issued under these uniform rules shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

**283—5.18(261,ExecOrd11) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1)"e," the commission shall maintain a record of all orders granting and denying waivers under these uniform rules. All records pertaining to waivers shall be indexed and available to members of the public at the commission's office.

**283—5.19(261,ExecOrd11) Voiding or cancellation.** A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The commission may, at any time, cancel a waiver upon appropriate notice and hearing if the commission finds that the facts as stated in the petition are not true, material facts have been withheld, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute or rule, or the petitioner has failed to comply with the conditions of the order.

**283—5.20(261,ExecOrd11) Violations.** Violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.

**283—5.21(261,ExecOrd11) Defense.** After the commission issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked. The order is not assignable, and it shall not inure to the benefit of the heirs or successors in interest of the person first obtaining the waiver.

**283—5.22(261,ExecOrd11) Appeals.** Any request for an appeal from a decision granting or denying a waiver shall be in accordance with the procedures in Iowa Code chapter 17A and the commission's rules.

These rules are intended to implement Iowa Code chapter 17A and Executive Order Number 11.

**ARC 9653A**

## CREDIT UNION DIVISION[189]

### 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 533.55(3) and Executive Order Number 11, the Credit Union Division of the Commerce Department hereby gives Notice of Intended Action to adopt Chapter 26, "Uniform Waiver and Variance Rules," Iowa Administrative Code.

These rules describe the procedures for applying for, issuing, or denying waivers and variances from Division rules. The purpose of these rules is to comply with Executive Order Number 11 which requires state agencies to adopt uniform waiver rules.

Public comments concerning the proposed rules will be accepted until 4:30 p.m. on February 29, 2000. Interested persons may submit written or oral comments to the Superintendent of Credit Unions, Credit Union Division, Department of Commerce, 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309-1827; telephone (515)281-6514.



## CREDIT UNION DIVISION[189](cont'd)

These rules are intended to implement Executive Order Number 11.

The following new chapter is proposed.

CHAPTER 26  
UNIFORM WAIVER AND VARIANCE RULES

**189—26.1(ExecOrd11) Applicability.** This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the credit union division.

**26.1(1) Credit union division authority.** A waiver or variance from rules adopted by the credit union division may be granted in accordance with this chapter if (1) the division has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

**26.1(2) Interpretive rules.** This chapter shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the division does not possess delegated authority to bind the courts to any extent with its definition.

**189—26.2(ExecOrd11) Compliance with statute.** No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

**189—26.3(ExecOrd11) Criteria for waiver or variance.** The division may issue an order, in response to a completed petition or on its own motion, granting a waiver or variance from a rule adopted by the division, in whole or in part, as applied to the circumstances of a specified person if the division finds that:

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

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

**26.3(1) Division discretion.** The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the division, upon consideration of all relevant factors.

**26.3(2) Mandatory waivers or variances.** In response to the timely filing of a completed petition requesting a waiver or variance, the division shall grant a waiver or variance from a rule, in whole or in part, as applied to the particular circumstances of a specified person, if the division finds that the application of all or a portion thereof to the circumstances of that specified person would not, to any extent, advance or serve any of the purposes of the rule.

**26.3(3) Burden of persuasion.** The petitioner shall assume the burden of persuasion when a petition is filed for a waiver or variance from a division rule.

**26.3(4) Special waiver or variance rules not precluded.** This chapter shall not preclude the division from granting waivers or variances in other contexts or on the basis of other standards if a statute or other division rules authorizes the division to do so and the division deems it appropriate to do so.

**26.3(5) Administrative deadlines.** When the rule from which a waiver or variance is sought establishes administrative deadlines, the division shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees.

**189—26.4(ExecOrd11) Filing of petition.** A petition for a waiver or variance must be submitted in writing to the division as follows:

**26.4(1) License application.** If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

**26.4(2) Contested cases.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding.

**26.4(3) Other.** If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the division's administrator.

**189—26.5(ExecOrd11) Content of petition.** A petition for waiver or variance shall include the following information where applicable and known to the requester:

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

**189—26.6(ExecOrd11) Additional information.** Prior to issuing an order granting or denying a waiver or variance, the division may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the superintendent of credit unions or the division's administrator.

## CREDIT UNION DIVISION[189](cont'd)

**189—26.7(ExecOrd11) Notice.** The division shall acknowledge a petition upon receipt. The division shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the agency may give notice to other persons. To accomplish this notice provision, the division may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the agency attesting that notice has been provided.

**189—26.8(ExecOrd11) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver or variance of a rule filed within a contested case and shall otherwise apply to agency proceedings for a waiver or variance only when the division so provides by rule or order or is required to do so by statute.

**189—26.9(ExecOrd11) Ruling.** An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver, if one is issued.

**26.9(1) Conditions.** The division may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**26.9(2) Time for ruling.** The division shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the division shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**26.9(3) When deemed denied.** Failure of the division to grant or deny a petition within the time periods shall be deemed a denial of that petition by the division.

**26.9(4) Service of order.** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

**189—26.10(ExecOrd11) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1)"e," the division shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the division office.

**189—26.11(ExecOrd11) Voiding or cancellation.** A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The division may at any time cancel a waiver or variance upon appropriate notice and hearing if the division finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

**189—26.12(ExecOrd11) Violations.** Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or vari-

ance is granted and is subject to the same remedies or penalties.

**189—26.13(ExecOrd11) Defense.** After the division issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**189—26.14(ExecOrd11) Appeals.** Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A and division rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

These rules are intended to implement Executive Order Number 11.

**ARC 9684A****ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 25, "Housing Fund," Iowa Administrative Code.

The proposed amendment would permit IDED to reserve up to a maximum of 60 percent of the state's annual HOME allocation for rental housing activities jointly funded with HOME and low-income housing tax credits (a program administered by the Iowa Finance Authority (IFA)). The amendment also reserves to IDED the right to require a 15 percent ratio of CHDO (community housing development organization) projects within the low-income housing tax credit projects funded.

The processes that will be followed by IDED and IFA for reviewing and awarding of jointly funded projects will be established in cooperation with IFA. IDED's administrative rules will then be amended to incorporate the procedures for jointly funded projects.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on February 29, 2000. Interested persons may submit written or oral comments by contacting Roselyn McKie Wazny, Division of Community and Rural Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed new chapter will be held on February 29, 2000, at 1:30 p.m. at the above address in the IDED main conference room. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on February 28, 2000, to be placed on the agenda.

This amendment is intended to implement Iowa Code section 15.108(1)"a."

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

The following amendment is proposed.

Amend 261—25.8(15) by adopting the following **new** subrule:

**25.8(3)** Up to a maximum of 60 percent of the state's annual HOME allocation may be reserved for rental housing activities jointly funded with HOME and low-income housing tax credits. IDEED reserves the right to require a 15 percent ratio of CHDO projects within the low-income housing tax credit projects funded.

## ARC 9674A

### 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 adopt Chapter 6, "Uniform Waiver and Variance Rules," Iowa Administrative Code.

These rules are necessary to comply with the Governor's Executive Order Number 11.

There will be a public hearing on the proposed amendments at 11 a.m., March 16, 2000, in Conference Room 2, South, Second Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing. 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 and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed rules before 4:30 p.m. on March 17, 2000. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

These rules are intended to implement Iowa Code chapters 17A and 272.

The following **new** chapter is proposed.

#### CHAPTER 6

#### UNIFORM WAIVER AND VARIANCE RULES

**282—6.1(17A,272) Applicability.** This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the board.

**6.1(1) Board authority.** A waiver or variance from rules adopted by the board may be granted in accordance with this chapter if: (1) the board has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

**6.1(2) Interpretive rules.** These uniform waiver and variance rules shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the board does not possess delegated authority to bind the courts to any extent with its definition.

**282—6.2(17A,272) Compliance with statute.** No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

**282—6.3(17A,272) Criteria for waiver or variance.** The board may issue an order, in response to a completed petition or on its own motion, granting a waiver or variance from a rule adopted by the board, in whole or in part, as applied to the circumstances of a specified person if the board finds that:

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

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

3. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person.

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

**6.3(1) Board discretion.** The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the board, upon consideration of all relevant factors.

a. The executive director shall review and make a recommendation to the board regarding a petition which relates to an application for a license, endorsement, or authorization, or relates to any other matter except a contested case. The board shall issue a ruling on each waiver request, in accordance with rule 6.9(17A,272), and may adopt the executive director's recommendation as its ruling.

b. The presiding officer in a contested case shall respond to a petition for waiver relating to a pending contested case proceeding in the proposed or final decision of the agency. The board may affirm, reverse, or modify the response upon review of the proposed decision or rehearing of a final decision.

**6.3(2) Mandatory waivers or variances.** In response to the timely filing of a completed petition requesting a waiver or variance, the board shall grant a waiver or variance from a rule, in whole or in part, as applied to the particular circumstances of a specified person, if the board finds that the application of all or a portion thereof to the circumstances of that specified person would not, to any extent, advance or serve any of the purposes of the rule.

**6.3(3) Burden of persuasion.** The petitioner shall assume the burden of persuasion when a petition is filed for a waiver or variance from a board rule.

**6.3(4) Special waiver or variance rules not precluded.** These uniform waiver and variance rules shall not preclude the board from granting waivers or variances in other contexts or on the basis of other standards if a statute or other board rule authorizes the board to do so, and the board deems it appropriate to do so.

**6.3(5) Administrative deadlines.** When the rule from which a waiver or variance is sought establishes administrative deadlines, the board shall balance the special individual

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

circumstances of the petitioner with the overall goal of uniform treatment of all licensees.

**282—6.4(17A,272) Filing of petition.** A petition for a waiver or variance must be submitted in writing to the board, as follows:

**6.4(1) License application.** If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

**6.4(2) Contested cases.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding.

**6.4(3) Other.** If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board's executive director.

**282—6.5(17A,272) Content of petition.** A petition for waiver or variance shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for whom a waiver or variance is being requested, and the case number of any related contested case.

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

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

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

5. A history of any prior contacts between the board and the petitioner relating to the regulated activity or license affected by the proposed waiver or variance, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

6. Any information known to the requester regarding the board's treatment of similar cases.

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

8. The name, address, and telephone number of any person or entity that would be adversely affected by the grant of a petition.

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

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

**282—6.6(17A,272) Additional information.** Prior to issuing an order granting or denying a waiver or variance, the executive director or board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive director, a committee of the board, or a quorum of the board.

**282—6.7(17A,272) Notice.** The board's executive director shall acknowledge a petition upon receipt. The executive di-

rector shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the agency may give notice to other persons. To accomplish this notice provision, the executive director may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the agency attesting that notice has been provided.

**282—6.8(17A,272) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver or variance of rule filed within a contested case, and shall otherwise apply to agency proceedings for a waiver or variance only when the board so provides by rule or order or is required to do so by statute.

**282—6.9(17A,272) Ruling.** An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**6.9(1) Conditions.** The board may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**6.9(2) Time for ruling.** The board shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**6.9(3) When deemed denied.** Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board.

**6.9(4) Service of order.** Within seven days of its issuance, any order issued under these uniform rules shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

**282—6.10(17A,272) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1)"e," the board shall maintain a record of all orders granting and denying waivers and variances under these uniform rules. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the board office.

**282—6.11(17A,272) Voiding or cancellation.** A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver or variance upon appropriate notice and hearing if the board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

**282—6.12(17A,272) Violations.** Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

**282—6.13(17A,272) Defense.** After the board issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**282—6.14(17A,272) Appeals.** Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A and board rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

These rules are intended to implement Iowa Code chapters 17A and 272.

## ARC 9672A

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.

The proposed amendment would require both a state and a federal background check for all initial applicants. These proposed subrules require applicants to submit a completed set of fingerprints to accompany the application to facilitate a national criminal history background check. The fee for the state background check from the Iowa Department of Criminal Investigation (approximately \$10 to \$13) will be assessed to the applicant. The fee for the evaluation of the national criminal investigation (approximately \$24) will be assessed to the applicant. Fees for conducting background checks would be in addition to any licensure fee.

If approved, this amendment would become effective February 1, 2001.

There will be a public hearing on the proposed amendment at 3 p.m., March 14, 2000, in Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing orally or in writing. Persons who wish to make oral presentation at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515) 281-5849, prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendment through 4:30 p.m., March 15, 2000. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend 282—14.1(272) by adopting the following new subrules:

**14.1(1)** Effective February 1, 2001, an initial applicant will be required to submit a completed fingerprint packet that accompanies the application to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet will be assessed to the applicant.

**14.1(2)** Effective February 1, 2001, an Iowa department of criminal investigation background check will be conducted on initial applicants. The fee for the evaluation of the DCI background check will be assessed to the applicant.

## ARC 9666A

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.

The proposed amendments will allow a person with a baccalaureate degree who meets any 30-hour teaching major listed in the Board's rules, to apply to an approved alternative preparation program for licensure. The amendments also allow persons from other states who have been prepared through an alternative preparation program and have completed three years of teaching to be issued an alternative preparation license in Iowa.

There will be a public hearing on the proposed amendments at 1 p.m. on March 14, 2000, in Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing. 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 and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendments before 4:30 p.m. on March 15, 2000. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

ITEM 1. Amend rule 282—14.10(272) as follows:

**282—14.10(272) Licenses.** ~~These~~ *The following* licenses ~~will be issued effective October 1, 1988~~ *are issued by the board.*

Provisional  
Educational  
Professional Teacher  
Professional Administrator

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Conditional  
Substitute  
Area Education Agency Administrator  
*Alternative Preparation*

ITEM 2. Adopt the following new rule:

**282—14.33(272) Requirements for an alternative preparation license.**

**14.33(1)** Following are the requirements for the issuance of a teaching license based on an alternative preparation program for persons prepared in Iowa.

a. Baccalaureate degree from a regionally accredited institution with a cumulative grade point average of 2.5 or better. This degree must have been conferred at least three years prior to application to an alternative preparation program.

b. Completion of an alternative preparation program approved by the state board of education.

c. Completion of an approved human relations component.

d. Completion of the exceptional learner program, which must include preparation that contributes to the education of individuals with disabilities and the gifted and talented.

e. Professional education core. Completed coursework or evidence of competency in:

(1) Student learning. The practitioner understands how students learn and develop and provides learning opportunities that support intellectual, career, social, and personal development.

(2) Diverse learners. The practitioner understands how students differ in their approaches to learning and creates instructional opportunities that are equitable and are adaptable to diverse learners.

(3) Instructional planning. The practitioner plans instruction based upon knowledge of subject matter, students, the community, curriculum goals, and state curriculum models.

(4) Instructional strategies. The practitioner understands and uses a variety of instructional strategies to encourage students' development of critical thinking, problem solving, and performance skills.

(5) Learning environment/classroom management. The practitioner uses an understanding of individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation.

(6) Communication. The practitioner uses knowledge of effective verbal, nonverbal, and media communication techniques, and other forms of symbolic representation, to foster active inquiry, collaboration, and support interaction in the classroom.

(7) Assessment. The practitioner understands and uses formal and informal assessment strategies to evaluate the continuous intellectual, social, and physical development of the learner.

(8) Foundations, reflection, and professional development. The practitioner continually evaluates the effects of the practitioner's choices and actions on students, parents, and other professionals in the learning community and actively seeks out opportunities to grow professionally.

(9) Collaboration, ethics, and relationships. The practitioner fosters relationships with parents, school colleagues, and organizations in the larger community to support students' learning and development.

f. Computer technology related to instruction.

g. Completion of pre-student teaching field-based experiences.

h. Methods of teaching with an emphasis on the subject and grade level endorsement desired.

i. Content/subject matter specialization. The practitioner understands the central concepts, tools of inquiry, and structure of the discipline(s) the practitioner teaches and creates learning experiences that make these aspects of subject matter meaningful for students.

This is evidenced by completion of a 30-semester-hour teaching major which must minimally include the requirements for at least one of the basic endorsement areas or special education teaching endorsements listed in 282—14.20(272) or 282—15.2(272).

j. A minimum of 12 weeks of student teaching in the subject area and at the grade level in which the endorsement is desired.

**14.33(2)** Following are the basic requirements for the issuance of a teaching license based on an alternative preparation program with an endorsement for persons prepared in states other than Iowa.

a. Hold a baccalaureate degree from a regionally accredited institution.

b. Provide a valid out-of-state teaching license based on a state-approved alternative preparation program.

c. Provide a recommendation from a regionally accredited institution, Department of Education, or a state's standards board indicating the completion of an approved alternative teacher preparation program.

d. Provide official institutional transcript(s) to be analyzed for any deficiencies that are needed for full Iowa licensure based on 14.33(1)“c” to “i” above.

e. Verify three years of teaching experience which will waive the student teaching requirement.

The alternative preparation license is valid for two years and may be renewed under certain prescribed conditions listed in 282—17.8(272) for a provisional license.

**ARC 9670A**

**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.

The amendment expands the options for an individual who wishes to substitute teach on the same basis as the holder of a substitute license while the regular license is in effect, to include the two-year exchange license.

There will be a public hearing on the proposed amendment at 9 a.m. on March 16, 2000, in Conference Room 2 South, Second Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

writing. 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 and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515) 281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendments before 4:30 p.m. on March 17, 2000. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule 14.17(3) as follows:

**14.17(3)** The holder of a substitute license is authorized to teach in any school system in any position in which a regularly licensed teacher was employed to begin the school year.

In addition to the authority inherent in the provisional, educational, professional teacher, *two-year exchange*, and permanent professional licenses and the endorsement(s) held, the holder of one of these regular licenses may substitute on the same basis as the holder of a substitute license while the regular license is in effect.

## ARC 9673A

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 16, "Occupational and Postsecondary Endorsements and Licenses," Iowa Administrative Code.

The amendments allow a maximum of six staff development units to be earned for licensure renewal rather than only five. These proposed amendments were inadvertently omitted and should have accompanied the parallel rules for PK-12 in Chapter 17.

There will be a public hearing on the amendments at 10 a.m., March 16, 2000, in Conference Room 2 South, Second Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing. 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 and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515) 281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendments before 4:30 p.m. on March 17, 2000. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

ITEM 1. Amend subrule 16.3(3) as follows:

**16.3(3)** Renewal units may be earned upon the completion of staff development programs approved through guidelines established by the board of educational examiners or approved technical update program approved by the board of educational examiners. ~~A maximum of five units may be earned from this subrule.~~

ITEM 2. Amend **16.5(1)"b"(3)** as follows:

(3) Renewal units may be earned upon the completion of staff development programs approved through guidelines established by the board of educational examiners or approved technical update program approved by the board of educational examiners. ~~A maximum of five units may be earned from this subparagraph.~~

## ARC 9641A

## 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 Executive Order Number 11, the State Board of Education hereby gives Notice of Intended Action to adopt Chapter 4, "Uniform Waiver Rules," Iowa Administrative Code.

This chapter describes the procedures for applying for, issuing or denying waivers from Department rules. The purpose of this chapter is to comply with Executive Order Number 11, which requires all state agencies to adopt uniform waiver rules.

Public comments concerning the proposed chapter will be accepted until 4:30 p.m. on February 29, 2000.

A public hearing will be held on February 29, 2000, at 1 p.m. in the State Board Room, Grimes State Office Building, Des Moines, Iowa. Interested persons may submit written or oral comments by contacting Ann McCarthy, Office of the Director, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515) 281-5296; E-mail [ann.mccarthy@ed.state.ia.us](mailto:ann.mccarthy@ed.state.ia.us).

This chapter is intended to implement Executive Order Number 11.

The following new chapter is proposed.

CHAPTER 4  
UNIFORM WAIVER RULES

**281—4.1(ExecOrd11) Applicability.** This chapter outlines a uniform process for the granting of waivers from rules implemented by the department of education. The intent of this chapter is to allow persons to seek exceptions to the application of rules to the extent allowed by this chapter and state and federal law.

**4.1(1) Definitions.**

"Board" means the state board of education.

"Department" means the department of education.

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

“Director” means the director of the department of education.

“Person” means individual, school corporation, government or governmental subdivision or agency, nonpublic school, partnership or association, or any legal entity.

**4.1(2) Authority.**

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

b. No waiver may be granted from a requirement that is imposed by statute. Any waiver must be consistent with statute.

**281—4.2(ExecOrd11) Director discretion.** The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the director upon consideration of all relevant factors. The director may bring a request for a waiver to the board for discussion prior to issuing a decision on the waiver. The director shall notify the board of any waiver granted or denied.

**4.2(1)** The director may, in response to a completed petition or on its own motion, grant a waiver from a rule, in whole or in part, as applied to the circumstances of a specified situation if the director finds each of the following:

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

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

c. Waiver in the specific case would not prejudice the substantial legal rights of any person; and

d. Waiver in the specific case would not have a negative impact on the student achievement of any person affected by the waiver.

In determining whether a waiver should be granted, the director shall consider whether the underlying public interest policies and legislative intent of the rules are substantially equivalent to full compliance with the rule. When the rule from which a waiver is sought establishes administrative deadlines, the director shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all constituents.

**4.2(2)** Special waiver rules not precluded. This uniform waiver rule shall not preclude the director from granting waivers in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so, and the director deems it appropriate to do so.

**281—4.3(ExecOrd11) Requester’s responsibilities in filing a waiver petition.**

**4.3(1)** Application. All petitions for waiver must be submitted in writing to the Director, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

**4.3(2)** Content of petition. A petition for waiver shall include the following information where applicable and known to the requester (for an example of a petition for waiver, see Exhibit A at the end of this chapter):

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

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

c. The relevant facts that the petitioner believes would justify a waiver.

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

e. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, or grant affected by the proposed waiver, including a description of each affected item held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, or grant within the last five years.

f. A detailed statement of the impact on student achievement for any person affected by the grant of a waiver.

g. Any information known to the requester regarding the board’s or department’s treatment of similar cases.

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

i. The name, address, and telephone number of any person or entity that would be adversely affected by the grant of a petition.

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

k. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

**281—4.4(ExecOrd11) Burden of persuasion.** The petitioner shall assume the burden of persuasion when a petition is filed for a waiver from a rule.

**281—4.5(ExecOrd11) Notice.** The department shall acknowledge a petition upon receipt. The department shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the department may give notice to other persons.

To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the department attesting that notice has been provided.

**281—4.6(ExecOrd11) Department responsibilities regarding petition for waiver.**

**4.6(1)** Additional information. Prior to issuing an order granting or denying a waiver, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the director may, on the director’s own motion or at the petitioner’s request, schedule a telephonic or in-person meeting between the petitioner and the director or the director’s designee.

**4.6(2)** Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (1) to any petition for a waiver filed within a contested case; (2) when the director so provides by rule or order; or (3) when a statute so requires.

**4.6(3)** Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order per-



EDUCATION DEPARTMENT[281](cont'd)

tains, a statement of the relevant facts and the reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

4.6(4) Conditions. The director may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

4.6(5) Time for ruling. The director shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

4.6(6) When deemed denied. Failure of the director to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director.

4.6(7) Service of order. Within seven days of its issuance, any order issued under this uniform rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

281—4.7(ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)“e,” the department shall maintain a record of all orders granting and denying waivers under this uniform rule. All final rulings in response to requests for waivers shall be indexed and available to the members of the public at the Department of Education, Office of Director, Grimes State Office Building, Des Moines, Iowa 50319-0146.

281—4.8(ExecOrd11) Voiding or cancellation. A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director may at any time cancel a waiver upon appropriate notice if the director finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

281—4.9(ExecOrd11) Violations. Violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.

281—4.10(ExecOrd11) Defense. After the director issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

281—4.11(ExecOrd11,17A) Appeals. Granting or denying a request for waiver is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

281—4.12(ExecOrd11) Exception. This rule does not apply to 281—Chapters 36 and 37, or to specific waiver provisions adopted in other chapters.

These rules are intended to implement Executive Order Number 11.

Exhibit A  
Sample Petition (Request) for Waiver

BEFORE THE DEPARTMENT OF EDUCATION

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter)



PETITION FOR WAIVER

Requests for waiver from a department rule shall include the following information in the petition for waiver where applicable and known:

- a. Provide the petitioner’s (person asking for a waiver) name, address, and telephone number.
- b. Describe and cite the specific rule from which a waiver is requested.
- c. Describe the specific waiver requested; include the exact scope and time period that the waiver will extend.
- d. Explain the important facts that the petitioner believes justify a waiver. Include in your answer why (1) applying the rule will result in hardship or injustice to the petitioner; (2) granting a waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver or variance will not prejudice the substantial legal rights of any person.
- e. Provide history of prior contacts between the department and petitioner relating to the regulated activity, license, or grant that would be affected by the waiver; include a description of each affected license or grant held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, or grant within the last five years.
- f. Provide a detailed statement of the impact on student achievement for any person affected by the grant of a waiver.
- g. Provide information known to the petitioner regarding the department’s treatment of similar cases.
- h. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver.
- i. Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the grant of the waiver.
- j. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver.
- k. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner’s signature

Date

Petitioner should note the following when requesting or petitioning for a waiver:

- 1. The petitioner has the burden of proving the following to the director: (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; (b) waiver on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; (c) waiver in the specific case would not prejudice the substantial legal rights of any person; and (d) waiver in the specific case would not have a negative impact on the student achievement of any person affected by the waiver.

EDUCATION DEPARTMENT[281](cont'd)

2. The director or the director's designee may request additional information from or request an informal meeting with the petitioner prior to granting or denying a request for waiver.

3. All petitions for waiver must be submitted in writing to the Director, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

## ARC 9676A

# ENVIRONMENTAL PROTECTION COMMISSION[567]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 455A.6, the Environmental Protection Commission hereby gives Notice of Intended Action to adopt new Chapter 13, "Waivers or Variances from Administrative Rules," Iowa Administrative Code.

The purpose is to adopt the uniform waiver rule as directed by Governor Vilsack in Executive Order Number 11, issued on September 14, 1999.

The proposed action is to adopt by reference the rule making effecting 561—Chapter 10. Notice of Intended Action in that rule making was published as **ARC 9627A** in the January 26, 2000, Iowa Administrative Bulletin.

Any interested persons may make written suggestions or comments on the proposed rules on or before February 29, 2000. Written comments should be directed to Anne Preziosi, Department of Natural Resources, Air Quality Bureau, 7900 Hickman, Urbandale, Iowa 50322; telephone (515)281-6243; fax (515)242-5094. Requests for a public hearing regarding this rule making must be submitted in writing to the above address by that date.

These rules are intended to implement Executive Order Number 11.

The following **new** chapter is proposed.

### CHAPTER 13 WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

**567—13.1(17A) Adoption by reference.** The commission adopts by reference 561—Chapter 10, Iowa Administrative Code, provided that the word "commission" is substituted for "department" throughout.

**567—13.2(17A) Report to commission.** The director shall submit a report of decisions on requests for waivers or variances to the commission at its regular meetings.

These rules are intended to implement Executive Order Number 11.

## ARC 9665A

# GENERAL SERVICES DEPARTMENT[401]

## 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 Executive Order Number 11, the Department of General Services hereby gives Notice of Intended Action to adopt Chapter 20, "Uniform Waiver and Variance Rules," Iowa Administrative Code.

The rules in Chapter 20 describe the procedures for applying for, issuing or denying waivers or variances from Department rules. The purpose of this new chapter is to comply with Executive Order Number 11 which requires state agencies to adopt a general waiver of rules.

Public comments concerning the proposed rules will be accepted until 4:30 p.m. on February 29, 2000. Interested persons may submit written or oral comments by contacting Julie Economaki, Director's Office, Department of General Services, Hoover State Office Building, Des Moines, Iowa 50319-0104; telephone (515)242-6118; fax (515)242-5974; E-mail [jeconom@max.state.ia.us](mailto:jeconom@max.state.ia.us).

These rules are intended to implement Executive Order Number 11.

The following **new** chapter is proposed.

### CHAPTER 20 UNIFORM WAIVER AND VARIANCE RULES

**401—20.1(ExecOrd11) Applicability.** This chapter outlines a uniform process for granting waivers or variances from rules adopted by the department. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the department.

#### 20.1(1) Definitions.

"Department" or "DGS" means the department of general services authorized by Iowa Code chapter 18.

"Director" means the director of the department of general services or the director's designee.

"Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, vendor, or any legal entity.

#### 20.1(2) Authority.

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

b. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

**401—20.2(ExecOrd11) Director discretion.** The decision on whether the circumstances justify the granting of a waiver

## GENERAL SERVICES DEPARTMENT[401](cont'd)

or variance shall be made at the discretion of the director, upon consideration of all relevant factors.

**20.2(1) Criteria for waiver or variance.** The director may, in response to a completed petition or on the director's own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the director finds each of the following:

- a. Application of the rule to the person at issue would result in hardship or injustice to that person; and
- b. A waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and
- c. A waiver or variance in the specific case would not prejudice the substantial legal rights of any other person; and
- d. A waiver or variance in a procurement, sale or auction meets the criteria established in subrule 20.2(2).

In determining whether a waiver or variance should be granted, the director shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver or variance is sought establishes administrative deadlines, the director shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all affected persons.

**20.2(2) Special waiver or variance rules not precluded.** These uniform waiver and variance rules shall not preclude the director from granting waivers or variances in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so and the director deems it appropriate to do so. The director may waive a rule or grant a variance due to noncompliance with a stated requirement in a procurement, sale or auction if the request meets all of the following criteria:

- a. The waiver or variance will tend to promote competition rather than inhibit or reduce competition.
- b. The waiver or variance will not materially alter the substantive contents of the offer, invitation to bid or a response to a request for proposal.
- c. The noncompliance with the stated requirement is correctable (if correction is necessary) without materially or substantially altering the substantive contents of the offer, invitation to bid or a response to a request for proposal.
- d. No other person who submits an offer, invitation to bid or response to a request for proposal is materially or substantially harmed by the waiver or variance. A person shall not be deemed to have been harmed if the waiver or variance merely increases competition.
- e. Fundamental notions of good faith and fair dealing favor the issuance of a waiver or variance.
- f. The waiver or variance will not result in unreasonable delay in the procurement, sale or auction and will not interfere with certainty or finality in the procurement, sale or auction.

**20.2(3) Special waiver or variance not permitted.** The compensation rates for publication in a newspaper for any notice, order or citation or other publication required or allowed by law as adopted in rule 401—5.21(618) by the state printing administrator pursuant to Iowa Code section 618.11 shall not be waived or varied. The procedure established in this chapter does not apply to waiver or variance of contractual terms or conditions; contracts shall be waived or varied only upon their own terms. These rules do not apply to the Terrace Hill commission established in Iowa Code section 18.8A(4) or rules adopted by the commission unless these rules are adopted by reference by the Terrace Hill commission.

**401—20.3(ExecOrd11) Requester's responsibilities in filing a waiver or variance petition.**

**20.3(1) Application.** All petitions for waiver or variance must be submitted in writing to the Department of General Services, Office of the Director, Hoover State Office Building, A Level, Des Moines, Iowa 50319-0104, Attention: Legal Counsel. Requests for waiver may be delivered, mailed, sent by facsimile transmission or by other electronic means reasonably calculated to reach the intended recipient. If the petition relates to a pending appeal, a copy of the petition shall also be filed in the appeal.

**20.3(2) Content of petition.** A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule (and the stated requirement in a procurement, auction or sale) from which a waiver or variance is requested.
  - b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
  - c. The relevant facts that the petitioner believes would justify a waiver or variance.
  - d. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance.
  - e. A history of any prior contacts between the department and the petitioner relating to the activity which is the subject of the requested waiver or variance.
  - f. Any information known to the requester regarding the department's treatment of similar cases.
  - g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.
  - h. The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a petition, if reasonably known to the petitioner.
  - i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.
  - j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.
  - k. The criteria in subrule 20.2(2) for a waiver or variance in a procurement, sale or auction.
- 20.3(3) Burden of persuasion.** The petitioner has the burden of persuasion when a petition is filed for a waiver or variance from a department rule.

**401—20.4(ExecOrd11) Notice.** The department shall acknowledge a receipt of a petition by written means reasonably calculated to reach the petitioner or designee. The department shall ensure that notice and a concise summary of the content of the petition have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the department may give notice to other persons.

To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the department attesting that notice has been provided.

GENERAL SERVICES DEPARTMENT[401](cont'd)

**401—20.5(ExecOrd11) Department responsibilities regarding petition for waiver or variance.**

**20.5(1) Additional information.** Prior to issuing an order granting or denying a waiver or variance, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the director may, on the director's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director.

**20.5(2) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (1) to any petition for a waiver or variance of rule filed within a contested case; (2) when the director so provides by rule or order; or (3) when a statute so requires.

**20.5(3) Ruling.** An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**20.5(4) Conditions.** The director may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**20.5(5) Time for ruling.** The director shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**20.5(6) When deemed denied.** Failure of the director to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director.

**20.5(7) Service of order.** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

**401—20.6(ExecOrd11) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1)"e," the department shall maintain a record of all orders granting and denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the Department of General Services, Office of the Director, Hoover State Office Building, A Level, Des Moines, Iowa 50319-0104.

**401—20.7(ExecOrd11) Voiding or cancellation.** A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director may at any time cancel a waiver or variance upon appropriate notice if the director finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

**401—20.8(ExecOrd11) Violations.** Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

**401—20.9(ExecOrd11) Defense.** After the director issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**401—20.10(ExecOrd11,17A) Appeals.** Granting or denying a request for waiver or variance is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

These rules are intended to implement Executive Order Number 11.

Exhibit A

Sample Petition (Request) for Waiver or Variance

BEFORE THE DEPARTMENT OF  
GENERAL SERVICES

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter) } PETITION FOR WAIVER

Requests for waiver or variance from a department rule shall include the following information in the petition for waiver where applicable and known:

- a. Provide the petitioner's (person asking for a waiver or variance) name, address, and telephone number and the name, address, and telephone number of the petitioner's designee (if any).
- b. Describe and cite the specific rule (and the stated requirement in a procurement, sale or auction) from which a waiver or variance is requested. (Please note: The compensation rates for publication in a newspaper for any notice, order or citation or other publication required or allowed by law as adopted in rule 401—5.21(618) by the state printing administrator pursuant to Iowa Code section 618.11 shall not be waived.)
- c. Describe the specific waiver or variance requested and include the exact scope and time period that the waiver or variance will extend.
- d. Explain the important facts that the petitioner believes justify a waiver or variance. Include in your statement why: (1) applying the rule will result in hardship or injustice to the petitioner; and (2) granting a waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver or variance will not prejudice the substantial legal rights of any other person.
- e. Provide history of prior contacts between the department and petitioner relating to the activity which is the subject of the requested waiver or variance.
- f. Provide information known to the petitioner regarding the department's treatment of similar cases.
- g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.
- h. Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the grant of the waiver or variance, if reasonably known to the petitioner.

## GENERAL SERVICES DEPARTMENT[401](cont'd)

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

j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

k. If the request for waiver or variance is with respect to a procurement, sale or auction, also include justification for each of the following criteria: (1) the waiver or variance will tend to promote competition rather than inhibit or reduce competition; (2) the waiver or variance will not materially alter the substantive contents of the offer, invitation to bid or a response to a request for proposal; (3) the noncompliance with the stated requirement is correctable (if correction is necessary) without materially or substantially altering the substantive contents of the offer, invitation to bid or a response to a request for proposal; (4) no other person who submits an offer, invitation to bid or response to a request for proposal is materially or substantially harmed by the waiver or variance (please note: a person shall not be deemed to have been harmed if the waiver or variance merely increases competition); (5) fundamental notions of good faith and fair dealing favor the issuance of a waiver or variance; and (6) the waiver or variance will not result in unreasonable delay in the procurement, sale or auction and will not interfere with certainty or finality in the procurement, sale or auction.

I hereby attest to the accuracy and truthfulness of the above information.

\_\_\_\_\_  
Petitioner's signature

\_\_\_\_\_  
Date

All petitions for waiver or variance must be submitted in writing to the Department of General Services, Office of the Director, Hoover State Office Building, A Level, Des Moines, Iowa 50319-0104, Attention: Legal Counsel.

## ARC 9643A

### 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, the Department of Human Services proposes to rescind Chapter 24, "Accreditation or Certification of Providers of Services to Persons With Mental Illness, Mental Retardation, and Developmental Disabilities," appearing in the Iowa Administrative Code and to adopt Chapter 24, "Accreditation of Providers of Services to Persons With Mental Illness, Mental Retardation, and Developmental Disabilities," Iowa Administrative Code.

These rules rewrite the policies governing accreditation of mental health service providers and terminates the three-year pilot project for certification of services for persons with mental illness, mental retardation, developmental disabilities, and brain injury.

The three-year pilot was established to test the implementation of one set of outcome-based standards for persons with mental illness, mental retardation, developmental disabilities, or brain injury. The pilot was a joint project with the Department of Inspections and Appeals, the Division of Vocational Rehabilitation, and the Department of Human Services.

The pilot project is very staff intensive. These outcome standards are implemented by interviewing consumers, direct care staff, and important persons in the consumer's life. Currently the Division of Vocational Rehabilitation does not have any quality assurance specialists on their staff. They rely on national accrediting bodies to accredit the providers they fund. The other divisions and departments also do not have adequate staff to continue to implement these standards at this time. For that reason, the pilot is being discontinued at this time.

The following changes are made to the policies governing accreditation:

- The standards have been organized into three sections: policies and procedures, organizational activities, and services. The standards for policies and procedures are new. The standards clarify what organizations need to have in the way of policies and procedures.

The standards which are currently grouped under organizational activities have been divided into two groups, those that are service and case specific (client records, social histories, assessments, consumer service plans, documentation of service provision, and confidentiality and legal status) and those that are not (organization of service systems, consumer rights, performance improvement system, leadership, management information system, human resources, and organizational environment). Those standards that are service and case specific have been included in the section on services with the standards for the specific services and will be reviewed with each specific service. Those standards, which are not service and case specific, are grouped together in the organizational activities section.

In computing the total overall rating which establishes the length of accreditation, the performance rating for policy and procedures shall be counted as 25 percent of the total, organizational activities as 25 percent of the total, and services as 50 percent of the total. There continues to be one accreditation award for all the services based upon the lowest score of the services surveyed. A review of a sample of consumer files is used to determine whether each specific service meets the established standards.

- Supported community living services are more clearly defined. Group therapy and support groups provided by community mental health centers are not considered part of supported community living services. Local counties and central point of coordination administrators will need to work with some community mental health centers and other mental health providers to determine what to call and bill some of the current services being provided under supported community living.

- A discrete service plan is not required for outpatient services. Draft copies of these amendments were shared with providers. Community mental health center representatives had the most concern about the standards established by the rules for outpatient services. After several advisory meetings with division staff, a decision was made to not require a discrete service plan for outpatient services. Information that needs to be documented can be noted in the intervention notes or narratives. Merit Behavioral Care, as the primary source of funding for this service, also had input on these changes and agreed to the revision.

HUMAN SERVICES DEPARTMENT[441](cont'd)

• Policy is clarified that group therapy is not a part of supported community living. If group therapy is needed, that service can be developed under outpatient services. Supported community living must be provided in the community where the consumer lives.

• Policy is clarified regarding the federal requirements for case management services.

• Several definitions were added and some were amended to more clearly define the intent of the standards.

• The appeal process for the accreditation decision is revised to require a review by the division and the commission prior to an appeal pursuant to 441—Chapter 7.

• A new rule is added governing the granting of exceptions to the accreditation standards in these rules. Exceptions to policy shall follow the Department’s general rule on exceptions to policy at rule 441—1.8(217). The Mental Health and Developmental Disabilities Commission shall make a recommendation to the director on whether the exception shall be approved.

For each of the services accredited under these standards, input was received by both the Mental Health and Developmental Disabilities Division and the Mental Health and Developmental Disabilities Commission throughout the rule-making process.

Community mental health centers chose members for an advisory group that met several times with staff from the Division. Once a draft was completed, the draft was shared with the Commission and with Merit Behavioral Care to ensure it was in agreement for payment purposes.

Division staff met quarterly with both Department and county case management administrators. Ongoing drafts were shared for input and changes made when necessary. A draft was also shared with Independent Case Management for input.

The Iowa Association of Community Providers chose to have input from its providers by sending a draft to all member providers. This included supported community living and other mental health providers. Any provider with concerns or questions sent written comments. The Division then dialogued with the provider staff and came to consensus on language contained in the standards.

These rules provide for waivers (exceptions to policy) in specified situations under the Department’s general rule on exceptions to policy at rule 441—1.8(217).

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before March 1, 2000.

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

Cedar Rapids - March 3, 2000 10 a.m.  
Cedar Rapids Regional Office  
Iowa Building - Suite 600  
Sixth Floor Conference Room  
411 Third St. S.E.  
Cedar Rapids, Iowa 52401

Council Bluffs - March 1, 2000 10 a.m.  
Administrative Conference Room  
Council Bluffs Regional Office  
417 E. Kaneshville Boulevard  
Council Bluffs, Iowa 51501

Davenport - March 1, 2000 10 a.m.  
Davenport Area Office  
Bicentennial Building - Fifth Floor  
Large Conference Room  
428 Western  
Davenport, Iowa 52801

Des Moines - March 2, 2000 10 a.m.  
Des Moines Regional Office  
City View Plaza  
Conference Room 102  
1200 University  
Des Moines, Iowa 50314

Mason City - March 1, 2000 10 a.m.  
Mason City Area Office  
Mohawk Square, Liberty Room  
22 North Georgia Avenue  
Mason City, Iowa 50401

Ottumwa - March 1, 2000 10 a.m.  
Ottumwa Area Office  
Conference Room 3  
120 East Main  
Ottumwa, Iowa 52501

Sioux City - March 1, 2000 10 a.m.  
Sioux City Regional Office  
Fifth Floor  
520 Nebraska St.  
Sioux City, Iowa 51101

Waterloo - March 1, 2000 10 a.m.  
Waterloo Regional Office  
Pinecrest Office Building  
Conference Room 420  
1407 Independence Avenue  
Waterloo, Iowa 50703

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

These rules are intended to implement Iowa Code chapter 225C.

The following amendment is proposed.

Rescind 441—Chapter 24, and adopt the following **new** Chapter 24 in lieu thereof:

CHAPTER 24  
ACCREDITATION OF PROVIDERS OF SERVICES  
TO PERSONS WITH MENTAL ILLNESS,  
MENTAL RETARDATION, AND  
DEVELOPMENTAL DISABILITIES

PREAMBLE

The mental health and developmental disabilities commission has established this set of standards to be met by all mental health and mental retardation organizations and services that are not licensed by the department of inspections and appeals and that are required to meet specific standards for the organizations and services under the authority of the commission.

The mental health and developmental disabilities commission has established this set of standards to be met by community mental health centers, mental health services providers, case management providers and supported community living providers per Iowa Code chapter 225C. The

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

commission's intent is to establish standards that are based on the principles of quality improvement, that are designed to facilitate the provision of excellent quality services that lead to positive outcomes, that make organizations providing services responsible for effecting efficient and effective management and operational systems that enhance the involvement of consumers and that establish a best practices level of performance by which to measure provider organizations. The standards are to serve as the foundation of a performance-based review of those organizations for which the commission holds accreditation responsibility as set forth in Iowa Code chapters 225C and 230A.

## MISSION OF ACCREDITATION

To ensure consumers and the general public of organizational accountability for meeting best practices performance levels, for efficient and effective management and for the provision of quality services that result in quality outcomes for consumers.

**441—24.1(225C) Definitions.**

"Accreditation" means the decision made by the commission that the organization has met the applicable standards. There will be one accreditation award for all the services based upon the lowest score of the services surveyed.

"Advisory board" means the board that reviews and makes recommendations to the organization's board of directors on the program being accredited. The advisory board meets at least three times a year and has at least three members, at least 51 percent of whom are not providers. The advisory board includes representatives who have disabilities or family members of persons with disabilities. The advisory board's duties include review and recommendation of policies, development and review of the organization plan for the program being accredited, review and recommendation of the budget for the program being accredited, and review and recommendation of the total quality improvement program of the program being accredited.

"Anticipated discharge plan" means the general statement of the condition or circumstances by which the consumer would no longer need services.

"Appropriate" means the degree to which the services or supports or activities provided or undertaken by the organization are relevant to the consumer's needs, situation, problems, or desires.

"Assessment" means the review of the consumer's current functioning in regard to the consumer's situation, needs, strengths, abilities, desires and goals.

"Benchmarks" are defined as best practices or competencies of excellent quality organizations producing excellent quality services and outcomes.

"Board of directors" means the board that provides oversight, guidance, and policy direction for the operation of the program being accredited. The board shall have at least three members. Organization staff shall not constitute the majority of members of the board.

"Case management services" means those services established pursuant to Iowa Code chapter 225C.

"Chronic mental illness" means the same as serious and persistent mental illness for the purposes of these standards.

"Commission" means the mental health and developmental disabilities commission (MH/DD commission) as established and defined in Iowa Code chapter 225C.

"Community" means a natural setting where consumers live, learn, work, and socialize.

"Community mental health center" means an organization providing mental health services which is established pursuant to Iowa Code chapters 225C and 230A.

"Consultation services" means case, program and community levels of professional assistance and information to increase the skill level and effectiveness of services being provided by other service organizations or groups.

"Consumer" means a person who uses the services of the organization.

"Credentialed staff" or "Staff who have been credentialed" means staff who have completed the organization credential verification process.

"Credential verification process" means the process used by the organization to define the qualifications of education, training and experience required for each staff position, and the procedures for verifying that staff in the positions meet those qualifications.

"Crisis intervention plan" means a personalized, individualized plan developed with the consumer that identifies potential personal psychiatric, environmental and medical emergencies. This plan shall also include how the consumer will access emergency services and professional and natural supports.

"Deemed status" means acceptance by the commission of accreditation or licensure of a program or service by another accrediting body in lieu of accreditation based on review and evaluation by the division (as outlined in accreditation procedures).

"Department" means the Iowa department of human services.

"Direct services" means services involving direct interaction with a consumer such as transporting a consumer or providing therapy, habilitation, or rehabilitation activities.

"Division" means the division of mental health and developmental disabilities of the department of human services.

"Doctor of medicine or osteopathic medicine" means a person who is licensed in the state of Iowa to practice medicine as a medical physician under Iowa Code chapter 148 or as an osteopathic doctor under Iowa Code chapter 150A.

"Education services" means professional information, training, assistance, and referral services provided to the general public, individual persons and to organizations about mental illness and mental health, the promotion of prevention services, and skill training for organizations.

"Functional assessment" means the assessment of the consumer's level of effectiveness in the activities and decision making required by daily living situations. The functional assessment also takes into consideration consumer strengths, stated needs, and level and kind of disability.

"Human services field" means a post-high school course of study resulting in a degree from an accredited four-year college in a field of study which includes, but is not limited to, psychiatry, psychology, social work, mental health counseling, marriage and family therapy, nursing, education, occupational therapy, and recreational therapy.

"Indicators" are defined as conditions that will exist when the activity is done competently and benchmarks are achieved. They also provide a means to assess the activity's effect on outcomes of services.

"Informed consent" refers to time-limited, voluntary consent. The consumer or legal guardian may withdraw consent at any time without risk of punitive action. The consumer or legal guardian has the opportunity to ask and have questions satisfactorily answered. Informed consent includes a description of the treatment and specific procedures to be followed, the intended outcome or anticipated benefits, the ra-

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

tionale for use, the risks of use and nonuse, and the less restrictive alternatives considered.

“Intensive psychiatric rehabilitation services” means services designed to restore, improve, or maximize level of functioning, self-care, responsibility, independence, and quality of life and to minimize impairments, disabilities, and disadvantages of persons with a disabling mental illness. Services are focused on improving personal capabilities while reducing the harmful effects of psychiatric disability and resulting in consumers’ recovering the ability to perform a valued role in society.

“Leadership” means the governing board, the chief administrative officer or executive director, managers, supervisors, and clinical leaders who participate in developing and implementing organizational policies, plans and systems.

“Marital and family therapist” means a person who is licensed under Iowa Code chapter 154D in the application of counseling techniques in the assessment and resolution of emotional conditions. This includes the alteration and establishment of attitudes and patterns of interaction relative to marriage, family life, and interpersonal relationships.

“Mental health counselor” means a person who is licensed under Iowa Code chapter 154D in counseling services involving assessment, referral, consultation, and the application of counseling, human development principles, learning theory, group dynamics, and the etiology of maladjustment and dysfunctional behavior to individuals, families, and groups.

“Mental health professional” means a person who meets all of the following conditions:

1. Holds at least a master’s degree in a mental health field, including, but not limited to, psychology, counseling and guidance, psychiatric nursing and social work; or is a doctor of medicine (MD) or doctor of osteopathic medicine and surgery (DO); and
2. Holds a current Iowa license when required by the Iowa licensure law; and
3. Has at least two years of postdegree experience supervised by a mental health professional in assessing mental health problems, mental illness and needs of persons and in providing appropriate mental health services for those persons.

“Mental health service provider” means an organization whose services are established to specifically address mental health services to individuals or the administration of facilities in which these services are provided. Organizations included are those that are contracting with a county board of supervisors to provide mental health services in lieu of that county’s affiliation with a community mental health center (Iowa Code chapter 230A) and those that may contract with a county board of supervisors for special services to the general public or special segments of the general public and that are not accredited by any other accrediting body. These standards do not apply to individual practitioners or partnerships of practitioners who are covered under professional licensure laws.

“Mental health treatment services” are those activities, programs, or services which include, but are not limited to, diagnosis, evaluation, psychotherapy, and psychosocial rehabilitation provided to persons with mental health problems, mental illness, or disorders and the stabilization, amelioration, or resolution of the problems, illness, or disorder.

“Mental retardation” means a diagnosis of mental retardation under these rules which shall be made only when the onset of the person’s condition was prior to the age of 18 years and shall be based on an assessment of the person’s intellec-

tual functioning and level of adaptive skills. A psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person’s adaptive skills shall make the diagnosis. A diagnosis of mental retardation shall be made in accordance with the criteria provided in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association.

“Natural supports” means those services and supports identified as wanted or needed by the consumer provided by persons not for pay (family, friends, neighbors, and others in the community) and organizations or entities that serve the general public.

“Organization” means the entity being accredited under 441—Chapter 24 that is a governmental entity or is an entity that meets Iowa Code requirements for a business organization as a for-profit or not-for-profit business, including, but not limited to, a business corporation under Iowa Code chapter 490 or a nonprofit corporation under Iowa Code chapter 504A. “Organization” does not mean an individual for whom a license to engage in a profession is required under Iowa Code section 147.2 or any individual providing a service if the individual is not organized as a corporation or other business entity recognized under Iowa Code.

“Outcome” means the result of the performance or non-performance of a function or process or activity.

“Persons with a chronic mental illness” means persons aged 18 and over with a persistent mental or emotional disorder that seriously impairs their functioning relative to such primary aspects of daily living as personal relations, living arrangements, or employment. Persons with chronic mental illness typically meet at least one of the following criteria:

1. Have undergone psychiatric treatment more intensive than outpatient care, more than once in a lifetime (e.g., emergency services, alternative home care, partial hospitalization or inpatient hospitalization).
2. Have experienced at least one episode of continuous, structured supportive residential care other than hospitalization.

In addition, these persons typically meet at least two of the following criteria, on a continuing or intermittent basis for at least two years:

- § Are unemployed, or employed in a sheltered setting, or have markedly limited skills and a poor work history.
- § Require financial assistance for out-of-hospital maintenance and may be unable to procure this assistance without help.
- § Show severe inability to establish or maintain a personal social support system.
- § Require help in basic living skills.
- § Exhibit inappropriate social behavior that results in demand for intervention by the mental health or judicial system.

In atypical instances, a person who varies from the above criteria could still be considered to be a person with chronic mental illness.

“Persons with developmental disabilities” means persons with a severe, chronic disability which:

1. Is attributable to mental or physical impairment or a combination of mental and physical impairments.
2. Is manifested before the person attains the age of 22.
3. Is likely to continue indefinitely.
4. Results in substantial functional limitation in three or more of the following areas of life activity: self-care, receptive and expressive language, learning, mobility, self-



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direction, capacity for independent living, and economic self-sufficiency.

5. Reflects the person's need for a combination and sequence of services which are of lifelong or extended duration and are individually planned and coordinated, unless this term is applied to infants and young children from birth to the age of five inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

"Procedures" means the steps to be taken to implement the policies of the organization.

"Program" means a set of related resources and services directed to the accomplishment of a fixed set of goals for the population of a specified geographic area or for special target populations.

"Psychiatric nurse" means a person who meets the requirements of a certified psychiatric nurse and is eligible for certification by the American Nursing Association and licensed by the state of Iowa to practice nursing as defined in Iowa Code chapter 152.

"Psychiatric rehabilitation practitioner" means a person who holds a graduate degree in rehabilitation counseling, mental health counseling, psychology, social work, nursing, or medicine and has at least two years' experience working in a psychiatric rehabilitation program or has at least 60 contact hours of training in psychiatric rehabilitation; or a person who holds a bachelor's degree in one of the above areas and has both at least two years of experience working in a psychiatric rehabilitation program and at least 60 contact hours of training in psychiatric rehabilitation.

"Psychiatrist" means a doctor of medicine or osteopathic medicine and surgery who is certified by the American Board of Psychiatry and Neurology or who is eligible for certification and who is fully licensed to practice medicine in the state of Iowa.

"Psychologist" means a person who is licensed to practice psychology in the state of Iowa, or who is certified by the Iowa department of education as a school psychologist, or is eligible for certification, or meets the requirements of eligibility for a license to practice psychology in the state of Iowa as defined in Iowa Code chapter 154B.

"Qualified case managers and supervisors" means persons who have the following qualifications: (1) a bachelor's degree with 30 semester hours or equivalent quarter hours in a human services field and at least one year of experience in the delivery of services to the population groups they serve, or (2) an Iowa license to practice as a registered nurse and at least three years of experience in the delivery of services to the population groups they serve. Persons employed as case management supervisors on or before August 1, 1993, who do not meet these requirements shall be considered to meet these requirements as long as they are continuously employed by the same case management provider.

"Qualified in a human services field" means holding at least a bachelor's degree from an accredited four-year college with a major or at least 30 semester hours or its equivalent in human services. Fields of study which qualify as "human-service-related fields" include, but are not limited to: psychiatry, psychology, social work, mental health counseling, marriage and family therapy, nursing, education, occupational therapy, and recreational therapy.

"Registered nurse" means a person who is licensed to practice nursing in the state of Iowa as defined in Iowa Code chapter 152.

"Rehabilitation services" means services designed to restore, improve, or maximize the individual's optimal level of functioning, self-care, self-responsibility, independence and quality of life and to minimize impairments, disabilities and dysfunction caused by a serious and persistent mental or emotional disability.

"Service plan" means an individualized goal-oriented plan of services written in language understandable by the consumer and developed for a consumer by the consumer and with the organization.

"Social worker" means a person who is licensed to practice social work in the state of Iowa as defined in Iowa Code chapter 154C.

"Staff" means a person paid by the organization to perform duties and responsibilities defined in the organization's policies and procedures.

"Supported community living services" means those services provided to individuals with a mental illness, mental retardation, or developmental disability to assist them in living, learning, working and socializing in the community. They include the provision of or arrangement for personal and environmental supports, assistance and referral in meeting basic human needs, the provision of or arrangement for family and community support, and education, coordination and development of local support systems. These services are intended to be provided in the individual's home or other natural community environment.

**441—24.2(225C) Standards for policy and procedures.** The organization has written policy direction for the program being accredited.

**24.2(1) Performance benchmark.** The organization has a current policy and procedures manual with policy guidelines and administrative procedures for all organizational activities and services specific to its organization.

**24.2(2) Performance indicators.**

a. The policies and procedures in the manual are current and meet the requirements in this division.

b. The policies and procedures manual is made available to all staff. The policies and procedures reflect current organizational activities and practices.

**441—24.3(225C) Standards for organizational activities.**

**24.3(1) Organization of service systems.**

a. Performance benchmark. The organization designs and structures the activities and systems of services to maximize coordination and facilitate continuity and comprehensiveness of services to a consumer.

b. Performance indicators.

(1) The consumer's admission to an appropriate level of service is based on an assessment of the consumer's needs, desires and abilities, and the organization's capability to provide the services.

(2) The organization has established and documented the necessary admission information to determine the consumer's eligibility for participation in the service.

(3) Information is provided to the consumer and, when appropriate, family and significant others about the nature of the services to be provided and the consumer's rights, choices, and responsibilities.

(4) Continuity of services occurs through coordination among the staff and professionals providing services to the consumer. Coordination of services through linkages with other settings and providers has occurred, as appropriate.

(5) Referral, transfer, or discharge of the consumer to another level of services or provider, or termination of ser-

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

vices, is based upon the consumer's assessed needs, abilities, situation and desires, and is planned and coordinated.

(6) A written discharge summary is included in each consumer record at the time of discharge.

**24.3(2) Consumer rights.**

a. Performance benchmark. Each consumer is recognized and respected in the provision of services, in accordance with basic human, civil and statutory rights.

**b. Performance indicators.**

(1) Services are provided in ways that respect and enhance the consumer's sense of autonomy, privacy, dignity, self-esteem and involvement in the consumer's own treatment. Language barriers, cultural differences, and cognitive deficits are taken into consideration and provisions are made to facilitate meaningful consumer participation.

(2) Requirements and expectations for participation in the service program are defined by the organization and staff providing the services.

(3) The organization has a mechanism established to protect the consumers and ensure their rights during any activities, procedure or research that requires informed consent.

(4) The organization informs the consumer about the consumer's rights and provides an avenue to express questions, concerns, complaints or grievances about any aspect of the consumer's service.

(5) The organization provides the consumers and their guardians the right to appeal the application of policies, procedures, or any staff action that affects the consumer. The provider has established written appeal procedures and a method to ensure that the procedures and appeal process are available to consumers.

(6) The organization has implemented procedures to ensure that the procedures and appeal process are available.

(7) All consumers, their legal representatives, or other persons authorized by law, have access to the consumer's record in accordance with state and federal laws and regulations.

**24.3(3) Performance improvement system.**

a. Performance benchmark. The organization has a systematic, organizationwide, planned approach to designing, measuring, evaluating, and improving the level of its performance.

**b. Performance indicators.**

(1) Organization leaders provide the direction, resources, and training to facilitate quality assessment and improvement activities on an organizationwide basis.

(2) There is a systematic process of identifying, collecting, and assessing information and data which is used to measure the organization's level of performance, identify priority areas for improvement, design and assess new systems, and evaluate levels of improvement resulting from a change in existing systems.

(3) Consumer expectations and perceptions, or those of legal guardians and family, and staff identification of priority areas are included in assessing quality of services and effectiveness of performance.

(4) Measurement of organization and consumer-focused outcomes is carried out to assess effectiveness of performance and determine areas where services or systems may need improvement.

(5) Data is gathered about consumer achievements and outcomes so that effectiveness of interventions is measured and monitored.

(6) Performance improvement activities involve all staff and represent all areas and levels of organizational functioning.

(7) Performance improvement activities involve consumers served by the organization and their legal guardians and family members as appropriate.

**24.3(4) Leadership.**

a. Performance benchmark. Organizational leaders provide the framework for the planning, designing, directing, coordination, provision and improvement of services that are responsive to the consumers and the community served by the organization.

**b. Performance indicators.**

(1) There are clearly articulated mission and values statements that are reflected in the long-range organizational plans and in organization policies.

(2) The annual and long-range budgeting process involves appropriate governing and managing levels of leadership and reflects the organization mission and values. An annual financial audit is done by an independent auditor or as provided by law.

(3) The organization establishes a board of directors or advisory board.

(4) The organization's decision-making process, including policy decisions affecting the organization, reflects involvement of the various levels of leadership and responsiveness to staff.

(5) Organization leaders solicit input from leaders of the various community and consumer groups served by the organization in designing responsive service delivery systems.

(6) The leaders develop and implement a service system appropriate to the needs of the consumers served by the organization.

(7) The organization leaders structure and support a method of performance improvement that ensures that internal systems and activities throughout the organization are measured, assessed and improved on an ongoing basis.

(8) Organization leaders make educational information and service consultation available to community groups and resources.

**24.3(5) Management information system.**

a. Performance benchmark. Information is obtained, managed and used in an efficient and effective method to document, enhance and improve organizational performance and service delivery to the consumers.

**b. Performance indicators.**

(1) The organization has provided for the security, confidentiality and integrity of all data information including consumer records.

(2) The organization has a system of consumer records, maintained on a current basis, for the organization, compilation, documentation, and maintenance of all individual consumer-specific information related to the provision and outcomes of services and treatments provided to the consumer.

(3) The organization provides opportunities to obtain information to use in planning, designing, managing and improving consumer services and organizational systems.

(4) The organization gathers information and data is captured, analyzed and available to facilitate the following performance improvement activities: decision making, service delivery, and performance improvement.

**24.3(6) Human resources.**

a. Performance benchmark. The organization provides credentialed staff in order to support the organization's mission and facilitate the provision of quality services to consumers.

**b. Performance indicators.**

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

(1) Qualifications and competencies are defined commensurate with the specific job responsibilities and applicable licensure laws, and a credentialing review process is established to ensure compliance. Copies of applicable licenses and degrees shall be included in personnel records.

(2) There is a system to ensure that the demonstrated performance and competency of all staff within their job responsibilities are assessed regularly, with provisions made for ongoing improvement goals, and for supervision or peer review.

(3) Ongoing in-service and other learning and educational opportunities are made available to and used by staff to maintain and improve staff competency levels. New staff receive initial orientation, information, and training which includes adult and child abuse mandatory reporter requirements and confidentiality training. Training on confidentiality and on reporting of child and dependent adult abuse and neglect shall be documented in personnel records.

(4) The organization has established and implemented a code of ethics for all staff. The personnel records shall have documentation that the current code of ethics has been reviewed with each staff member. The organization ensures that the following issues are addressed: confidentiality, consumer rights, professional and legal issues and statutory obligations in providing services to consumers.

**24.3(7) Organizational environment.**

a. Performance benchmark. Services are provided in an organizational environment that is safe and supportive for the consumers being served and the staff providing services.

**b. Performance indicators.**

(1) The environment enhances the self-image of the consumer and preserves the consumer's dignity, privacy, and self-development.

(2) The environment is safe and accessible and meets all applicable local, state, and federal regulations.

(3) The processes that service and maintain the environment and the effectiveness of the environment are reviewed within the organization's monitoring and improvement system.

(4) Procedures for interventions are established for situations in which a consumer may be involved in behavior that presents significant risk to the consumer or others. The interventions also ensure that the consumer's rights are protected and that due process is afforded.

(5) Risk management situations are reviewed by the organization's performance improvement system for necessity, appropriateness, effectiveness and prevention.

(6) The organization has a mechanism that addresses the safe storage, provision, and administration of medication when used within the service environment in accordance with state and federal regulations.

**441—24.4(225C) Standards for services.** The standards in subrules 24.4(1) through 24.4(6) shall be reviewed as part of the review for each specific service set forth in subrules 24.4(7) through 24.4(14).

**24.4(1) Clinical records.**

a. Performance benchmark. Each clinical record shall include a social history, assessment, consumer service plan, and documentation of service provision.

**b. Performance indicators.**

(1) Essential information is kept current.

(2) Records reflect the input of the consumer served.

**24.4(2) Social history.**

a. Performance benchmark. The social history shall include relevant historical information regarding the familial,

physical, psychosocial, behavioral, environmental, social functioning, cultural and legal aspects of the consumer's life.

**b. Performance indicators.**

(1) Relevant historical information is collected and documented.

(2) The social history is developed and completed by staff credentialed in accordance with organization policy and procedure and appropriate professional standards of practice.

(3) The social history is updated at least annually.

(4) Family and significant others desired by the consumer are involved, as appropriate, in developing the social history.

**24.4(3) Assessment.**

a. Performance benchmark. A written assessment is developed that is the basis for the services provided to the consumers. The assessment includes information about the consumer's current situation, needs, problems, wants, abilities and desired results.

**b. Performance indicators.**

(1) Staff credentialed in accordance with organization policy and procedure and appropriate professional standards of practice complete the assessment.

(2) Decisions regarding level, type and immediacy of services to be provided, or need for further assessment or evaluation, are based upon the analysis of the information gathered in the assessment and with the consumer's involvement.

(3) Assessments of children reflect developmental history and needs.

(4) Collateral provider information should be solicited as appropriate to the individual situation in order to compile a comprehensive and full assessment.

(5) Each consumer is reassessed at least annually during the course of services to determine the consumer's response to interventions and when a significant change occurs in the consumer's functioning, presenting problem, needs, or desires. The reassessment shall be documented in a written format.

(6) Consumers with a diagnosis of a serious and persistent mental illness must have this diagnosis supported by a psychiatric or psychological evaluation conducted by a qualified professional and documentation of the diagnosis shall be contained in the consumer record.

(7) Documentation supporting the diagnoses of a developmental disability by professionals shall be in the consumer record.

**24.4(4) Consumer service plan.**

a. Performance benchmark. Individualized, planned and appropriate services are guided by an individual-specific service plan developed in collaboration with the consumer, significantly involved others as appropriate, and staff. Services are planned and directed to where the consumers live, learn, work, and socialize.

**b. Performance indicators.**

(1) The service plan is based on the current assessment.

(2) The service plan identifies observable or measurable consumer goals and action steps to meet the goals.

(3) The service plan includes interventions and supports needed to meet those goals with incremental time lines.

(4) The service plan includes the persons or organizations responsible for carrying out the interventions or supports.

(5) Services defined in the service plan are appropriate to the severity level of problems and specific needs or disabilities and related to desired consumer outcomes.

(6) The plan reflects consumer desires and involves other organizations and individuals as appropriate.

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(7) The selection and wording of the goals and desired outcomes reflect consumer collaboration.

(8) Activities identified in the service plan encourage the consumer's ability and right to make choices, to experience a sense of achievement, and to modify or continue the consumer's participation in the treatment process.

(9) Staff monitor the service plan with review occurring regularly. At least annually, the service plan is assessed and revised to determine achievement, continued need or change in goals or intervention methods. The review includes the consumer with the involvement of significant others as appropriate.

(10) A separate, individualized, anticipated discharge plan is developed as part of the individualized service plan.

(11) The service plan shall include documentation of any rights restrictions with a plan to restore those rights or a reason why a plan is not needed.

**24.4(5) Documentation of service provision.**

a. Performance benchmark. Individualized and appropriate intervention services and treatments are provided in ways that support the needs, desires, and goals identified in the service plan, and that respect consumers' rights and choices.

b. Performance indicators.

(1) All interventions respect and enhance the consumer's abilities and dignity, encourage the development of a sense of achievement, and allow the consumer to choose to continue or to modify the consumer's participation in the treatment process.

(2) Responsible staff monitor and document the provision of the intervention services, the consumer's response to those services, and the outcomes of the services provided. This documentation shall be in a written, legible, narrative format in accordance with organizational procedures.

(3) Staff who are credentialed in accordance with organization policy and procedure, who meet relevant standards of practice, and who function within an authorized scope of practice provide intervention services.

(4) Services provided to consumers reflect current practice and knowledge levels.

**24.4(6) Confidentiality and legal status.** The benchmark for confidentiality and legal status applies to all clinical records.

a. Performance benchmark. Information regarding a consumer is recognized and respected as confidential.

b. Performance indicators.

(1) The organization shall obtain written consent from the consumer, the consumer's legal guardian, or other persons authorized by law for the release of personal identifying information.

(2) Refusal by the consumer to authorize the release of personal identifying information is not an automatic reason for denial of services.

(3) Personal identifying information is released or disclosed only in accordance with existing federal and state laws and regulations.

(4) There shall be documentation of legal status including a copy of guardianship papers, probation, commitment or other court orders if applicable.

**24.4(7) Providers of case management.** Case management is a service that assists service recipients in gaining access to appropriate living environments, needed medical services, and interrelated social, vocational, and educational services. Consumers receive case management services from qualified, supervised case managers. Case manage-

ment in this chapter meets the guidelines set forth in the Iowa Medicaid state plan.

Case management services link consumers to service agencies and support systems responsible for providing the necessary direct service activities and coordinate and monitor those services. Case managers shall not provide direct services. Within an accredited case management program, the average caseload shall be no more than 45 consumers per case manager.

a. Performance benchmark. Consumers are enabled to live, learn, work, and socialize as independently as possible in a community setting through the receipt of skill enhancement services that are coordinated and monitored.

b. Performance indicators.

(1) Consumers are part of a team composed of, at a minimum, the case manager and organizations or natural supports relevant to the consumer's service needs. In addition, the team may include family at the discretion of the consumer.

(2) The team works with the consumer to establish the service plan which guides and coordinates the delivery of the services.

(3) The case manager advocates for the consumer.

(4) The case manager coordinates the services. Face-to-face meetings with the consumer must be held at least quarterly.

(5) The case manager monitors the services, but does not provide direct services.

(6) Consumers are linked to appropriate resources, which shall provide necessary direct services and natural supports.

(7) Consumers participate in developing an individualized crisis intervention plan.

(8) Consumers are facilitated to exercise choice, make decisions, and take risks that are a typical part of life and fully participate as members in the community.

(9) Documentation shows consumer input on choosing goals.

(10) Documentation shows consumers are informed about their choice of providers as provided in the county management plan.

**24.4(8) Day treatment and intensive outpatient therapy services.** Day treatment and intensive outpatient therapy services are individualized services emphasizing mental health treatment and intensive psychiatric rehabilitation activities designed to increase the consumer's ability to function independently or facilitate transition from residential placement. Individual and group treatment and rehabilitation services are used based on consumer needs and identified behavioral or mental health issues. A mental health professional provides the mental health treatment services. Supervision of staff and services is done by a mental health professional.

a. Performance benchmark. Consumers who are experiencing a significantly reduced ability to function in the community are stabilized and improved by the receipt of intensive psychiatric rehabilitation, mental health treatment services and in-home support services; and the need for residential or inpatient placement is alleviated.

b. Performance indicators.

(1) Consumers participate with the staff in identifying the problem areas to be addressed and the goals to be achieved that are based on the consumer's need for services.

(2) Consumers receive individualized services designed to focus on those identified mental health or behavioral issues that are causing the significant impairment in their day-to-day functioning.

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(3) Consumers who receive intensive outpatient and day treatment services receive a comprehensive and integrated schedule of recognized individual and group treatment and rehabilitation services at least three hours per day, three days per week for an identified period of time.

(4) Consumers and staff review the consumer's progress in resolving problems and achieving goals on a frequent and regular basis.

(5) Consumers receive services appropriate to defined need and current risk factors.

(6) Consumers receive services from staff who are appropriately qualified and trained to provide the range and intensity of services required by the specific problems or disabilities of the consumer. A mental health professional provides or directly supervises the provision of treatment services. A mental health professional who has been trained as a psychiatric rehabilitation practitioner or a psychiatric rehabilitation practitioner provides or supervises the provision of rehabilitation and support services.

(7) Consumers participate in discharge planning which focuses on coordinating and integrating consumer, family, and community and organization resources.

(8) Family members of consumers are involved in the planning and provision of services as appropriate and as desired by the consumer.

**24.4(9)** Intensive psychiatric rehabilitation services. Intensive psychiatric rehabilitation services are individualized services emphasizing mental health treatment, intensive psychiatric rehabilitation services and in-home support services designed to increase the consumer's ability to function independently and to prevent or reduce the need for services in a hospital or residential setting. A mental health professional provides the mental health treatment services. Intensive psychiatric rehabilitation services are provided by or under the supervision of a psychiatric rehabilitation practitioner or a mental health professional who has been trained as a rehabilitation practitioner.

a. Performance benchmark. Consumers who are experiencing a significantly reduced ability to function in the community are stabilized and improved by the receipt of intensive psychiatric rehabilitation, mental health treatment services and in-home support services; and the need for residential or inpatient placement is alleviated.

b. Performance indicators.

(1) Consumers participate with the organization staff in identifying the problem areas to be addressed and the goals to be achieved.

(2) Consumers receive individualized services designed to focus on those identified mental health needs, functional needs and support needs that are causing the significant impairment in their day-to-day functioning.

(3) Whenever possible, intensive psychiatric rehabilitative services should be provided in natural settings where people live, work, learn, and socialize.

(4) Consumers and staff review their progress in resolving problems and achieving goals on a frequent and regular basis.

(5) Consumers receive services appropriate to defined need and current risk factors.

(6) Consumers receive services from staff who are appropriately qualified and trained to provide the range and intensity of services required by the specific problems or disabilities of the consumer. A mental health professional provides or directly supervises the provision of treatment services. A mental health professional or a psychiatric rehabilitation

practitioner provides or supervises the provision of rehabilitation and support services.

(7) Consumers participate in discharge planning which focuses on coordinating and integrating consumer, family, and community and organization resources.

(8) Significantly involved others are involved with the consumer in the planning and provision of services as appropriate and as desired by the consumer.

(9) Consumers receive four to ten hours per week of recognized individual and group treatment and rehabilitation services with an emphasis on individual services. Individual in-home support services may also be provided. All services are provided for an identified period of time.

(10) An increase in motivational readiness to choose valued roles and environments is documented in each consumer's file.

(11) Increases in skill competency are documented in each consumer's file.

(12) Increases in the use of critical resources are documented in each consumer's file.

(13) The achievement of chosen rehabilitation goals is documented in each consumer's file.

(14) Satisfaction with services is documented in each consumer's file.

(15) Satisfaction with chosen roles and environments is documented in each consumer's file.

(16) Positive changes in environmental status such as getting a job, moving to a more independent living arrangement, enrolling in an education program, and joining a community group are achieved by consumers and are documented in each consumer's file.

(17) A decrease in the need for and use of psychiatric inpatient services is documented in each consumer's file.

**24.4(10)** Supported community living services. Supported community living services are those services and supports determined necessary to enable consumers with a mental illness, mental retardation, or a developmental disability to live, learn, work, and socialize in a community setting. Services are consumer individualized, need and abilities focused, and organized according to the following components, which are to be provided by organizational staff or through linkages with other resources: outreach to appropriate support or treatment services; assistance and referral in meeting basic human needs; assistance in housing and living arrangements; mental health treatment; crisis intervention and assistance; social and vocational assistance; support, assistance, and education to the consumer's family and to the community; protection and advocacy; coordination and development of natural support systems; and service coordination. Services are directed to enhancing the consumer's ability to regain or attain higher levels of independence, or to maximize current levels of functioning.

a. Performance benchmark. Consumers with disabilities live, learn, work, and socialize in the community.

b. Performance indicators.

(1) Consumers receive services within their home and community setting based on need, desire and mutually identified problem areas.

(2) Consumers participate in a functional assessment at intake to assist in defining areas of service need and establishing a service plan. The functional assessment shall be summarized in a narrative that describes the consumer's current level of functioning in the areas of living, learning, working, and socialization. Functional assessments are reviewed on a regular basis to determine progress.

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(3) Consumers with a mental illness have a current psychiatric evaluation contained in the consumer record.

(4) Consumers with a diagnosis of mental retardation must have this diagnosis supported by a psychological evaluation conducted by a qualified professional and documentation of the diagnosis shall be contained in the consumer record.

(5) Documentation supporting the diagnosis of a developmental disability by professionals shall be in the consumer record.

(6) Consumers receive support services directed to enabling them to regain or attain higher levels of functioning or to maximize current functioning.

(7) Natural support systems identified by the consumers receive education and consultation services from staff.

(8) Services are delivered on an individualized basis in the place where the consumer lives or works. Supported community living is not part of an organized mental health support or treatment group.

(9) Documentation is in the consumer file that natural supports outside the organization are accessed.

(10) Consumers participate in developing a detailed individualized crisis intervention plan.

**24.4(11) Partial hospitalization services.** Partial hospitalization services are active treatment programs providing intensive group and individual clinical services within a structured therapeutic environment for those consumers who are exhibiting psychiatric symptoms of sufficient severity to cause significant impairment in day-to-day functioning. Short-term outpatient crisis stabilization and rehabilitation services are provided to avert hospitalization or to transition from an acute care setting. Services are supervised and managed by a mental health professional, and psychiatric consultation is routinely available. Clinical services are provided by a mental health professional.

a. **Performance benchmark.** Consumers who are experiencing serious impairment in day-to-day functioning due to severe psychiatric distress are enabled to remain in their community living situation through the receipt of therapeutically intensive milieu services.

b. **Performance indicators.**

(1) Consumers and staff mutually develop an individualized service plan that focuses on the behavioral and mental health issues and problems identified at admission. Goals are based on the consumer's need for services.

(2) Consumers receive clinical services that are provided and supervised by mental health professionals. A licensed and qualified psychiatrist provides psychiatric consultation and medication services.

(3) Consumers receive a comprehensive schedule of active, planned and integrated psychotherapeutic and rehabilitation services provided by qualified professional staff at least four hours per day, four days per week.

(4) Consumers receive group and individual treatment services that are designed to increase their ability to function independently.

(5) Consumers are involved in the development of an anticipated discharge plan that includes linkages to family, provider, and community resources and services.

(6) Consumers have sufficient staff available to ensure their safety, to be responsive to crisis or individual need, and to provide active treatment services.

(7) Consumers receive services commensurate with current identified risk and need factors.

(8) Support systems identified by consumers are involved in the planning and provision of services and treatments as appropriate and desired by the consumer.

**24.4(12) Outpatient psychotherapy and counseling services.** Outpatient psychotherapy and counseling services are dynamic processes in which the therapist uses professional skills, knowledge and training to enable consumers to realize and mobilize their strengths and abilities; take charge of their lives; and resolve their issues and problems. Psychotherapy services may be individual, group, or family, and are provided by a person meeting the criteria of a mental health professional, or a person with a master's degree in a mental health field who is directly supervised by a mental health professional.

a. **Performance benchmark.** Consumers realize and mobilize their own strengths and abilities to take control of their lives in the areas where they live, learn, work, and socialize.

b. **Performance indicators.**

(1) Consumers are prepared for their role as a partner in the therapeutic process at intake where they define their situation, evaluate those factors that affect their situation, and establish desired problem resolution. Psychiatric services and medical management are available to the consumer.

(2) Psychiatric and psychopharmacological services are available as needed by the consumer.

(3) Current and future treatment recommendations and activities mutually agreed to by the consumer and the therapist shall be documented in the initial assessment and progress notes. A distinct service plan document is not required.

(4) The consumer's status as of the last visit and the reasons for discontinuation of services are documented in the progress notes. A distinct discharge summary document is not required.

(5) Consumer records shall be subject to an internal quality assurance process and monitored by the organization. Quality assurance activities shall include:

1. A review of the consumer's involvement in and with treatment.

2. Verification that treatment activities are documented and are relevant to the diagnosis or presenting problem.

3. Verification that the mental health professional follows up on consumers who miss appointments.

**24.4(13) Emergency services.** Emergency services are crisis services that provide a focused assessment and rapid stabilization of acute symptoms of mental illness or emotional distress, and are available and accessible, by telephone or face-to-face, to consumers on a 24-hour basis. The clinical assessment and psychotherapeutic services shall be provided by a person who holds a master's degree in a mental health field, including, but not limited to, psychology, counseling and guidance, psychiatric nursing, psychiatric rehabilitation, and social work who has training in emergency services and who has access, at least by telephone, to a mental health professional, if indicated; or a person who holds a bachelor's degree in a human services discipline with five years of experience providing mental health services or human services who has training in emergency services and who has access, at least by telephone, to a mental health professional; or a psychiatric nurse with three years of clinical experience in mental health who has training in emergency services and who has access, at least by telephone, to a mental health professional. A comprehensive social history is not required for this treatment.

a. **Performance benchmark.** Consumers receive, when needed, emergency services that provide a focused assess-

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ment and rapid stabilization of acute symptoms of mental illness or emotional distress.

b. Performance indicators.

(1) Consumers can access 24-hour emergency services by telephone or in person.

(2) Information about how to access emergency services is publicized to facilitate availability of services to consumers, family members, and the public.

(3) Consumers receive assessments and services from either a mental health professional or from personnel who meet the requirements above and are supervised by a mental health professional. Psychiatric consultation is available, if needed.

(4) Consumers receive intervention services commensurate with current identified risk factors.

(5) Significantly involved others of consumers are involved as necessary and appropriate to the situation and as desired by the consumer.

(6) Consumers are involved in the development of post-emergency service planning and resource identification and coordination.

**24.4(14) Evaluation services.** Evaluation services are screening, diagnosis and assessment of individual and family functioning needs, abilities, and disabilities, and determining current status and functioning in the areas of living, learning, working, and socializing.

a. Performance benchmark. Consumers receive comprehensive evaluation services that include screening, diagnosis, and assessment of individual or family functioning, needs and disabilities.

b. Performance indicators.

(1) The evaluation shall include recommendations for services and need for further evaluations.

(2) Evaluations shall consider the emotional, behavioral, cognitive, psychosocial, and physical information as appropriate and necessary.

(3) Consumers shall receive comprehensive evaluation services by a mental health professional that include screening, diagnosis, and assessment of individual or family functioning, needs, abilities, and disabilities.

(4) Persons who meet the criteria of a mental health professional shall complete mental health evaluations.

**441—24.5(225C) Accreditation.** The commission shall make all decisions involving issuance, denial, or revocation of accreditation. This accreditation shall delineate all categories of service the organization is accredited to provide. Although an organization may have more than one facility or service site, only one accreditation notice shall be issued to the organization.

**24.5(1) Organizations eligible for accreditation.** The commission accredits the following organizations:

- a. Providers of case management.
- b. Community mental health centers.
- c. Providers of supported community living.
- d. Providers of other mental health services.

**24.5(2) Performance outcome evaluations system.**

a. There are three major sections contained in these standards: policies and procedures, organizational activities, and services. The major sections are divided into standards, with a performance benchmark and performance indicators for each standard. Each of the standards for the three sections (policy and procedures, organizational activities, and services) as set forth in rules 441—24.2(225C), 24.3(225C), and 24.4(225C) shall be reviewed.

A performance compliance level shall be determined for each benchmark based on the number of indicators present

for that benchmark. Each indicator under a benchmark is assigned a percentage weight arrived at by dividing 100 percent by the number of indicators for the benchmark. Benchmark rating totals shall be added and divided by the number of benchmarks to determine the section's performance rating. The performance compliance level for the benchmarks of each section shall have a potential total rating of 100 percent.

In order for a total overall rating to be established, the performance rating for policy and procedures shall be counted as 25 percent of the total, organizational activities as 25 percent of the total, and services as 50 percent of the total.

b. When an organization is accredited for more than one service under this chapter, staff will conduct one survey for the organization. There shall be one accreditation award for all the services based upon the lowest score of the services surveyed. At the time of the recertification visit, staff shall review the services that did not receive three-year accreditation.

When an organization subcontracts with agencies to provide services, on-site reviews shall determine if each agency meets all the requirements in this division. When an organization subcontracts with more than one agency, the length of accreditation shall be determined individually.

**24.5(3) Accreditation decisions.**

a. Initial 270-day accreditation. This type of accreditation is granted to a new organization, or for an organization not previously accredited by the division. Staff may conduct a desk audit or on-site visit to review the organization's mission, policies, procedures, staff credentials, and program descriptions.

b. Three-year accreditation. An organization or service is eligible for this type of accreditation if it has achieved an 80 percent or higher percent average performance compliance level. The organization may be required to develop and submit a plan of corrective action and improvement that may be monitored either by written report or on-site review.

c. One-year accreditation. An organization is eligible for this type of accreditation when multiple and substantial deficiencies exist in specific areas causing compliance levels with performance benchmarks and indicators to fall between the averages of 70 percent to 79 percent, or when previously required corrective action plans have not been implemented or completed. The organization must submit a corrective action plan to correct and improve specific deficiencies and overall levels of functioning. This plan shall be monitored through on-site reviews, written reports and the provision of technical assistance.

d. Probational 180-day accreditation. An organization is eligible for this type of accreditation in lieu of denial when the overall compliance level is from 60 to 69 percent and pervasive and serious deficiencies exist; or when previously required corrective action plans as a result of a one-year accreditation have not been implemented or completed. All deficiencies must be corrected by the time of the follow-up on-site survey at the conclusion of the provisional time period. After this survey the organization shall either be accredited for at least one year, or accreditation shall be denied. Organizations with a one- or three-year accreditation may be downgraded to the probational 180-day accreditation when one or more complaints are founded at an on-site investigation visit conducted by division staff.

e. Denial of accreditation.

(1) When there are pervasive and serious deficiencies that put consumers at immediate risk or when the overall compliance level falls to 59 percent or below, the division

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administrator is authorized to temporarily deny accreditation, based upon that determination. The action of the division administrator shall be reviewed at the next regularly scheduled commission meeting and, if approved, accreditation shall be denied.

(2) When one or more complaints are received, an investigation shall be completed and a report submitted to the commission. If any of the complaints are founded and the commission determines there is a pervasive or serious deficiency, accreditation shall be denied.

**24.5(4) Nonassignability.** Accreditation shall not be assignable to any other organization or provider.

**24.5(5) Discontinuation.**

a. A discontinued organization is one that has terminated the service for which it has been accredited.

b. Accreditation is not transferable. Any person or other legal entity acquiring an accredited facility for the purpose of operating a service shall make an application as provided herein for a new certificate of accreditation. Similarly, any organization having acquired accreditation and desiring to fundamentally alter the service philosophy or transfer to different premises must notify the division 30 calendar days before said action in order for the division to review the change and to determine appropriate action.

c. An organization shall notify the division of any sale or change in the business status or transfer of ownership in the business or impending closure of the accredited or certified service at least 30 calendar days before closure. The organization shall be responsible for the referral and placement of consumers, as appropriate, and for the preservation of all records.

**24.5(6) Application and renewal procedures.** Applying for accreditation usually constitutes the beginning of the accreditation process and the process shall continue until the commission makes final determination of the organization's accreditation status. The division shall provide Form 470-3005, Application for Accreditation, to all applicants for accreditation or renewal. An applicant for accreditation shall submit the following information.

a. The name and address of the applicant organization.

b. The name and address of the chief executive officer of the applicant organization.

c. The type of organization and specific services for which the organization is seeking accreditation.

d. The targeted population groups for which services are to be provided, as applicable.

e. The number of individuals in each of the targeted population group or groups to be served, as applicable.

f. Other relative information related to the standards as requested by division staff.

g. Form 470-3005, Application for Accreditation. The organization's chief executive officer and the chairperson of the governing body shall sign this form.

**24.5(7) Application review.** An organization seeking accreditation shall submit a completed application, Form 470-3005, to the division. The division shall review the application for completion and request any additional material as needed. Organizations applying for first-time accreditation may be granted initial accreditation for 270 days to operate until the division completes an on-site survey.

**24.5(8) Survey review of organizations.** The division shall review organizational services and activities as determined by the accreditation category. This review may include on-site case record audits, administrative procedures, clinical practices, personnel records, performance improve-

ment systems and documentation, and interviews with staff, consumers, boards of directors, or others deemed appropriate, consistent with the confidentiality safeguards of state and federal laws.

a. An on-site visit shall be made with the organization. The division shall not be required to provide advance notice to the provider of the on-site visit for accreditation.

b. The on-site survey team shall consist of designated members of the division staff. The team may include provider staff, consumers, and others deemed appropriate.

c. The team shall survey the organization that has applied for accreditation or that is being reviewed as determined by accreditation category and the services indicated on the accreditation application in order to verify information contained in the application and ensure compliance with all applicable laws, rules and regulations.

d. The accreditation survey team leader shall send a written report of the findings to the organization within 30 working days after completion of the accreditation survey.

e. Organizations applying for first-time accreditation shall be offered technical assistance. Following accreditation, any organization may request technical assistance from the division to bring into conformity those areas found in noncompliance with this chapter's requirements. The commission may also require that technical assistance be provided to an organization if multiple deficiencies are noted during a survey to assist in implementation of the organization's corrective action plan. Renewal applicants may be provided technical assistance as needed.

f. Organizations required to develop a corrective action and improvement plan shall submit it to the division within 30 working days after the receipt of a report issued as a result of the division's survey review. The corrective action plan shall include: specific problem areas cited, corrective actions to be implemented by the organization, dates by which each corrective measure shall be completed, and quality assurance and improvement activities to measure and ensure continued compliance.

g. The division shall prepare all documents with a final recommendation regarding accreditation to be presented at the commission meeting. The division shall mail summary reports of the on-site service review or desk review and a final recommendation concerning accreditation to all commission members on each application to be processed at the next commission meeting. If the commission approves accreditation, Form 470-3006, Notice of Action-Approval, shall be issued which states the duration of the accreditation and the services which the organization is accredited to provide. If the commission denies or revokes accreditation, Form 470-3008, Notice of Action-Denial, shall be issued which states the reasons for the denial.

h. The division may grant an extension to the period of accreditation for an organization if there has been a delay in the accreditation process which is beyond the control of the organization, division, or commission; or the organization has requested an extension to permit the organization to prepare and obtain approval of a corrective action plan. The division shall establish the length of the extension on a case-by-case basis.

**441—24.6(225C) Deemed status.** The commission may grant deemed status to organizations accredited by a recognized national, not-for-profit, accrediting body when the commission determines the accreditation is for similar services. Deemed status for supported community living services



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will also be granted to organizations that are certified under 441—subrule 77.37(14).

**24.6(1)** National accrediting bodies. The national accrediting bodies currently recognized as meeting division criteria for possible deeming are:

- a. Joint Commission on Accreditation of Healthcare Organizations (JCAHO).
- b. The Commission on Accreditation of Rehabilitation Facilities (CARF).
- c. The Council on Quality and Leadership in Supports for People with Disabilities (The Council).
- d. Council on Accreditation of Services for Families and Children (COA).

The accreditation credentials of these national bodies must specify the type of organization, programs, and services that they accredit, and include targeted population groups, if appropriate.

Deemed status means that the division is accepting an outside body's review, assessment, and accreditation of an organization's functioning and services. Therefore, the accrediting body doing the review must be assessing categories of organizations and types of programs and services corresponding to those described under this chapter.

An organization that has received accreditation by deemed status is still held responsible for meeting all requirements under this chapter and all applicable state laws and regulations. When an organization that is nationally accredited requests deemed status for services not covered by the national body's standards but covered under this chapter, the accreditation for those services shall be done by the division. Technical assistance by division staff shall be provided to deemed status organizations as time permits; however, the assistance will be focused on this chapter's requirements.

**24.6(2)** Reservations. When deemed status is granted, the commission and the division reserve the following:

- a. To have division staff conduct on-site focused reviews for those organizations applying for deemed status that the division has not previously accredited.
- b. To have division staff do joint site visits with the accrediting body, attend exit conferences, or conduct focused follow-behind visits as determined to be appropriate in consultation with the national accrediting organization and the provider organization.
- c. To be informed of and to investigate all complaints that fall under this chapter's jurisdiction and to make findings as a result of the investigation. Complaints and findings shall be reported to the national accrediting body. The complaint process outlined in this chapter shall be followed.
- d. To review and act upon deemed status under the following circumstances: when complaints have been founded, when focused reviews find instances of noncompliance with this chapter's requirements, when the national accreditation status of the provider expires without renewal, or when the organization's status is downgraded or withdrawn by the national accrediting body.
- e. To have division staff conduct either focused or full surveys in instances where the national body has accredited the organization for less than the maximum time period.

**24.6(3)** Application for deemed status. To apply for deemed status, the organization shall:

- a. Submit Form 470-3331, Application for Deemed Accreditation, and copies of the latest survey report and accreditation certificate, documentation of specific programming policies and procedures for populations being served, and credentials for staff providing services to populations served.

- b. Sign Form 470-3332, Letter of Agreement, and submit it to the division.

**24.6(4)** Requirements for deemed status. To be eligible for deemed status, the organization shall:

- a. Be currently accredited by a recognized national accrediting body for services that are defined under this chapter, or
- b. Be currently accredited under 441—subrule 77.37(14) for supported community living under the home- and community-based waiver. If consumers with mental illness are served, the provider must submit verification of the training and credentials of the staff to show that the staff can meet the needs of the consumers they serve.
- c. Require the supported community living staff to have the same supervisor as the HCBS/MR program.
- d. Require staff for the program being deemed to have the training and credentials needed to meet the needs of the person served.

**24.6(5)** Granting of deemed status. When the commission grants deemed status, the accreditation period shall coincide with the time period awarded by the national accrediting body or the certification for home- and community-based services. Under no circumstances shall accreditation be made for longer than three years.

**24.6(6)** Continuation of deemed status. The following documentation shall be submitted to the division to continue deemed status:

- a. A copy of the application for renewal shall be sent to the division at the same time as application is made to a national accrediting body.
- b. For organizations deemed for supported community living under the home- and community-based services (HCBS) waiver, HCBS staff shall furnish the division copies of the letter notifying a provider of a forthcoming recertification.
- c. Following the on-site review by a national accrediting body, the organization shall send the division a copy of the cover sheet and national accrediting body report within 30 calendar days from the date that the organization receives the documents. If a corrective action plan is required, the organization shall send the division a copy of all correspondence and documentation related to the corrective action.
- d. HCBS staff shall furnish the division with copies of HCBS certification reports and any corrective action required by HCBS within 30 calendar days after HCBS staff complete the report or the organization completes required corrective action.

**441—24.7(225C) Complaint process.** The division shall receive and record complaints by consumers, employees, any interested persons, and the public relating to or alleging violations of applicable requirements of the Iowa Code or rules adopted pursuant to the Code.

**24.7(1)** Submittal of complaint. The complaint may be delivered personally or by mail to the MH/DD Division, Department of Human Services, Fifth Floor, Hoover State Office Building, Des Moines, Iowa 50319-0114, or by telephone at (515)281-5874.

- a. Consumers shall be assisted as needed or requested in making a complaint.
- b. The information received should specifically state the basis of the complaint.

**24.7(2)** Review of complaint. Upon receipt of a complaint, the division shall make a preliminary review of the complaint. If the division concludes that the complaint is reasonable, has merit, and is based on a violation of rules in this chapter, it may make an on-site review of the organiza-

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

tion (with approval of either the division administrator or designee or the commission) which is subject to the complaint. The on-site review does not require advance notice to the organization.

**24.7(3) Decision of division.** The division shall determine an appropriate response which may include, when approved by the administrator or designee, an on-site investigation. The decision and action shall be made in a timely fashion to preserve the availability of witnesses and avoid beginning an investigation under conditions which may have been significantly altered since the period with which the complaint is concerned. If a decision is made to conduct an on-site investigation, the chief executive officer and board chairperson of the organization involved shall, before or at the commencement of the on-site investigation, be notified that the division has received a complaint.

a. The organization shall be given an opportunity to informally present a position regarding allegations in the complaint. The position may be submitted in writing or presented in a personal conference with division staff.

b. A written report shall be submitted by certified mail to the chief administrative officer of the organization and the chairperson of the board of directors within 20 working days after completion of the investigation.

c. The report shall indicate whether the complaint was or was not substantiated, the basis for the substantiation or nonsubstantiation, the specific rules violated, and a recommendation for corrective action with time lines specified in the report.

d. The date of delivery shown by the certified mail stub shall constitute date of official notice.

**24.7(4) Review by commission.** To the extent allowed by Iowa Code section 21.5, the commission may review the complaint and investigation report in a closed meeting.

a. If the complaint is founded, the commission may take actions deemed appropriate, which may include downgrading or suspending or revoking an organization's accreditation status, depending on the severity of the substantiated complaint.

b. The action taken by the commission shall be voted upon in the reconvened public meeting part and entered into the official record of commission minutes.

c. The complainant and the organization shall be informed of the findings and actions taken by the commission.

**24.7(5) Corrective action plan.** If the complaint is substantiated, the organization may be expected to submit a corrective action plan to the division within 20 calendar days after receiving the commission's decision. This plan must respond to violations cited and commission requirements, and include time lines, internal monitoring systems, and performance improvement planning. Failure of the organization to respond to the report may of itself constitute the basis for revocation or suspension of accreditation. The organization shall be notified if any action is taken.

**441—24.8(225C) Appeal of survey report.**

**24.8(1) Review by the department.** When an organization does not agree with the results or content of an accreditation report, it may request a review of the report. This request shall be made in writing within 30 calendar days from the date of the report to MH/DD Division, Bureau Chief of Quality Assurance and Support, Department of Human Services, Hoover State Office Building, Fifth Floor, Des Moines, Iowa 50319-0114. A meeting shall be set up between organization staff and the division for clarification of the report findings within 30 calendar days of the date of the organization's letter requesting a review of the report.

a. The division shall send a letter to the organization within 15 calendar days from the date of the meeting notifying the organization if any changes were made in the report or corrective action plan.

b. Services to the consumers shall continue according to 441—Chapter 24 until the review is completed.

**24.8(2) Review by the commission.** If the organization is not satisfied with the decision of the division, it may request a review of accreditation reports and accreditation recommendations by the commission. This request shall be made in writing within 30 calendar days from the date of the decision to the MH/DD Commission, MH/DD Division, Department of Human Services, Hoover State Office Building, Fifth Floor, Des Moines, Iowa 50319-0114.

a. The request must be received by the division a minimum of 15 calendar days before the next commission meeting to be put on the agenda. Requests received less than 15 calendar days before the next commission meeting will be put on the agenda for the next commission meeting. The division shall send the organization a copy of the agenda. The organization can choose to come to the commission meeting for a verbal presentation.

The commission shall make a formal motion on the request that will become part of the minutes. The division shall notify the organization of the commission's decision within five working days of the meeting.

b. Services to the consumers shall continue according to 441—Chapter 24 until the review is completed.

**24.8(3) Appeal procedure.** If the organization completed all the review procedures set forth in subrules 24.8(1) and 24.8(2) and is dissatisfied with the decision of the commission, it may file an appeal with the department pursuant to 441—Chapter 7. Written request for an appeal shall be made to Appeals Section, Department of Human Services, Hoover State Office Building, Fifth Floor, Des Moines, Iowa 50319-0114, within 30 calendar days of the written decision from the division.

Appeals filed prior to completion of all review procedures will be deemed premature and denied hearing.

**441—24.9(225C) Exceptions to policy.** Exceptions to policy shall follow the policies and procedures in the department's general rule on exceptions to policy at rule 441—1.8(217). The mental health and developmental disabilities commission shall make a recommendation to the director on whether the exception shall be approved.

These rules are intended to implement Iowa Code chapter 225C.

**ARC 9644A****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend

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

Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code.

This amendment increases the per day reimbursement for nursing facilities providing skilled care for Medicaid clients requiring a ventilator. A facility providing ventilator care for a Medicaid client will now receive the maximum allowable cost for the type of facility (\$346.20 per day for hospital-based facilities and \$163.41 per day for freestanding (non-hospital-based) facilities) plus an additional \$100 per day. In order for the facilities to receive payment for ventilator care, the clients must require at least six hours of ventilator care every day, be inappropriate for home care, and have failed attempts at weaning or be inappropriate for weaning.

This category of Medicaid client has complex and intensive service needs normally above the level of the capabilities of skilled nursing facility staff and above services ordinarily provided in a skilled nursing facility. As a result, Iowa Medicaid clients are often transferred to out-of-state facilities in Omaha and Lincoln, Nebraska, for their service needs. This change should enable Iowa facilities to provide ventilator care, thereby eliminating the need for costly out-of-state placements.

This amendment does not provide for waiver in specified situations because it confers a benefit in the form of increased compensation to nursing facilities.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before March 1, 2000.

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

The following amendment is proposed.

Amend subrule 79.1(9), paragraph "b," as follows:

b. In-state facilities serving Medicaid eligible patients who require a ventilator at least six hours every day, are inappropriate for home care, have a failed attempt at weaning or are inappropriate for weaning, and have medical needs that require skilled care as determined by the Iowa Foundation for Medical Care shall receive reimbursement for the care of these patients equal to the maximum allowable cost for the type of facility plus a \$50 \$100 per day incentive factor. For ventilator care a facility may not receive a rate that exceeds the ceiling rate for its facility classification plus \$50 per day. The facility Facilities may continue to receive the payment reimbursement at these rates for 30 days for any person weaned from a respirator who continues to reside in the facility and continues to meet skilled criteria for those 30 days.

**ARC 9655A****INSPECTIONS AND APPEALS  
DEPARTMENT[481]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals proposes to amend Chapter 51, "Hospitals," Iowa Administrative Code.

The proposed amendment reflects changes made to Iowa Code section 135B.7 during the 1999 Legislative Session (1999 Iowa Acts, Senate File 277) regarding hospital medical staff.

These rules reflect statutory provisions. Therefore, a waiver of this rule or a portion of this rule would conflict with state law.

Any interested person may make written comments or suggestions on the proposed amendment on or before February 29, 2000. Written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319-0083. Faxes may be sent to (515) 242-6863; E-mail may be sent to [jkomos@dia.state.ia.us](mailto:jkomos@dia.state.ia.us).

This amendment is intended to implement Iowa Code Supplement section 135B.7.

The following amendment is proposed.

Amend subrule 51.5(3) as follows:

**51.5(3)** A hospital shall not deny clinical privileges to physicians and surgeons, podiatrists, osteopaths or osteopathic surgeons, dentists, certified health service providers in psychology, physician assistants or advanced registered nurse practitioners licensed under Iowa Code chapter 148, 148C, 149, 150, 150A, 152, or 153 or section 154B.7 solely by reason of the license held by the practitioner or solely by reasons of the school or institution in which the practitioner received medical schooling or postgraduate training if the medical schooling or postgraduate training was accredited by an organization recognized by the council on postsecondary accreditation or an accrediting group recognized by the United States Department of Education.

**ARC 9656A****INSPECTIONS AND APPEALS  
DEPARTMENT[481]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals proposes to amend Chapter 51, "Hospitals," Iowa Administrative Code.

The proposed amendment updates reference sources guiding hospitals in the development of policies and procedures for obstetric and neonatal services.

Any interested person may make written comments or suggestions on the proposed amendment on or before February 29, 2000. Written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319-0083. Faxes may be sent to (515) 242-6863; E-mail may be sent to [jkomos@dia.state.ia.us](mailto:jkomos@dia.state.ia.us).

This amendment is not subject to waiver because hospital rules are considered minimum standards.

## INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

This amendment is intended to implement Iowa Code section 135B.7.

The following amendment is proposed.

Amend subrule 51.32(2) as follows:

**51.32(2)** Written policies and procedures shall be implemented governing obstetric and neonatal services that are consistent with the needs of the patient and resources of the hospital. Policies and procedures shall be developed in consultation with and with the approval of the hospital's medical staff. At a minimum, the policies and procedures shall provide for:

a. to g. No change.

Reference sources to guide hospitals in the development of policies and procedures are: *641—Chapter 150, Iowa Regionalized System of Perinatal Health Care, Iowa Administrative Code, "Guidelines for Perinatal Services," Seventh Edition, Iowa Department of Public Health;* and "Guidelines for Perinatal Care," *Third Fourth Edition, American Academy of Pediatrics, American College of Obstetrics and Gynecology.*

**ARC 9657A****INSPECTIONS AND APPEALS  
DEPARTMENT[481]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals proposes to amend Chapter 57, "Residential Care Facilities," and Chapter 58, "Nursing Facilities," Iowa Administrative Code.

The proposed amendments correct the numerical reference made to the Iowa Code and update language. The proposed language is similar to that enacted by the Board of Pharmacy Examiners and reflects changes to the long-term care environment.

Any interested person may make written comments or suggestions on the proposed amendments on or before February 29, 2000. Written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319-0083. Faxes may be sent to (515) 242-6863; E-mail may be sent to [moliver@dia.state.ia.us](mailto:moliver@dia.state.ia.us).

A public hearing will be held on February 29, 2000, at 9 a.m. in the Director's Conference Room, Second Floor, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa. Persons may present their views orally or in writing at the public hearing.

These amendments are subject to waiver pursuant to the Department's variance provisions contained in rule 481—58.2(135C).

These amendments are intended to implement Iowa Code section 135C.14(8).

The following amendments are proposed.

ITEM 1. Amend **57.19(1)"b"(5)** as follows:

(5) Schedule II drugs, as defined by Iowa Code chapter 204 124, shall be kept in a locked box within the locked medication cabinet; (II, III)

ITEM 2. Amend rule 481—58.51(135C) as follows:

**481—58.51(135C) Choice of physician Freedom of choice of physician and pharmacy.** Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility. *To determine compatibility with the current system, the medication administration system, payment system, and accessibility may be considered. The pharmacy selected by the resident must provide for the timely delivery of medication.* (II)

**ARC 9650A****LOTTERY DIVISION[705]****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 99E.9(3) and Executive Order Number 11, the Lottery Division proposes to amend Chapter 1, "General Operation of the Lottery," Iowa Administrative Code.

The purpose of the amendment is to satisfy the requirements of Executive Order Number 11 which requires state agencies to adopt a general waiver rule for rules promulgated by the agency.

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

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

Rule 705—1.30(99E) will provide for the general requirements for requesting a waiver and describe the procedure the Lottery will use to grant a waiver. The rule provides that the granting of a waiver will be in the sole discretion of the Lottery's Board.

The Lottery will hold a public hearing to receive public comments on the amendment on February 29, 2000, at 2 p.m. at the offices of the Lottery, 2015 Grand Avenue, Des Moines, Iowa. The Lottery will receive written comments on the amendment until the close of business on March 1, 2000. Comments may be addressed to Ken Brickman, Lottery Administrative Rules Coordinator, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to (515)281-7882, or E-mailed to [Web.Master@ilot.state.ia.us](mailto:Web.Master@ilot.state.ia.us).

This amendment is intended to implement Executive Order Number 11.

## LOTTERY DIVISION[705](cont'd)

The following amendment is proposed.

Amend 705—Chapter 1 by adopting the following **new** rule:

**705—1.30(99E) Waiver or variance of rules.** This rule outlines a uniform process for the granting of waivers or variances from rules adopted by the lottery.

**1.30(1) Lottery board authority.** A waiver or variance from rules adopted by the lottery board may be granted in accordance with this rule if (a) the lottery has exclusive rule-making authority to promulgate the rule from which a waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (b) no statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

**1.30(2) Interpretive rules.** This uniform waiver and variance rule shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the lottery does not possess delegated authority to bind the courts to any extent with its definition.

**1.30(3) Compliance with statute.** No waiver or variance may be granted from a requirement that is imposed by statute. Any waiver or variance must be consistent with statute.

**1.30(4) Criteria for waiver or variance.** The lottery may issue an order, in response to a completed petition or on its own motion, granting a waiver or variance from a rule adopted by the lottery board, in whole or in part, as applied to the circumstances of a specified person if the lottery board finds all three of the following exist:

- a. Application of the rule to the person at issue would result in hardship or injustice to that person; and
- b. A waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and
- c. A waiver or variance in the specific case would not prejudice the substantial legal rights of any person.

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

**1.30(5) Lottery discretion.** The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the sole discretion of the lottery board upon consideration of all relevant factors.

**1.30(6) Mandatory waivers or variances.** In response to the timely filing of a completed petition requesting a waiver or variance, the lottery shall grant a waiver or variance from a rule, in whole or in part, as applied to the particular circumstances of a specified person, if the lottery board finds that the application of all or a portion thereof to the circumstances of that specified person would not, to any extent, advance or serve any of the purposes of the rule.

**1.30(7) Burden of persuasion.** The petitioner shall assume the burden of persuasion when a petition is filed for a waiver or variance from a lottery rule.

**1.30(8) Special waiver or variance rules not precluded.** This uniform waiver and variance rule shall not preclude the lottery from granting waivers or variances in other contexts or on the basis of other standards if a statute or other lottery rule authorizes the lottery to do so and the lottery board deems it appropriate to do so.

**1.30(9) Administrative deadlines.** When the rule from which a waiver or variance is sought establishes administra-

tive deadlines or deadlines in bidding documents, the lottery shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons participating in a particular program offered by, service sought from, or benefit conferred by the lottery.

**1.30(10) Filing of petition.** A petition for a waiver or variance must be submitted in writing to the lottery as follows:

- a. Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding.
- b. Other. If the petition does not relate to a pending contested case, the petition may be submitted to the lottery board.

**1.30(11) Content of petition.** A petition for waiver or variance shall include the signature of the petitioner at the conclusion of the petition attesting to the accuracy and truthfulness of the information set forth in the petition, and shall include the following information where applicable and known to the petitioner:

- a. The name, address, and telephone number of the person or entity for whom a waiver or variance is being requested, and the case number of any related contested case if pending or closed within the last two years.
- b. A description and citation of the specific rule from which a waiver or variance is requested.
- c. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
- d. The relevant facts that the petitioner believes would justify a waiver or variance. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance.
- e. A complete history of all the lottery’s action relative to the petitioner and the rule from which the waiver is requested.
- f. Any information known to the petitioner regarding the lottery’s treatment of similar cases.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.
- h. The name, address, and telephone number of any person or entity that would be adversely affected by the grant of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the lottery with information relevant to the requested waiver or variance.

**1.30(12) Additional information.** If the petition is not filed in a contested case and prior to issuing an order granting or denying a waiver or variance, the lottery may request additional information from the petitioner relative to the petition and circumstances relating to the request for waiver or variance. The request may be in the form of written questions or oral interview. The lottery may interview or direct written questions to other persons in connection with the waiver or variance requested. If the petition was not filed in a contested case, the lottery may, on its own motion or at the petitioner’s request, schedule a telephonic or in-person meeting between the petitioner and a committee or a quorum

LOTTERY DIVISION[705](cont'd)

of the lottery board to consider the petition for waiver or variance.

**1.30(13) Notice.** The lottery shall acknowledge a petition upon receipt. The lottery shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the lottery may give notice to other persons. To accomplish this notice provision, the lottery board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the lottery board attesting that notice has been provided.

**1.30(14) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A and 705—Chapter 6 regarding contested case hearings shall apply to any petition for a waiver or variance of rule filed within a contested case, and shall otherwise apply to lottery proceedings for a waiver or variance only when the lottery board so provides by rule or order or is required to do so by statute.

**1.30(15) Ruling.** An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver or variance if one is granted.

An order that grants a waiver shall also state that the waiver is effective for the lesser of the period requested by petitioner or one year from the date of issuance and that the petitioner may apply for an extension beyond the one-year period. To request continuance of the waiver beyond the one-year period, the petitioner must submit a petition for extension of waiver requesting a one-year extension. In order for a petition for extension of a waiver to be valid, it must be submitted to the lottery not more than 45 or less than 30 days prior to the expiration date of the previously issued waiver or extension of waiver. Failure to timely file the petition for the extension of waiver or for the requirements contained in this rule shall result in denial of the petition for extension of the waiver.

**1.30(16) Conditions.** The lottery board may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**1.30(17) Time for ruling.** The lottery board shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the lottery board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**1.30(18) When deemed denied.** Failure of the lottery board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the lottery.

**1.30(19) Service of order.** Within seven days of its issuance, any order issued under this uniform rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

**1.30(20) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1)"e," the lottery shall maintain a record of all orders granting and denying waivers or variances under this uniform rule. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the lottery's central office.

**1.30(21) Voiding or cancellation.** A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The lottery may at any time cancel a waiver or variance upon appropriate notice and hearing if the lottery board finds that the facts as stated in the petition are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the petitioner has failed to comply with the conditions of the order.

**1.30(22) Violations.** Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

**1.30(23) Defense.** After the lottery issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked. The order shall only be effective for the person to whom it is issued. The order is not assignable and it shall not inure to the benefit of the heirs or successors in interest of the person first obtaining the waiver or variance.

**1.30(24) Appeals.** Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A and the lottery's rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless rule or statute provides a contrary time.

This rule is intended to implement Iowa Code section 99E.9(3) and Executive Order Number 11.

## ARC 9675A

### NURSING BOARD[655]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to adopt Chapter 15, "Uniform Waiver and Variance Rules," Iowa Administrative Code.

Proposed Chapter 15 establishes uniform rules providing for waivers or variances from administrative rules. This rule making implements Executive Order Number 11 signed by the Governor on September 14, 1999. It provides for increased flexibility of administrative rule enforcement as applied to individual licensed nurses, continuing education providers or nursing education programs.

Any interested person may make written comments or suggestions on or before February 29, 2000. Such written materials should be directed to the Executive Director, Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who want to convey their views orally should contact the Executive Director at (515)281-3256 or in the Board office at 400 S.W. 8th Street, by appointment.

These rules are intended to implement Iowa Code chapters 17A, 147 and 152.

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

The following new chapter is proposed.

CHAPTER 15  
UNIFORM WAIVER AND VARIANCE RULES

**655—15.1(17A,147,152) Applicability.** This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the board of nursing.

**15.1(1) Board authority.** A waiver or variance from rules adopted by the board may be granted in accordance with this chapter if (1) the board has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

**15.1(2) Interpretive rules.** This chapter shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the board does not possess delegated authority to bind the courts to any extent with its definition.

**655—15.2(17A,147,152) Compliance with statute.** No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

**655—15.3(17A,147,152) Criteria for waiver or variance.** The board may issue an order, in response to a completed petition or on its own motion, granting a waiver or variance from a rule adopted by the board, in whole or in part, as applied to the circumstances of a specified person if the board finds that:

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

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

**15.3(1) Board discretion.** The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the board, upon consideration of all relevant factors.

**15.3(2) Mandatory waivers or variances.** In response to the timely filing of a completed petition requesting a waiver or variance, the board shall grant a waiver or variance from a rule, in whole or in part, as applied to the particular circumstances of a specified person, if the board finds that the application of all or a portion thereof to the circumstances of that specified person would not, to any extent, advance or serve any of the purposes of the rule.

**15.3(3) Burden of persuasion.** The petitioner shall assume the burden of persuasion when a petition is filed for a waiver or variance from a board rule.

**15.3(4) Special waiver or variance rules not precluded.** These uniform waiver and variance rules shall not preclude the board from granting waivers or variances in other contexts or on the basis of other standards if a statute or other board rule authorizes the board to do so, and the board deems it appropriate to do so.

**15.3(5) Administrative deadlines.** When the rule from which a waiver or variance is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees.

**655—15.4(17A,147,152) Filing of petition.** A petition for a waiver or variance must be submitted in writing to the board, as follows:

**15.4(1) License application.** If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

**15.4(2) Contested cases.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding.

**15.4(3) Other.** If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board's executive director.

**655—15.5(17A,147,152) Content of petition.** A petition for waiver or variance shall include the following information where applicable and known to the requester:

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

**655—15.6(17A,147,152) Additional information.** Prior to issuing an order granting or denying a waiver or variance, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive director, a committee of the board, or a quorum of the board.

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

**655—15.7(17A,147,152) Notice.** The board shall acknowledge a petition upon receipt. The board shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of receipt of the petition. In addition, the agency may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the agency attesting that notice has been provided.

**655—15.8(17A,147,152) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver or variance of rule filed within a contested case, and shall otherwise apply to agency proceedings for a waiver or variance only when the board so provides by rule or order or is required to do so by statute.

**655—15.9(17A,147,152) Ruling.** An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**15.9(1) Conditions.** The board may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**15.9(2) Time for ruling.** The board shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**15.9(3) When deemed denied.** Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board.

**15.9(4) Service of order.** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

**655—15.10(17A,147,152) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1)"e," the board shall maintain a record of all orders granting and denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the board office.

**655—15.11(17A,147,152) Voiding or cancellation.** A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver or variance upon appropriate notice and hearing if the board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

**655—15.12(17A,147,152) Violations.** Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or vari-

ance is granted and is subject to the same remedies or penalties.

**655—15.13(17A,147,152) Defense.** After the board issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**655—15.14(17A,147,152) Appeals.** Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A and board rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

These rules are intended to implement Iowa Code chapters 17A, 147 and 152.

## ARC 9647A

RACING AND GAMING  
COMMISSION[491]

## 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 99D.7 and 99F.4, the Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 8, "Mutuel Department," and Chapter 13, "Occupational and Vendor Licensing," Iowa Administrative Code.

Item 1 allows the licensee more flexibility in allowing the stewards, who are on site, to make the determination as to the approval of smaller fields for trifecta wagering.

Item 2 includes making a threat or intimidating statement as grounds for denial, suspension or revocation of an occupational license.

Item 3 rescinds the labor organization registration rule which the Commission has no statutory authority to enforce.

Any person may make written suggestions or comments on the proposed amendments on or before February 29, 2000. Written material should be directed to the Racing and Gaming Commission, 717 E. Court Avenue, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on February 29, 2000, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court Avenue, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are proposed.

ITEM 1. Amend subrule 8.2(13), paragraph "g," as follows:

g. Shall prohibit trifecta wagering on any contest with seven six or fewer betting interests scheduled to start, except in greyhound racing, or as provided in (1) below:



## RACING AND GAMING COMMISSION[491](cont'd)

(1) Cancel trifecta. The stewards have the authority to cancel trifecta wagering at any time they determine an irregular pattern of wagering or determine that the conduct of the race would not be in the interest of the regulation of the pari-mutuel wagering industry or in the public confidence in racing. ~~The stewards shall cancel trifecta wagering anytime there are fewer than seven betting interests at the time the horses leave the paddock for the post.~~ The administrator stewards may approve smaller fields for trifecta wagering if extraneous circumstances are shown by the licensee.

(2) Reserved.

ITEM 2. Amend subrule 13.10(8) as follows:

**13.10(8)** Illegal sale, possession, receipt or use of a controlled substance; intoxication; use of profanity; fighting; *making threatening or intimidating statements or engaging in threatening or intimidating behavior*; or any conduct of a disorderly nature on association grounds.

ITEM 3. Rescind and reserve rule **491—13.14(99D, 99F)**.

## ARC 9642A

SCHOOL BUDGET REVIEW  
COMMITTEE[289]

## 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 Executive Order Number 11, the State Board of Education hereby gives Notice of Intended Action to adopt Chapter 8, "Uniform Waiver Rules," Iowa Administrative Code.

This chapter describes the procedures for applying for and issuing or denying waivers from Board rules. The purpose of this chapter is to comply with Executive Order Number 11, which requires all state agencies to adopt a general waiver of rules.

Public comments concerning the proposed chapter will be accepted until 4:30 p.m. on February 29, 2000. A public hearing will be held on February 29, 2000, at 2 p.m. in the State Board Room, Grimes State Office Building, Des Moines, Iowa. Interested persons may submit written or oral comments by contacting Ann McCarthy, Office of the Director, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone: (515)281-5296; E-mail: [ann.mccarthy@ed.state.ia.us](mailto:ann.mccarthy@ed.state.ia.us).

These rules are intended to implement Executive Order Number 11.

The following **new** chapter is proposed.

CHAPTER 8  
UNIFORM WAIVER RULES

**289—8.1(ExecOrd11) Applicability.** This chapter outlines a uniform process for the granting of waivers from rules implemented by the department of education. The intent of this chapter is to allow persons to seek exceptions to the application of rules to the extent allowed by this chapter and state and federal law.

**8.1(1) Definitions.**

"Board" means the school budget review committee.

"Director" means the director of the department of education.

"Person" means individual, school corporation, government or governmental subdivision or agency, nonpublic school, partnership or association, or any legal entity.

**8.1(2) Authority.**

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

b. No waiver may be granted from a requirement that is imposed by statute. Any waiver must be consistent with statute.

**289—8.2(ExecOrd11) Board discretion.** The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the board upon consideration of all relevant factors.

**8.2(1)** The board may, in response to a completed petition or on its own motion, grant a waiver from a rule, in whole or in part, as applied to the circumstances of a specified situation if the board finds each of the following:

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

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

c. Waiver in the specific case would not prejudice the substantial legal rights of any person.

In determining whether waiver should be granted, the board shall consider whether the underlying public interest policies and legislative intent of the rules are substantially equivalent to full compliance with the rule. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all constituents.

**8.2(2)** Special waiver rules not precluded. These uniform waiver rules shall not preclude the board from granting waivers in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so and the board deems it appropriate to do so.

**289—8.3(ExecOrd11) Requester's responsibilities in filing a waiver petition.**

**8.3(1) Application.** All petitions for waiver must be submitted in writing to the School Budget Review Committee, Grimes State Office Building, Des Moines, Iowa 50319-0146. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

**8.3(2) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester (for an example of a petition for waiver see Exhibit A at the end of this chapter):

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

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

c. The relevant facts that the petitioner believes would justify a waiver.

SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

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

e. A history of any prior contacts between the board and the petitioner relating to the regulated activity or grant affected by the proposed waiver, including a description of each affected item held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or grant within the last five years.

f. A detailed statement of the impact on student achievement for any person affected by the grant of a waiver.

g. Any information known to the requester regarding the board's treatment of similar cases.

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

i. The name, address and telephone number of any person or entity that would be adversely affected by the grant of a petition.

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

k. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

**289—8.4(ExecOrd11) Burden of persuasion.** The petitioner shall assume the burden of persuasion when a petition is filed for a waiver from a rule.

**289—8.5(ExecOrd11) Notice.** The board shall acknowledge a petition upon receipt. The board shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons.

To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the department attesting that notice has been provided.

**289—8.6(ExecOrd11) Board responsibilities regarding petition for waiver.**

**8.6(1) Additional information.** Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board or the board's designee.

**8.6(2) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (1) to any petition for a waiver filed within a contested case; (2) when the board so provides by rule or order; or (3) when a statute so requires.

**8.6(3) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and the reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**8.6(4) Conditions.** The board may condition the grant of the waiver on such reasonable conditions as appropriate to

achieve the objectives of the particular rule in question through alternative means.

**8.6(5) Time for ruling.** The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**8.6(6) When deemed denied.** Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board.

**8.6(7) Service of order.** Within seven days of its issuance, any order issued under these uniform rules shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

**289—8.7(ExecOrd11) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1)"e," the board shall maintain a record of all orders granting and denying waivers under these uniform rules. All final rulings in response to requests for waivers shall be indexed and available to the members of the public at the Iowa Department of Education, Office of Director, Grimes State Office Building, Des Moines, Iowa 50319-0146.

**289—8.8(ExecOrd11) Voiding or cancellation.** A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver upon appropriate notice if the board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

**289—8.9(ExecOrd11) Violations.** Violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.

**289—8.10(ExecOrd11) Defense.** After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**289—8.11(ExecOrd11,17A) Appeals.** Granting or denying a request for waiver is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

**289—8.12(ExecOrd11) Exception.** These rules do not apply to specific waiver provisions adopted in other chapters.

These rules are intended to implement Executive Order Number 11.

Exhibit A

Sample Petition (Request) for Waiver

BEFORE THE DEPARTMENT OF EDUCATION

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter)



PETITION FOR WAIVER

## SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

Requests for waiver from a board rule shall include the following information in the petition for waiver where applicable and known:

- a. Provide the petitioner's (person asking for a waiver) name, address, and telephone number.
- b. Describe and cite the specific rule from which a waiver is requested.
- c. Describe the specific waiver requested, include the exact scope and time period that the waiver will extend.
- d. Explain the important facts that the petitioner believes justify a waiver. Include in your answer why (1) applying the rule will result in hardship/injustice to the petitioner; (2) granting a waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver will not prejudice the substantial legal rights of any person.
- e. Provide history of prior contacts between the board and petitioner relating to the regulated activity or grant that would be affected by the waiver; include a description of each affected license or grant held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, or grant within the last five years.
- f. Provide a detailed statement of the impact on student achievement for any person affected by the grant of a waiver.
- g. Provide information known to the petitioner regarding the board's treatment of similar cases.
- h. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver.
- i. Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the grant of the waiver.
- j. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver.
- k. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

\_\_\_\_\_  
Petitioner's signature

\_\_\_\_\_  
Date

Petitioner should note the following when requesting or petitioning for a waiver:

1. The petitioner has the burden of proving to the director: (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; (b) waiver on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver in the specific case would not prejudice the substantial legal rights of any person.
2. The board or the board's designee may request additional information from or request an informal meeting with the petitioner prior to issuing an order granting or denying a request for waiver.
3. All petitions for waiver must be submitted in writing to the School Budget Review Committee, Iowa Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

ARC 9677A

## TREASURER OF STATE[781]

## 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 Executive Order Number 11, the Treasurer of State hereby gives Notice of Intended Action to adopt Chapter 19, "Waiver of Administrative Rules," Iowa Administrative Code.

On January 21, 2000, the Treasurer of State approved the proposed new rule which allows for waivers in compliance with Executive Order Number 11 and is intended to provide greater access to Iowa state government programs and services.

Written comments concerning the proposed rule will be accepted until 4:30 p.m. on March 3, 2000. Interested persons may submit written or oral comments by contacting Bret L. Mills, Deputy Treasurer, Office of Treasurer of State, State Capitol Building, Room 114, Des Moines, Iowa 50319; telephone (515)281-8261; E-mail [bmills@max.state.ia.us](mailto:bmills@max.state.ia.us).

A public hearing to receive comments about the proposed rule will be held at 10 a.m. on March 3, 2000, at the above address in the Office of Treasurer of State, State Capitol Building, Room 114. Individuals interested in providing comments at the hearing should contact Bret Mills at (515) 281-8261 by 4 p.m. on March 2, 2000, to be placed on the hearing agenda.

This rule is intended to implement Iowa Code chapter 17A and Executive Order Number 11.

The following new chapter is proposed.

## CHAPTER 19

## WAIVER OF ADMINISTRATIVE RULES

**781—19.1(17A,ExecOrd11) Requests for waiver of rules.** Requests for waiver of a rule of the Treasurer of State[781] of the Iowa Administrative Code shall be made to the Office of Treasurer of State, State Capitol Building, Room 114, Des Moines, Iowa 50319.

**19.1(1)** Waivers from agency rules shall not be granted unless the following circumstances are met:

- a. The agency has exclusive rule-making authority to promulgate the rule from which waiver is requested; and
- b. No statute or rule otherwise controls the grant of a waiver from the rule from which waiver is requested.

**19.1(2)** The person that requests waiver of the rule must provide clear and convincing evidence that:

- a. Compliance with the rule will create an undue hardship on the person requesting the waiver.
- b. Substantially equal protection of health and safety will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.
- c. The waiver will not harm other persons and will not adversely affect the public interest.

## TREASURER OF STATE[781](cont'd)

**19.1(3)** The treasurer shall grant or deny the waiver within 60 days of the date the request is filed with the agency after review and recommendation of the division or program administrator. A denial of a request for a waiver is absolutely final and is not appealable. The treasurer shall deny the request for waiver of a state or federal statute. If the request for waiver relates to a time requirement of a rule, the request must be received before the time specified in the rule has expired. The treasurer may deny the request if the request does not comply with the provisions of this rule.

**19.1(4)** Waivers are granted at the complete discretion of the treasurer after consideration of all relevant factors including, but not limited to, the following:

a. The need of the person or entity directly affected by the exception. Exceptions will be granted only in cases of extreme need.

b. Whether there are exceptional circumstances justifying an exception to the general rule applicable in otherwise similar circumstances.

c. Whether granting the exception would result in a net savings to the state or promote efficiency in the administration of programs or service delivery. Net savings or efficiency will make an exception more likely.

d. In the case of services, assistance, or grants, whether other possible sources have been exhausted. Exceptions will not generally be granted if other sources are available.

e. The cost of the exception to the state and availability of funds in the department's budget.

**19.1(5)** All requests for waiver must substantially conform to the following form:

(Name of person requesting waiver)	}	REQUEST FOR WAIVER OF (Specify rule for which waiver is requested)
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**Reasons for requesting waiver:**

Name, address, telephone number and signature of person submitting waiver request.

The specific rule to which an exception is requested or the substance thereof.

The specific waiver requested.

The nature of the waiver requested, including any alternative means or other proposed condition or modification proposed to achieve the purpose of the rule.

**19.1(6)** The treasurer may condition the grant of a waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**19.1(7)** A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The treasurer may, at any time, cancel a waiver upon appropriate notice if the treasurer finds the facts as stated in the request appear not true, material facts have been withheld, the alternative means of compliance provided in the waiver has failed to achieve the objectives of the statute, or the person requesting the waiver has failed to comply with conditions set forth in the waiver approval.

**19.1(8)** All grants of waivers shall be indexed and available to members of the public in the Office of Treasurer of State, State Capitol Building, Room 114, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code chapter 17A and Executive Order Number 11.

**NOTICE—USURY**

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

January 1, 1999 — January 31, 1999	6.75%
February 1, 1999 — February 28, 1999	6.75%
March 1, 1999 — March 31, 1999	6.75%
April 1, 1999 — April 30, 1999	7.00%
May 1, 1999 — May 31, 1999	7.25%
June 1, 1999 — June 30, 1999	7.25%
July 1, 1999 — July 31, 1999	7.50%
August 1, 1999 — August 31, 1999	8.00%
September 1, 1999 — September 30, 1999	8.00%
October 1, 1999 — October 31, 1999	8.00%
November 1, 1999 — November 30, 1999	8.00%
December 1, 1999 — December 31, 1999	8.00%
January 1, 2000 — January 31, 2000	8.00%
February 1, 2000 — February 29, 2000	8.25%

**ARC 9664A****UTILITIES DIVISION[199]****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 Iowa Code sections 17A.4, 474.5, 476.1, and 476.2(1), the Utilities Board (Board) gives notice that on January 18, 2000, the Board issued an order in Docket No. RMU-00-1, In re: Rule Waivers. The Board is proposing to rescind current 199—1.3(17A,474) and replace it with a new rule 199—1.3(17A,474,476). The Board is also proposing to add a new subrule 2.2(17).

The Board's proposed new waiver rule is intended to improve its existing waiver rule by implementation of changes in Governor Vilsack's Executive Order 11, issued September 14, 1999, which requires each agency to initiate rule-making proceedings to adopt the uniform waiver rule contained in the executive order.

The Board has had a waiver rule, which has functioned well for many years. The Board has issued many waivers pursuant to the rule currently in effect. The Board has successfully handled hundreds of waivers between 1988 and 1998. Most waiver requests were granted, and the Board issued some waivers without request when it was appropriate. Therefore, the Board wants to ensure that any modifications to the current rule improve it. The Board has tried to make the new rule as simple as possible, both in language and function.

The uniform rule in the executive order contains many useful sections, which the Board is proposing to incorporate. It also contains sections which are not applicable to the Board's process and are unnecessary. The Board has modified or eliminated those sections.

The uniform waiver rule contains standards which an agency must use when deciding whether it may or must grant a waiver request. The Board believes it would be useful to add these standards to its waiver rule. However, the lan-

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guage has been simplified and modified to reflect several differences specific to the Board. First, requests for waivers before the Board are not usually made by a separate petition. Requests are most often made in another pleading in an already existing docket. In addition, the requesting party may not always be the person who benefits from the waiver. For example, a utility company may request a waiver to benefit a class of customers. The uniform rule has been modified to reflect these differences.

In addition, with respect to the mandatory waiver requirement in uniform rule section II.B, the Board believes that any requester who is able to meet the standard in section II.B would also be able to satisfy the three criteria in II.A. Therefore, the Board believes II.B is superfluous, and is not proposing to include it. In addition, the Board believes waiver of its rules should be discretionary and not mandatory. Section II.B has not been included in the proposed rule.

Paragraph II.C of the uniform rule is always true, and does not need to be stated in the rule. Paragraphs II.D and II.E are not needed.

Section III of the uniform rule contains procedures for granting waivers. The Board has included parts of this section in its proposed waiver rule, and in the proposed new waiver request form. The section was modified in several respects. The language was simplified wherever possible. In most cases, a waiver request will be made in another pleading in an already existing docket. There is normally no separate proceeding regarding the waiver request. For this reason, the Board will already have much of the information, and it does not need to be stated in the rule or in the waiver request. The Board does not need some of the information contained in the uniform rule to evaluate the request. The Board recognizes there may be instances where persons requesting a waiver may be unfamiliar with the Board's processes, or may wish to initiate a waiver request in a separate proceeding. For this reason, the Board proposes to offer requesters a choice of using the waiver request form in new subrule 199 IAC 2.2(17), or of submitting their request as a part of another pleading, as has been done most often in the past.

Section III has also been modified to reflect that notice of any waiver request or order granting or denying a waiver request will have already been given to other parties in the docket. It is inherent in the Board's authority to be able to request additional information, and this does not need to be stated in the rule. In addition, the Board publishes a weekly list of all orders issued by the Board and all filings made by parties. This list is provided to subscribers who include utility companies, the Office of Consumer Advocate, Division of the Department of Justice, and any others who have requested it. The list is also published on the Board's Web site. Therefore, anyone who wishes to know whether any waiver requests have been filed or any orders granting or denying a waiver request issued may obtain the information easily and quickly. The Board has never had a problem in the past with implementation of its waiver rule.

Paragraph III.E requires orders granting waivers to describe the precise scope and operative period of the waiver. This is included in the Board's proposed rule. The remainder of paragraph III.E is not needed, as waiver requests are always granted or denied by written Board order, and there has never been a problem with timeliness of issuance. Paragraph III.F is not needed, because Board orders are always sent to the petitioner and all other parties in the docket. The Board will comply with paragraph III.G, but it is not necessary that

this be stated in the rule. Paragraphs III.H and III.I are not needed to be stated in the rule.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before February 29, 2000, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

If requested pursuant to Iowa Code section 17A.4(1)"b," or on its own motion after reviewing the statements, the Board will determine whether an opportunity for oral presentation should be provided.

These rules are intended to implement Iowa Code chapters 17A, 474, and 476.

The following amendments are proposed.

ITEM 1. Rescind 199—1.3(17A,474) and adopt the following **new** rule in lieu thereof:

**199—1.3(17A,474,476) Waivers.** In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds that:

1. Application of the rule would result in hardship or injustice; and
2. The waiver would be consistent with the public interest; and
3. The waiver would not prejudice the substantial legal rights of any person.

A waiver may be granted at the discretion of the board upon consideration of all relevant factors.

Persons requesting a waiver may use the form provided in 199—subrule 2.2(17), or may submit their request as a part of another pleading.

The waiver shall describe its precise scope and operative period. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.

This rule is intended to implement Iowa Code sections 17A.4, 474.5, 476.1, and 476.2(1).

ITEM 2. Amend 199—2.2(17A,474) by adopting the following **new** subrule:

**2.2(17) Waiver request.**

STATE OF IOWA  
BEFORE THE IOWA UTILITIES BOARD

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(insert case title)	}	DOCKET NO. (insert docket no.) WAIVER REQUEST
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COMES NOW (insert name of person requesting the waiver), and files this request for a waiver, and in support states:

1. A citation to the specific rule the requester wants to be waived.
2. The scope and operative period of the waiver.
3. The requester must show that under the circumstances described in this paragraph: (a) application of the rule would

## UTILITIES DIVISION[199](cont'd)

result in hardship or injustice; and (b) the waiver would be consistent with the public interest; and (c) the waiver would not prejudice the substantial legal rights of any person.

4. Persons who may be adversely impacted by the grant of the waiver, if known.

WHEREFORE, (insert name of requester) prays the board grant the request for a waiver of the rule specified above.

Respectfully submitted,

\_\_\_\_\_  
(signature of requester)  
(name)  
(address and ZIP code)

**ARC 9663A**

## UTILITIES DIVISION[199]

### 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 Iowa Code section 477C.4, the Utilities Board (Board) gives notice that on January 20, 2000, the Board issued an order in Docket No. RMU-00-2, In re: Equipment Distribution Program. The Board is proposing to amend 199 IAC 37.2(1)"b," 37.2(3), 37.3(1), 37.3(5), 37.3(6), 37.3(8), 37.4(477C), and 37.5(1). 199 IAC Chapter 37 contains the rules for the Equipment Distribution Program (EDP), which provides assistive telecommunications devices for hearing- and speech-impaired individuals.

The EDP is a voucher program, with the standard amount of the voucher set at 95 percent of the average retail market price for the piece of equipment that costs up to \$1,000 (99 percent for over \$1,000). The Board is concerned that there are individuals who cannot afford the copayment required by the rules. Therefore, a hardship provision is added to 199 IAC 37.2(1)"b" to handle such instances on a case-by-case basis.

Subrule 37.2(3) currently provides 60 days for the purchase of equipment to be completed, with an additional 20 days for the vendor to return the voucher to the program administrator. There have been problems with voucher recipients not turning in their vouchers to a dealer until the end of the 60 days, giving the dealer very little time to obtain the equipment if it is not in stock or must be back-ordered. Thus, many waivers of this rule were necessary, which meant Board intervention. The rule change increases the total number of days to process the voucher from 100 to 120 days. The applicant is given 40 days to return the voucher to the dealer, giving the dealer 60 days to get the equipment to the applicant and return the voucher to the administrator. The amendment also provides the program administrator with limited authority to extend two of the deadlines.

Subrule 37.3(1) currently requires applicants requesting equipment to have an appropriate professional verify their need for equipment. The rule does not differentiate between initial application and reapplication (the current reapplication waiting period is three years, although these rules propose to increase the reapplication period to five years). In most cases, it is unlikely that the person's impairment has

changed since the first verification. These persons should not be burdened with obtaining a second professional verification when reapplying for equipment. The proposed change removes the requirement that a verification of need be signed by an appropriate professional in cases of reapplication. The exception to this is when a person's condition has changed from the previous application and the person re-applies for a different category of equipment than originally received. The Board is also proposing a change in the first sentence to correct the grammar.

Current subrule 37.3(5) limits each household to a voucher for one type of equipment or equipment package. However, there are situations where both a deaf and a hard of hearing individual may live in the same household. These two disabilities require different equipment, so the Board proposes to change the rule to accommodate both disabilities.

Subrule 37.3(6) provides for equipment replacement. Most equipment that Iowa's program distributes has a relatively long life span. Upon researching other state's programs and discussing the issue with other state EDP administrators at the conference for the national equipment distribution organization, Telecommunications Equipment Distribution Program Administrators (TEDPA), the consensus was that the assistive equipment has a life span of at least five years and, if properly cared for, even longer. Most states provide that equipment may be replaced after not less than five years. Iowa's program has the shortest period of three years. This proposal would change Iowa's reapplication period from three to five years.

In addition, if a person wishes to reapply before the reapplication period expires, the current rule requires a waiver to be given by the Board. The program administrator is in a better position to determine the need for replacement equipment prior to the end of the normal replacement period. The second change to subrule 37.3(6) would give the authority to the program administrator to determine the appropriateness of the reapplication.

Rule 199 IAC 37.3(477C) sets eligibility criteria for applicants to be eligible to receive assistance from the program. Subrule 37.3(8) sets a household income limit. The current rule contains an income limit of \$45,000 for a family of four. The Board believes that a set income limit should be stated in the rules, it should be based on the median family income, and it should be an amount high enough to accommodate increases which will occur in the next three to four years.

Since the rule is expected to be effective for several years, the Board is proposing that the income limit in the rules be \$30,000 for a family of one, with an increase of \$9,000 for each additional family member. The income limit for a family of four would be \$57,000. These limits are based on a report generated by the Department of Human Services to determine eligibility for its various programs. Their source is the Census Bureau's report that shows the Iowa median income for the year 2000 for a family of one is \$26,927, and for a family of four is \$51,782. The Census Bureau report showed an Iowa median income level in 1999 of \$25,047 for a family of one and \$48,167 for a family of four. For each additional person in the family up to six people, the limit is increased by \$8,285 for the year 2000. For 1999, the increase was \$7,707 for each additional person.

Rule 199 IAC 37.4(477C) gives examples of the types of equipment distributed through the program. The last sentence states that a limited number of telebrailers are available. However, telebrailers are no longer being manufactured and are virtually impossible to obtain. Since telebrailers are, in effect, not available, there has been some attempt to fill the void by other manufacturers, but it is an evolving

## UTILITIES DIVISION[199](cont'd)

process. Currently, there are some telecommunications devices called braille phones that are available for use by deaf/blind individuals. Braille phones are quite costly, as were the telebrailers, with a price of over \$6,000. These may or may not be the ultimate replacement for telebrailers. Since equipment for these individuals is an evolving process, putting a named piece of equipment in the rule should be avoided. Therefore, the language is proposed to be changed from "telebrailers" to "telecommunications devices for the deaf/blind."

The Board proposes to revise subrule 37.5(1) to clarify that a person with a complaint may also go to the Board with the person's complaint. The intent is to treat complaints under the Equipment Distribution Program the same as utility customer complaints under the Board's complaint procedures if the program administrator is unable to resolve complaints informally. Also, many deaf individuals may have difficulty writing their complaint, as English may not be their first language (i.e., American Sign Language is their primary language). To simplify the process, wording has been added to the rule to specify that complainants may state their complaints verbally as well as in writing. Finally, the proposed change provides that informal settlement should be attempted to be completed within 45 days. This requirement will help to avoid any long delays in resolving a complaint. If the complaint cannot be resolved through the informal process within 45 days, the complainant may submit the complaint to the Board for resolution.

Any interested person may file a written statement of position on the proposed amendments no later than March 10, 2000, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should include the author's name and address and should specifically refer to this docket. All statements should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

If requested pursuant to Iowa Code section 17A.4(1)"b," or on its own motion after reviewing the statements, the Board will determine whether an opportunity for oral presentation should be provided.

These amendments are intended to implement Iowa Code section 477C.4.

The following amendments are proposed.

ITEM 1. Amend paragraph 37.2(1)"b" as follows:

b. The standard amount shall be 95 percent of the average retail market price for the piece of equipment, unless the retail market price is more than \$1,000, in which case the standard amount shall be 99 percent of the average retail market price. *The standard amount may be increased to 100 percent if a person demonstrates to the program administrator that the person is unable to pay the matching amount.*

ITEM 2. Amend subrule 37.2(3) as follows:

37.2(3) Term. The vouchers shall provide for a 40-day period to present the voucher to the vendor. *The vendor, upon presentation of the voucher, shall have 60-day period 60 days to complete the sale and delivery of the equipment purchase, a 20-day period for the vendor to and to return the voucher to the program administrator. and The program administrator shall have a 20-day period 20 days for the program administrator to process and return the voucher to the board for payment. The program administrator, for good cause shown, may extend either the 40- or 60-day deadline, provided the voucher is returned to the board for payment within 120 days from the issuance of the voucher. Except for good cause shown, the vendor will not be reimbursed for a*

voucher issued more than 100 120 days before the voucher is returned to the board for payment.

ITEM 3. Amend subrule 37.3(1) as follows:

37.3(1) The applicant's need for the equipment must be verified by an appropriate professional, including but not limited to a licensed physician; certified teacher in the fields of hearing, speech, or ~~visually impaired~~ *visual impairment*; speech pathologist; audiologist; or an appropriate state or federal agency representative, as part of the *initial application. At the time of reapplication for equipment, the applicant must submit a statement certifying the applicant's condition has not changed to the extent that a different type of equipment is needed. If an applicant's condition has changed to the extent a different type of equipment is needed from that originally received, the applicant's need must be verified by an appropriate professional.*

ITEM 4. Amend subrule 37.3(5) as follows:

37.3(5) The applicant will be limited to a voucher for one type of equipment or equipment package ~~per household. If there are individuals in the same household who have different communication impairments that require different types of assistive telecommunications equipment, the individuals may make a joint or separate request to the equipment distribution program administrator. The administrator may grant those portions of the requests that satisfy the eligibility requirements in this rule.~~

ITEM 5. Amend subrule 37.3(6) as follows:

37.3(6) Equipment may be replaced under the program by reapplication as appropriate. ~~but a change in the nature of the equipment for the repeat applicant will require board approval. Reapplication will be limited by a three five-year waiting period. The reapplication period will be subject to waiver may be shortened by the program administrator for good cause shown.~~

ITEM 6. Amend subrule 37.3(8) as follows:

37.3(8) An applicant's gross household income must be less than ~~\$45,000~~ *\$57,000* for a family of four. Household numbers above or below four will increase or decrease that amount in ~~\$5,000~~ *\$9,000* increments.

ITEM 7. Amend rule 199—37.4(477C) as follows:

**199—37.4(477C) Equipment.** The board will authorize the types of equipment to be distributed through the program, including but not limited to telecommunications devices for the deaf with printers, signalers, amplifiers, computer software, and a limited number of ~~telebrailers~~ *telecommunications devices for the deaf/blind.*

ITEM 8. Amend subrule 37.5(1) as follows:

37.5(1) The program administrator will make determinations concerning matters such as eligibility, type of equipment for particular applicants, or reimbursement of vendors.

a. The administrator, after requiring interested persons to state *verbally or in writing* any complaint or dispute arising under the equipment distribution program, shall attempt to settle the matter informally *within 45 days.*

b. ~~Within 14 days of determining that~~ *Should the informal dispute resolution process has failed fail, the program administrator shall serve a proposed resolution in writing on all interested persons and provide a copy to the board. the complaint may be submitted to the board by the complainant and will be processed by the project manager as provided for utility customers in 199 IAC Chapter 6. The complaint will be directed to the program administrator with a copy to the*

## UTILITIES DIVISION[199](cont'd)

*Consumer Advocate. The board staff assigned to the equipment distribution program will then issue a proposed resolution as defined in 199 IAC 6.4(476).*

c. The proposed resolution shall include a description of the facts involved in the dispute and a clear statement of the proposed resolution.

d. The proposed resolution shall also give notice that any interested person dissatisfied with the proposed resolution has 14 days after the issuance of the proposed resolution to file a written request for formal complaint proceedings before the Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069. If no timely request for formal complaint proceedings is filed, the proposed resolution shall be deemed binding on all interested persons served with the proposed resolution. The request for formal complaint proceedings shall be considered as filed on the date of the United States Postal Service postmark or the date personal service is made.

**ARC 9687A****WORKFORCE DEVELOPMENT  
BOARD/SERVICES DIVISION[877]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development hereby gives Notice of Intended Action to amend Chapter 1, "Workforce Development Board," Iowa Administrative Code.

On January 21, 2000, the Workforce Development Board approved the proposed amendments. The amendments add a representative of Iowa's independent colleges and universities as an ex officio member, change the address where records are stored, and define how the Department and Board will provide information to the Department of Corrections and respond to inquiries concerning private sector employment projects and construction and maintenance projects of the Department of Corrections.

Written comments concerning the proposed amendments will be accepted until 4:30 p.m. on February 29, 2000. Interested persons may submit written or oral comments by contacting JoAnn Callison, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319; E-mail: [joann.s.callison@iwd.state.ia.us](mailto:joann.s.callison@iwd.state.ia.us); telephone (515) 242-0057.

A public hearing to receive comments about the proposed amendments will be held at 1 p.m. on February 29, 2000, at the above address in the Labor Conference Room, Third Floor West. Individuals interested in providing comments at the hearing should contact Paula Nissen at (515)281-0252 by 4 p.m. on February 28, 2000, to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code sections 84A.1 to 84A.1B and Iowa Code chapter 96.

The following amendments are proposed.

ITEM 1. Amend subrule 1.1(2) as follows:

**1.1(2)** Nonvoting members. The board consists of seven ex officio, nonvoting members. Of the seven members, four members shall be members of the general assembly; one member shall be a president or president's designee of one of the three state universities, designated by the board of regents on a rotating basis; one member shall represent the largest statewide public employees' organization representing state employees; and one shall be a superintendent or superintendent's designee of a community college, appointed by the Iowa association of community college presidents; and one member shall represent the independent colleges and universities in Iowa.

ITEM 2. Amend rule 877—1.4(84A) as follows:

**877—1.4(84A) Records.** Agendas, minutes, and materials presented to the board are available from the Policy Office, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309 Division of Policy and Information, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319, except those records concerning closed sessions which are exempt from disclosure under Iowa Code subsection 21.5(4) or which are otherwise confidential by law. Board records contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code section 21.3 and subsection 96.11(5). These records are not stored in an automated data processing system and may not be retrieved by a personal identifier. Rule-making records may contain information about persons making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

ITEM 3. Amend 877—Chapter 1 by adopting the following new rules:

**877—1.5(84A) Coordination with the department of corrections on private sector employment projects.** To assist the department of corrections with programs that employ prisoners in the private sector, the department of workforce development shall be responsible for coordinating the following process:

**1.5(1)** Prior to an employer's submitting an application to the department of corrections for a private sector employment project, the employer shall place with the nearest workforce development center a job order with a duration of at least 30 days. The job order shall be listed statewide in all centers and on the department of workforce development's jobs Internet site.

**1.5(2)** The department of corrections shall send a letter requesting verification of the employer's 30-day job listing, the average wage rate for the job(s) the prisoners will perform, the current unemployment rate in the county where the employer is located, and the current employment level of the company that will employ the prisoners. The letter should be sent to Division Administrator, Division of Policy and Information, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

**1.5(3)** The department of workforce development shall verify in writing the job listing, including the number of qualified applicant referrals and hires made as a result of the job order, the average entry-level wage rate for the proposed job(s), the entry-level wage range, the current unemployment rate for the county where the employer is located, and the current employment levels of the company that will employ the prisoners based upon the most recent quarter for



## WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

which data is available. The average wage rate and wage range will be based on the appropriate geographic area for which occupational wage information is available. The appropriate geographic area may be statewide.

**1.5(4)** Average entry-level wage rates and entry-level wage ranges for jobs currently held by prisoners and employment levels of companies employing prisoners shall be updated by the department of workforce development every six months upon the department of corrections' sending a letter listing all current companies employing prisoners and the prisoners' job classifications to Division Administrator, Division of Policy and Information, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

**1.5(5)** The department of workforce development shall provide a periodic report to the state workforce development board regarding information supplied to the department of corrections for private sector employment projects. Frequency of the report will depend upon the level of activity.

**1.5(6)** Inquiries concerning private sector employment projects shall be in writing and address the following questions:

- a. How the project is believed to violate the intent of Iowa Code section 904.809;
- b. Evidence of a local surplus of labor in the job classifications of the type in which prisoners are employed; and
- c. Whether private sector employees or employees involved in a labor dispute have been displaced as a result of the project.

Inquiries shall be sent to Division Administrator, Division of Policy and Information, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. A copy of the inquiry shall be sent to the department of corrections. The administrative rules committee of the state workforce development board shall review the inquiry and any additional responses or oral testimony requested by the committee and make a recommendation to the full board as to whether the intent of Iowa Code section 904.809 has or has not been met and whether corrective action, if any, needs to be taken by the department of corrections to meet the intent. At the discretion of the administrative rules committee, oral presentations may be requested from the party(ies) to the inquiry. The full board shall make a final recommendation within 60 days of receipt of the inquiry. The board's final recommendation shall be mailed to both the department of corrections and the party(ies) making the inquiry.

**877—1.6(84A) Coordination with the department of corrections on construction and maintenance projects.** To assist the department of corrections with the employment of prisoners on construction and maintenance projects, the department of workforce development shall be responsible for coordinating the following process:

**1.6(1)** Prior to an employer's submitting an application to the department of corrections for employing prisoners on a construction or maintenance project, the employer shall place with the nearest workforce development center a job order with a duration of at least 30 days. The job order shall be listed statewide in all centers and on the department of workforce development's jobs Internet site.

**1.6(2)** The department of corrections shall send a letter requesting verification of the employer's 30-day job listing, the average wage rate for the job(s) the prisoners will perform, the current unemployment rate in the county where the employer is located, and the current employment level of the company that will employ the prisoners. The letter should be sent to Division Administrator, Division of Policy and Infor-

mation, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

**1.6(3)** The department of workforce development shall verify in writing the job listing, including the number of qualified applicant referrals and hires made as a result of the job order, the average entry-level wage rate for the proposed job(s), the entry-level wage range, the prevailing wage as determined by the U.S. Department of Labor, the current unemployment rate for the county where the employer is located, and the current employment levels of the company that will employ the prisoners based upon the most recent quarter for which data is available. The average entry-level wage rate and entry-level wage range will be based on the appropriate geographic area for which occupational wage information is available. The appropriate geographic area may be statewide.

**1.6(4)** It is recommended that all prisoners employed in construction and maintenance projects receive a ten-hour OSHA safety course provided free of charge by the department of workforce development. The department of workforce development will make every effort to conduct the training within a reasonable time period after receipt of a request for training.

**1.6(5)** If the contract to employ offender labor exceeds six months, the department of corrections shall request and receive from the department of workforce development the average wage rates and wage ranges for jobs currently held by prisoners and current employment levels of companies employing prisoners. The letter should be addressed to Division Administrator, Division of Policy and Information, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

**1.6(6)** The department of workforce development shall provide a periodic report to the state workforce development board regarding information supplied to the department of corrections for construction and maintenance projects. Frequency of the report will depend upon the level of activity.

**1.6(7)** Inquiries concerning construction and maintenance projects performed by prisoners may be made by area workers, or their representatives, that are affected by a project. Inquiries shall be in writing and address the following questions:

- a. How the project is believed to violate the intent of Iowa Code sections 904.701 and 904.703;
- b. Evidence of a local surplus of labor in the job classifications of the type in which prisoners are employed;
- c. Whether private sector employees or state, county or local government employees or any employees involved in a labor dispute have been displaced as a result of the project; and
- d. Whether existing contracts for employment or services have been impaired.

Inquiries shall be sent to Division Administrator, Division of Policy and Information, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. A copy of the inquiry shall be sent to the department of corrections. The administrative rules committee of the state workforce development board shall review the inquiry and any additional responses or oral testimony requested by the committee and make a recommendation to the full board as to whether the intent of Iowa Code sections 904.701 and 904.703 has or has not been met and whether corrective action, if any, needs to be taken by the department of corrections to meet the intent. At the discretion of the administrative rules committee, oral presentations may be requested from the party(ies) to the inquiry. The full board shall make a final recommendation within

## WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

60 days of receipt of the inquiry. The board's final recommendation shall be mailed to both the department of corrections and the party(ies) making the inquiry.

**ARC 9688A****WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development hereby gives Notice of Intended Action to adopt Chapter 7, "Iowa Workforce Investment Act Program," Iowa Administrative Code.

On January 21, 2000, the Workforce Development Board approved the proposed new chapter. The chapter provides local elected officials, regional workforce investment board members and local workforce development partners with the necessary policies and procedures to administer the Workforce Investment Act of 1998 beginning July 1, 2000.

Written comments concerning the proposed new chapter will be accepted until 4:30 p.m. on February 29, 2000. Interested persons may submit written or oral comments by contacting JoAnn Callison, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319; E-mail [joann.s.callison@iwd.state.ia.us](mailto:joann.s.callison@iwd.state.ia.us); telephone (515) 242-0057.

A public hearing to receive comments about the proposed new chapter will be held at 1 p.m. on February 29, 2000, at the above address in the Labor Conference Room, Third Floor West. Individuals interested in providing comments at the hearing should contact Paula Nissen at (515)281-0252 by 4 p.m. on February 28, 2000, to be placed on the hearing agenda.

These rules are intended to implement Iowa Code sections 84A.1 to 84A.1B, Iowa Code chapter 96, and the Workforce Investment Act of 1998.

The following new chapter is proposed.

**CHAPTER 7****IOWA WORKFORCE INVESTMENT ACT PROGRAM**

**877—7.1(84A,PL105-220) Designation of responsibility.** Through Executive Order Number One and Executive Order Number Five, the department of workforce development was designated by the governor as the department responsible for activities and services under the Workforce Investment Act (WIA) of 1998 (P.L. 105-220).

**877—7.2(84A,PL105-220) Purpose.** The purpose of the Iowa workforce investment Act program is to meet the needs of businesses for skilled workers and the training, education and employment needs of individuals through a statewide, one-stop workforce development center system.

**877—7.3(84A,PL105-220) Definitions.**

"Chief elected official board" means the units of local government joined through an agreement for the purpose of

sharing liability and responsibility for programs funded by the Workforce Investment Act of 1998.

"Contractor" means grantees, subrecipients, coordinating service providers, and service providers.

"Coordinating service provider" means the entity or consortium of entities selected by the regional workforce investment board and the chief elected official board to coordinate partners within the workforce development center system. The coordinating service provider is one of the workforce development center system partners.

"Department" means the department of workforce development.

"Director" means the director of the department of workforce development.

"Local elected official" means the county supervisors and mayors of a region's cities with a population of more than 50,000.

"Local grant recipient" means the chief elected official board.

"Mandatory partners" means the service providers that make their services available through the workforce development center system and use a portion of their resources to support the operation of the regional workforce development center system and the delivery of core services to their customers. Entities that carry out the following federal programs are required to make their services available through the workforce development center system: Wagner-Peyser Act; Unemployment Insurance; Senior Community Service Employment Activities - Title V Older Americans Act; Adult Ed and Literacy Activities - Title II; Title I of the Rehabilitation Act of 1973; Welfare to Work; Veterans Services under Chapter 41, Title 38; Employment and Training Activities under Community Block Grants; HUD Employment and Training Activities; and postsecondary Vocational Education Activities under the Carl Perkins Act. In addition, those entities selected to provide Workforce Investment Act funded services for adults, dislocated workers and youth are mandatory partners, as are service providers for Native American programs, migrant and farm worker programs, veterans workforce programs, and Job Corps.

"Regional workforce investment board" means a board established according to 877—Chapter 6, "Regional Advisory Boards," Iowa Administrative Code.

"Subrecipient" means an entity selected by the chief elected official board to receive the Workforce Investment Act funds in a region from the department and disburse those funds to the entity(ies) designated by the regional workforce investment board.

"Workforce development center system" means the regional network of workforce development centers and access points for workforce development services supported by the chief elected official board, regional workforce investment board, partners, service providers, and vendors. The system is focused on meeting the needs and priorities of the customer through an integrated service delivery system based on interagency partnerships and the sharing of resources.

"Workforce Investment Act of 1998," "WIA" or "the Act" means Public Law 105-220.

**877—7.4(84A,PL105-220) Service delivery region designations.** The governor is responsible for the designation of workforce investment regions with the assistance of the state workforce development board, after consultation with the chief elected officials and after consideration of comments received through a public comment process.

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**7.4(1)** In making the designation of regions, the governor shall take into consideration the following:

- a. Geographic areas served by local educational agencies and intermediate educational agencies;
- b. Geographic areas served by postsecondary educational institutions and vocational education schools;
- c. The extent to which the regions are consistent with labor market areas;
- d. The distance that individuals will need to travel to receive services provided in the regions; and
- e. The resources of the areas that are available to effectively administer the activities carried out through the workforce development centers.

**7.4(2)** In order to initiate the designation process, the governor shall publicly announce the proposed region designations after receiving a recommendation from the state workforce development board. This will begin a public comment period of two weeks, during which local elected officials and other interested parties may comment on the proposed designations. Due to state legislative limitations, the maximum number of regions that may be designated is 16.

**7.4(3)** Any request from any unit of local government with a population of 500,000 or more shall be approved by the governor. In addition, the governor shall approve any requests from any unit of general local government, or consortium of contiguous units of general local government, that was a service delivery area under the federal Job Training Partnership Act, provided that it is determined that the area performed successfully in each of the last two program years and has sustained the fiscal integrity of funds. For the purposes of this subrule, "performed successfully" means that the service delivery area met or exceeded the performance for the following performance standards as appropriate:

- a. Title IIA: adult follow-up employment rate; adult welfare follow-up employment rate; adult follow-up weekly earnings; and adult welfare follow-up weekly earnings.
- b. Title III: entered employment rate; and average wage at placement.

Also for the purposes of this subrule, "sustained fiscal integrity" means that the Secretary of the Department of Labor has not made a final determination during any of the last three years that either the grant recipient or administrative entity misspent funds due to willful disregard of the requirements of the Job Training Partnership Act, gross negligence, or failure to observe accepted standards of administration.

**7.4(4)** The final designation of the regions shall be made by the governor once all comments have been received and reviewed.

**7.4(5)** Any unit of general local government (or consortium of contiguous units of general government) that requests, but is not designated, a region under 7.4(3) may submit an appeal in accordance with the provisions of 7.22(12).

**877—7.5(84A,PL105-220) Chief elected official board.** Each region is required to form a chief elected official board made up of representatives of the elected officials of local governments within the region.

**7.5(1)** The board shall consist of a representative of each county within a region and a representative of each of the region's cities with a population of 50,000 or more.

**7.5(2)** The board shall be formed through an agreement that details how the responsibilities and liabilities related to WIA programs will be shared by the local governments. At a minimum, the agreement must contain the following items:

- a. All elements of an agreement required by Iowa Code chapter 28E for joint exercise of governmental powers;
- b. Process for selecting the chairperson;

- c. Process for nominating and selecting appointments to the regional workforce investment board;

- d. Apportionment of responsibility and liability among participating units of government, including losses, expenses and burdens that may result from any misuse of WIA grant funds; and

- e. Designation of an entity to serve as the local subrecipient.

**7.5(3)** The fully executed agreement, or any amendments to the agreement, must be filed with the secretary of state and the county recorder of each county that is a party to the agreement. A copy of the agreement and any amendments must also be sent to Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50319.

**7.5(4)** The chief elected official board shall serve as the local grant recipient and be liable for any misuse of WIA grant funds, unless an agreement is reached with the department to act as the local grant recipient and to bear such liability. The department shall only serve as a region's local grant recipient in rare or extreme circumstances.

**7.5(5)** The chief elected official boards have the following roles and responsibilities:

- a. Providing input to the governor, through the department and state workforce development board, on designation of workforce investment regions;
- b. Securing nominations for regional workforce investment board vacancies in accordance with 877—Chapter 6, "Regional Advisory Boards," Iowa Administrative Code;
- c. Accepting liability for any misuse of WIA funds expended under contract with the chief elected official board;
- d. Developing and entering into a memorandum of agreement with the region's workforce development center system's partners;
- e. Conducting oversight of the WIA adult and dislocated worker services, youth programs, and the workforce development center system;
- f. Evaluating service delivery to determine if regional needs and priorities are being met;
- g. Determining whether regional needs have changed and, if so, whether a plan modification is necessary;
- h. Ensuring that quality improvement is ongoing and performance standards are met; and
- i. Developing and submitting the regional workforce development customer service plan based on a regional needs assessment and analysis.

**7.5(6)** In partnership with the regional workforce investment board, the chief elected official board is responsible for:

- a. Negotiating and reaching agreement with the department on regional performance standards;
- b. Appointing a youth advisory council;
- c. Determining the role of the coordinating service provider;
- d. Designating and certifying the coordinating service provider; and
- e. Developing a chief elected official - regional workforce investment board agreement to detail how the two boards shall work together in establishing and overseeing the region's workforce development center system, as defined in 877—7.7(84A,PL105-220).

**877—7.6(84A,PL105-220) Regional workforce investment board.** Each region shall establish a regional workforce investment board as defined in 877—Chapter 6, "Regional Advisory Boards," Iowa Administrative Code. The

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roles and responsibilities of the regional workforce investment board include:

1. Selecting service providers for WIA adult and dislocated worker intensive services and youth programs.
2. Establishing policy for the region's workforce development center system.
3. Developing a budget to carry out the duties of the board, subject to the approval of the chief elected official board.
4. Coordinating WIA youth, adult and dislocated worker employment and training activities with economic development strategies and developing other employer linkages with these activities.
5. Promoting the participation of private sector employers in the workforce development system and ensuring the availability of services to assist such employers in meeting workforce development needs.
6. Certifying eligible training providers.
7. Determining the use of the strategic workforce development fund, including the operation and funding of a summer or in-school youth program(s), use of discretionary funds, and selection of service providers.
8. Selecting the welfare-to-work service provider.
9. Submitting an annual report to the state workforce development board.
10. Establishing cooperative relationships with other boards in the region.
11. Directing the activities of the youth advisory council.
12. Duties shared with the chief elected official board as outlined in subrule 7.5(6).

**877—7.7(84A,PL105-220) Regional workforce investment board/chief elected official board agreement.** Each regional workforce investment board and chief elected official board shall enter into an agreement to define how they shall share certain responsibilities.

**7.7(1)** At a minimum, the agreement must include the following elements:

- a. How the coordinating service provider will be selected;
- b. How the boards will be involved in negotiations of performance measures with the department;
- c. How the boards will develop a memorandum of understanding with the region's workforce development center system's partners;
- d. How the boards will develop and approve the regional workforce development customer service plan;
- e. How the boards will share the oversight of the workforce development center system;
- f. Process that will be used by the boards to appoint members to the youth advisory council;
- g. Process for modifying or amending the agreement;
- h. Process to be used to develop an operating budget for the regional workforce investment board and youth advisory council; and
- i. Methods of communications between the two boards.

**7.7(2)** A fully executed copy, and any subsequent modifications, of the agreement shall be submitted to Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

**877—7.8(84A,PL105-220) Youth advisory council.** Each region must appoint a youth advisory council to provide expertise and make recommendations regarding youth employment and training policy.

**7.8(1)** The roles and responsibilities of the youth advisory council, at the direction of the regional workforce investment board, include the following:

- a. Assist in the development of the regional customer service plan relating to eligible youth;
- b. Recommend and oversee youth service providers; and
- c. Coordinate youth activities funded under WIA.

**7.8(2)** Youth advisory council membership shall include:

- a. Members of the regional workforce investment board that have a special interest or expertise in youth policy;
- b. Individuals who represent youth service agencies, such as juvenile justice and local law enforcement agencies;
- c. Individuals who represent local public housing authorities, if applicable;
- d. Parents of youth eligible for WIA youth services or that were served under a Job Training Partnership Act youth program;
- e. Individuals with experience relating to youth activities;
- f. Former Job Training Partnership Act participants;
- g. Representatives of the Job Corps, if Job Corps has an office within the region; and
- h. Any other individuals that the chairperson of the regional workforce investment board, in cooperation with the chief elected official board, determines to be appropriate.

**7.8(3)** The size of the youth council, the number of representatives from each sector, term length, nomination process, and county/city representation are decisions of the regional workforce investment board and chief elected official board.

**7.8(4)** The regional workforce investment board shall submit the name, mailing address, and sector affiliation of each youth advisory council appointee to the department for mailing list purposes. The list, and subsequent updates due to new appointments, shall be submitted to Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

**877—7.9(84A,PL105-220) Selection of coordinating service provider.** To receive funds made available under Title I of WIA, the regional workforce investment board, in agreement with the chief elected official board, must designate an entity as the coordinating service provider for the workforce investment region. In addition, the regional workforce investment board must designate service providers for core and intensive services for adults and dislocated workers, as well as a youth service provider to provide day-to-day oversight of the youth program and to provide eligibility determinations, enrollment, objective assessment and individual service strategies for youth.

**7.9(1)** The regional workforce investment board and chief elected official board must determine the role of the coordinating service provider. At a minimum, the coordinating service provider's roles and responsibilities shall include the following:

- a. Provide overall customer management and tracking, including responsibility for results of enrollments.
- b. Manage the workforce development center system in the region, including workforce development center facilities, and ensure that services are accessible and available in every county of the region.
- c. Ensure workforce development center system partners' compliance with the memorandum(s) of understanding.

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d. Coordinate and negotiate the resource sharing agreement.

e. Ensure that performance standards and customer satisfaction goals for the region's workforce development center system are met.

f. Provide information and feedback to the regional workforce investment board and chief elected official board concerning the delivery of the services outlined in the customer service plan versus the needs and priorities identified in the regional needs assessment and analysis.

g. Maintain, promote and market the regional workforce development center system.

h. Develop and submit an annual progress report toward meeting the needs and priorities identified in the regional needs assessment and analysis to the regional workforce investment board.

i. May, as described in the memorandum(s) of understanding, determine eligibility for training services.

**7.9(2)** The regional workforce investment board and chief elected official board need to determine if they want to grandfather the current coordinating service provider, based on the role that has been determined. The boards also need to determine if the current coordinating service provider desires to be grandfathered.

**7.9(3)** If the regional workforce investment board or chief elected official board does not desire to grandfather the existing coordinating service provider, or if the coordinating service provider members do not desire to be grandfathered, then the service provider(s) needs to be selected prior to the designation of the coordinating service provider.

**7.9(4)** The coordinating service provider may be a public or private entity of demonstrated effectiveness, or a consortium of entities, located in the region. Eligible entities may include, but are not limited to, the following:

- a. A postsecondary educational institution;
- b. An employment service agency established under the Wagner-Peyser Act;
- c. A private nonprofit organization (including a community-based organization);
- d. A private, for-profit entity;
- e. A government agency; or
- f. Another interested organization (includes a local chamber of commerce or other business organization).

Elementary schools and secondary schools are the only entities not eligible for designation or certification as a coordinating service provider. However, nontraditional public secondary schools and area vocational schools are eligible for designation.

**7.9(5)** To designate a coordinating service provider, the regional workforce investment board must utilize one of the three processes listed below. More than one option may be pursued concurrently.

a. An agreement with the governor to designate the coordinating service provider that was in place on August 7, 1998. In order to utilize this option, the chairpersons of the regional workforce investment board and chief elected official board must provide a written notice to the department indicating that both boards have taken appropriate action and desire to pursue this option.

b. A competitive process. At a minimum, the competitive process to designate the coordinating service provider shall include the following:

(1) Public notice. A public notice shall be published in one of the official county newspapers, as designated by the county board of supervisors. The public notice must indicate that both boards shall hold a joint meeting to select the coor-

inating service provider(s) for the region. The notice must list the criteria that will be used in the selection of the coordinating service provider(s). The notice must also require that written proposals be submitted by a specific date and invite interested entities to give presentations and answer questions relating to the selection criteria in 7.9(6) at the joint public meeting. Notices must also be mailed to potentially interested entities within the region.

(2) Public meeting. Since both boards must agree on the designation of the coordinating service provider, at a minimum, the boards shall jointly conduct a public meeting to review the written proposals received, obtain any additional information from entities submitting written proposals, and reach an agreement as to the selection(s).

c. An agreement between the regional workforce investment board and a consortium of entities that, at a minimum, includes three or more of the required partners. In order to utilize this option, at a minimum, the regional workforce investment board and chief elected official board shall notify all partners that they are willing to consider proposals from mandatory partners and hold an open meeting to obtain input and finalize the action.

**7.9(6)** The following criteria are suggested for use in the selection of a coordinating service provider:

a. The effectiveness of the agency or organization in delivering comparable or related services based on documentation of achievement of performance and service level requirements, previous audit and monitoring reports, and capability of the agency's fiscal unit to manage a similar type of program or project;

b. The likelihood of meeting program goals based upon factors such as past performance, staff commitment, and availability and location of staff;

c. The effectiveness of the agency or organization in minimizing the duplication of services, while at the same time maximizing the coordination with other agencies and organizations to provide the highest quality activities and services to the participants in the programs; and

d. Other criteria as determined by both boards.

**877—7.10(84A,PL105-220) Selection of service providers.** Core and intensive services for the adult program and the dislocated worker program shall be provided through the workforce development center. These services may be provided by one entity or a number of different entities. If the role of the coordinating service provider includes the provision of core and intensive services for adults and dislocated workers, then the selection of adult and youth service providers may be combined with the selection of the coordinating service provider. The regional workforce investment board and chief elected official board must determine the most effective and efficient manner to provide these services in the region. The regional workforce investment board and chief elected official board must also determine which service providers will be responsible for ensuring that performance standards are met and that the service provider(s) responsible for performance have the authority to make enrollment decisions for their participants.

**7.10(1)** In selecting service providers, the regional workforce investment board may use the following procedure or may develop a more formal procurement procedure. At a minimum, the procedure to designate service providers must include the following:

a. Public notice. A public notice shall be published in the official county newspaper, as designated by the county board of supervisors. The public notice must indicate that the regional workforce investment board shall hold a meet-

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ing to select the service provider(s) to provide core and intensive services for the adult and dislocated worker programs under Title I. The notice shall list the criteria for the selection of the service provider(s) and invite interested entities to give presentations and answer questions relating to the selection criteria. Notices shall also be mailed to potentially interested entities within the local region.

b. Public meeting. The regional workforce investment board shall conduct a public meeting to obtain information from entities interested in providing core and intensive services in the local region and to reach an agreement as to the selection of the service provider(s).

c. Criteria for selecting service providers. The following are examples of criteria that could be considered and addressed in the selection of a service provider.

(1) The effectiveness of the agency or organization in delivering comparable or related services based on documentation of achievement of performance and service level requirements, previous audit and monitoring reports, and capability of the agency's fiscal unit to manage a similar type of program or project;

(2) The likelihood of meeting performance goals based upon factors such as past performance, staff commitment, and availability of staff; and

(3) The effectiveness of the agency or organization in minimizing the duplication of services, while at the same time maximizing the coordination with other agencies and organizations to provide the highest quality activities and services to the participants in the program.

(4) Other criteria as determined by the regional workforce investment board.

**7.10(2)** Youth service providers shall be selected via a competitive process and based on recommendations of the youth advisory council. Since the delivery of the youth services could be accomplished through a number of different service providers, the regional workforce investment board should initially designate a youth service provider to coordinate the operation of the youth program and to provide eligibility, enrollment, objective assessment and individual service strategy services for youth. Additional youth service providers could be designated at a later date. At a minimum, the procedure to designate the youth service provider(s) must include the following:

a. Public notice. A public notice shall be published in one of the official county newspapers, as designated by the county board of supervisors. The public notice must indicate that the regional workforce investment board shall hold a public meeting to select a youth service provider to coordinate the operation of the youth program, and to provide eligibility, enrollment, objective assessment and individual service strategy services for youth. The notice must list the criteria to be used in the selection of the youth service provider(s) and must require that written proposals be submitted by a specific date. The notice must also invite interested entities that have submitted written proposals to give presentations and answer questions relating to the selection criteria at the public meeting. Notices must also be mailed to potentially interested entities within the local region.

b. Public meeting. The regional workforce investment board must conduct a public meeting to review the written proposals received, obtain any additional information from entities submitting written proposals, and reach an agreement as to the selection(s).

c. Criteria for selecting youth service providers. The following are examples of criteria that could be considered and addressed in the selection of a service provider:

(1) The effectiveness of the agency or organization in delivering comparable or related services based on documentation of achievement of performance and service level requirements, previous audit and monitoring reports and capability of the agency's fiscal unit to manage a similar type of program or project;

(2) The likelihood of meeting performance goals based upon factors such as past performance, staff commitment, and availability of staff;

(3) The effectiveness of the agency or organization in minimizing the duplication of services, while at the same time maximizing the coordination with other agencies and organizations to provide the highest quality activities and services to the participants in the program; and

(4) Other criteria as determined by the regional workforce investment board.

**7.10(3)** Entities with taxing authority may not use tax paid services as in-kind matching funds.

**877—7.11(84A, PL105-220) Memorandum of understanding.** The memorandum of understanding is an agreement developed and executed between the regional workforce investment board, with the agreement of the chief elected official board, and the workforce development center system partners relating to the operation of the workforce development center system in the region. There may be a single memorandum of understanding developed that addresses the issues relating to the regional workforce development center system, or the regional workforce investment board and partners may decide to enter into several agreements. Regardless of whether there is a single agreement or multiple agreements, each partner should be aware of the contents of all of the agreements executed.

**7.11(1)** The regional workforce investment board and the chief elected official board shall initiate the negotiation process for the development of the agreement. Prior to the start of negotiations, the following tasks should be completed:

a. Identify all of the local partners and the services they provide.

b. Name the coordinating service provider.

c. Determine the role of the coordinating service provider.

d. Complete the regional needs assessment and analysis.

e. Execute a single memorandum of understanding or multiple memorandums of understanding.

**7.11(2)** At a minimum, the memorandum of understanding shall include:

a. The services to be provided through the workforce development center system.

b. The location of the comprehensive workforce development center(s), as well as other locations where each partner's services will be provided. All partners must make their core services available, at a minimum, at one comprehensive physical center in the region. All adult and dislocated worker core services shall also be available at the comprehensive center. In addition, core services may be provided at additional sites and partners' applicable core services need not be provided exclusively at the comprehensive workforce development center. The core services may be made available by the provision of appropriate technology at the comprehensive workforce development center, by co-locating personnel at the center, by cross-training of staff, or through a cost reimbursement agreement.

c. The programs and services that will be available at the different locations must be specified, as well as the manner in which the services will be made available.

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d. The particular arrangements for funding the services provided through the workforce development center system and the operating costs of the system. Each partner must contribute a fair share of the operating costs based on the use of the workforce development center delivery system by the individuals attributable to the partner's program. While the resources that a partner contributes do not have to be cash, the resources must be of value, and must be necessary for the effective and efficient operation of the center system. The specific method of determining each partner's proportionate responsibility must be described in the agreement. This could include a list of resources that each partner is providing toward the operation of the system. Since most partners' budgets fluctuate on an annual basis, partner contributions for the operating costs of the system should be reevaluated annually.

e. The partners who will be using the common intake/case management system as the primary referral mechanism, and how referrals will occur between and among the partners not utilizing the common intake/case management system.

f. When the agreement will become effective as well as when the memorandum will terminate or expire. The effective date must be no later than July 1, 2000.

g. The process or procedure for amending the agreement. The procedure should include such items as:

- (1) Identification of who can initiate an amendment;
- (2) Time lines for completing an amendment;
- (3) Conditions under which an amendment will become necessary; and
- (4) Method of communicating changes to all of the partners.

**7.11(3)** It is a legal obligation for the regional workforce investment board, chief elected official board and partners to engage in good-faith negotiation and reach agreement on the memorandum of understanding. Any or all parties may seek the assistance of the department or other appropriate state agencies in negotiating the agreements. After exhausting all alternatives, the department or the other state agencies may consult with the appropriate federal agencies to address impasse situations. If the regional workforce investment board and chief elected official board have not executed a memorandum of understanding with all of the mandatory partners and service providers, the region shall not be eligible for state incentive grants awarded for local cooperation.

**877—7.12(84A, PL105-220) Performance measures.** The programs authorized in Title I are evaluated by measures established by the Act on a state and regional basis. In order for the state to qualify for incentive funds, it must meet performance standards set for these measures, in conjunction with successful performance by programs funded under the Carl Perkins Act and the Workforce Investment Act Title II.

**7.12(1)** Standards for measurement for each region shall be established through negotiations between the department, the chief elected official board and each regional workforce investment board.

**7.12(2)** Performance outcome measures. The overall mission of Iowa's workforce development center system is to increase the size of the skilled labor force and increase earned income among Iowa citizens. Each region's workforce development center system shall address its locally developed priorities in conjunction with the above goals. In addition to having the performance of the regional workforce development center system evaluated as a whole, all Title I programs shall be evaluated based on the following outcome measures:

- a. Adult program outcome measures.

- (1) Entry into unsubsidized employment;
- (2) Retention in unsubsidized employment for six months after entry into employment;
- (3) Earnings received in unsubsidized employment for six months after entry into employment; and

(4) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

b. Dislocated worker program outcome measures.

- (1) Entry into unsubsidized employment;
- (2) Retention in unsubsidized employment for six months after entry into employment;
- (3) Earnings received in unsubsidized employment for six months after entry into employment; and

(4) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter unsubsidized employment.

c. Youth aged 19 to 21 outcome measures.

- (1) Entry into unsubsidized employment;
- (2) Retention in unsubsidized employment for six months after entry into employment;
- (3) Earnings received in unsubsidized employment for six months after entry into employment; and

(4) Attainment of a recognized credential related to achievement of educational skills (such as a secondary school diploma or its recognized equivalent), or occupational skills, by participants who enter postsecondary education, advanced training, or unsubsidized employment.

d. Youth aged 14 to 18 outcome measures.

- (1) Attainment of basic skills and, as appropriate, work readiness or occupational skills;
- (2) Attainment of secondary school diplomas and their recognized equivalents; and
- (3) Placement and retention in postsecondary education, advanced training, military service, employment, or qualified apprenticeships.

e. Customer satisfaction of participants.

f. Customer satisfaction of employers.

**7.12(3)** Other measures. The following measures shall also be tracked and progress reported.

a. Entry by participants who have completed training services into unsubsidized employment related to the training received;

b. Wages at entry into employment (including rate of wage replacement for groups of participants, such as dislocated workers);

c. Cost of workforce investment activities relative to the effect of the activities on the performance of participants;

d. Retention and earnings received in unsubsidized employment 12 months after entry into the employment; and

e. Performance of recipients of public assistance, out-of-school youth, veterans, individuals with disabilities, displaced homemakers, and older individuals, as required by the Department of Labor.

**7.12(4)** Retention in employment measures and wages earned measures will be calculated using data from the unemployment insurance wage record database.

**7.12(5)** Regional performance standards shall be negotiated between the department, the regional workforce investment board and chief elected official board. Performance standards shall be negotiated for each region annually. The department, the regional workforce investment

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board and chief elected official board shall evaluate regional performance and the appropriateness of the negotiated standards each year. Formal negotiation shall be conducted for two-year periods and remain consistent with years in which needs assessment activities are conducted.

The department shall establish a minimum acceptable level of performance for each measure, based upon levels established through negotiation between the state and the Department of Labor and using historical data. Negotiation will focus on the adjusted level of performance, which will serve as the regional objective. Performance of a program within a region below the minimum acceptable levels shall be the basis for corrective action or sanctions. Performance above adjusted levels shall be the basis for incentive awards. In addition, regions may negotiate maximum levels of performance (level at which adjusted levels shall not be negotiated beyond during the first five years).

**7.12(6) Incentive awards.** A portion of the state level funds shall be reserved from Title I programs to provide incentive awards to regions that demonstrate superior performance and to provide technical assistance to all regions. Incentive awards, which are granted during a program year, shall be distributed based upon performance from the previous program year. Actual distribution of the funds shall occur after the end of each program year when final performance standards are calculated. At that time, performance shall be compared against the region's adjusted levels to determine eligibility for, and the amount of, incentive awards.

Incentive awards shall be distributed to regional workforce investment boards when average performance across all measures exceeds the average adjusted levels for the percent achieved score for each measure. When the percent achieved score is greater than 100 percent, the region qualifies for a regional incentive award. There is no requirement for the number of individual measures that must be exceeded, but the customer and employer satisfaction measures must be exceeded for a region to qualify for an incentive award.

The regional workforce investment board must utilize the incentive funds to support Title I services, but it is possible for a region to purchase services that do not count toward performance measurement.

The determination of actual performance achievement on the 17 performance measures and any subsequent incentive awards shall be based on data contained in the integrated customer service (ICS) system. The initial determination of incentive awards shall be made no later than September 1 following the end of the program year. By that time, the chair of each regional workforce investment board shall be notified of its initial performance and incentive award determination. The regional workforce investment board, or its designee, shall be allowed two weeks in which to respond to these initial determinations. The response shall be limited to the calculation of the awards. Changes to the data shall not be permitted unless authorized by the department. A final determination and the awarding of incentive funds shall occur no later than October 1 following the end of the program year. The department reserves the authority to adjust the time lines for the awarding of incentive funds if circumstances warrant such an adjustment.

**7.12(7)** If a region does not meet performance outcome requirements, the department shall provide technical assistance to the region to improve its performance. The following process shall be used:

a. Technical assistance shall be available to the Title I service providers through the department's staff. In situa-

tions where regional performance falls below the minimum acceptable level, the department will assist the regional workforce investment board, or its designee, with the development of a performance improvement plan.

b. If regional Title I programs do not meet the minimum acceptable level of performance for two consecutive years, the regional workforce investment board shall be required to develop a performance improvement plan. Technical assistance shall also be available to the regional workforce investment board and chief elected official board to adjust the regional customer service plan to facilitate the success of the region's performance improvement plan.

c. The performance improvement plan must be reviewed and approved by the chief elected official board prior to its submittal of the plan to the department.

**7.12(8)** If a region falls below the minimum acceptable levels of performance agreed upon for the region's average composite percent achieved score in any of the program areas for two consecutive years, the governor, through the department, shall take corrective action. The critical measures that determine possible sanctions are:

1. Adult program measures average;
2. Dislocated worker program measures average;
3. Youth program measures average; and
4. Customer satisfaction measures average.

At a minimum, the corrective action shall include the development of a performance improvement plan and the possibility of a reorganization plan, under which the governor:

- a. Requires the appointment and certification of a new regional workforce investment board;
- b. Prohibits the use of particular service providers that have been identified as achieving poor levels of performance;
- c. Requires the certification of a new coordinating service provider;
- d. Requires the development of a new regional plan; or
- e. Requires other appropriate measures designed to improve the performance of the region.

An appeal to sanctions may be made by following the process identified in 7.22(15). If a region is being sanctioned, it shall not qualify for an incentive award in the Title I category.

**877—7.13(84A, PL105-220) Regional customer service plan.** Each regional workforce investment board, in partnership with the chief elected official board, shall develop and submit to the governor a five-year comprehensive plan that is in compliance with the state's workforce investment plan. A region must have an approved plan in place prior to receiving funds.

**7.13(1)** The plan shall contain the following elements:

- a. Workforce development services available in the region.
- b. An explanation of how customers access the services.
- c. Statement of the region's workforce development priorities.
- d. An identification of the workforce investment needs of businesses, job seekers, and workers in the region.
- e. Current and projected employment opportunities, and the job skills necessary to obtain such opportunities.
- f. A description of the regional workforce development center system, including the locations of access points, such as the region's one-stop center, satellite workforce development centers, resource centers, and other locations within the region where access to services shall be provided (including the access point in each county for department services that is required by state law); what products and services will be



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delivered at each of these locations and how access to those services will be provided at that location; identification of the products and services that may be provided upon a fee basis and an explanation of the amount and circumstances when the fee will be applied; and a description or flowchart of the service delivery system, identifying how customers will be served and referred within the center system, and when necessary, how program services will be provided to employers, and to other customers through the adult, dislocated workers, rapid response, and youth programs.

g. Description of the region's policies regarding such issues as activities and services, eligibility, and applicant and participant processes.

h. If a region will be sharing the costs of delivering services with another region within a labor market area, that arrangement and cost-sharing agreement should be described.

i. Identification of the chief elected official board's and regional workforce investment board's oversight policies concerning the region's performance standards and continuous improvement activities.

j. Identification of how the regional workforce investment board and chief elected official board will evaluate the service delivery process and service providers' performance.

k. Description of the annual budget development, review and monitoring process for the region.

l. Description of how economic development groups, older workers, disabled individuals, and partners are provided an opportunity to provide periodic and meaningful input regarding the operation of the workforce development system.

m. Identification of the subrecipient or entity responsible for the disbursement of grant funds.

n. Attachments, including the regional needs assessment and analysis; the region's negotiated performance measures; the region's memorandum of understanding; a copy of the region's complaint procedures; procurement procedures; and any documentation customers will be asked to provide for enrollment.

o. Public input process, including proof of publication for public notices soliciting public input for the plan.

**7.13(2)** Prior to submitting the plan to the governor, the regional workforce investment board shall provide opportunities for public input regarding the plan. The public input process must include, at minimum:

a. Making copies of a proposed plan available to the public through such means as public hearings and public notices in local newspapers.

b. Allowing a 30-day period for regional workforce investment board members and members of the public, including representatives of business and labor organizations, to submit comments to the regional workforce investment board on the proposed plan after the plan is made available to the public. When the plan is submitted to the governor, any comments received expressing disagreement with the plan shall be included.

c. Holding open meetings to make information about the plan available to the public on an ongoing basis.

**7.13(3)** The plan must be formally approved by the regional workforce investment board and chief elected official board. An original signed document and four copies must be submitted by April 1, 2000, to the Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

**7.13(4)** The department shall review the plan and recommend approval to the state workforce development board,

unless deficiencies in the plan are identified in writing by the department and revision is required; or the plan is not in compliance with federal and state laws and regulations, including required consultations and public comment provisions.

**7.13(5)** Modifications to the plan may be required by the department under certain circumstances, including significant changes in regional economic conditions, changes in the financing available, changes in the regional workforce investment board structure, or a need to revise strategies to meet performance goals. A proposed modification of the plan must be approved by vote of the regional workforce investment board and chief elected official board at a public meeting.

**877—7.14(84A, PL105-220) Certification of training providers.**

**7.14(1)** Eligible training providers. Eligible training providers include:

a. Postsecondary educational institutions that are eligible to receive funds under Title IV of the Higher Education Act of 1965 and provide a program that leads to an associate degree, baccalaureate degree or certificate;

b. Entities that carry out programs under the National Apprenticeship Act; and

c. Other public or private providers of a program of training services.

**7.14(2)** Training programs. A program of training services is one or more courses or classes that, upon successful completion, leads to a certificate, an associate degree, or baccalaureate degree; or a competency or skill recognized by employers; or a training regimen that provides individuals with additional skills or competencies generally recognized by employers.

**7.14(3)** Certification process. An application for each training program must be submitted to the regional workforce investment board in the region in which the training provider desires its program to be approved. Each program of training services must be described, including appropriate performance and cost information. Training providers shall be approved, initially, as well as subsequently, by regional workforce investment boards in partnership with the department.

**7.14(4)** Regional workforce investment board role. The regional workforce investment board shall be responsible for:

a. Accepting applications from postsecondary educational institutions, entities providing apprenticeship programs, and public and private providers for initial and subsequent approval.

b. Submitting to the department the local list of approved providers, including performance and cost information for each program.

c. Ensuring dissemination of the statewide list to participants in employment and training activities through the regional workforce development center system.

d. Consulting with the department in cases where approved providers shall have their approval revoked because inaccurate information has been provided.

e. Notifying all known providers of training in their region regarding the process and time line for accepting applications.

**7.14(5)** Department role. The department shall be responsible for:

a. Establishing initial approval criteria as well as setting minimum levels of performance for public and private providers;

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- b. Setting minimum levels of performance measures for all providers to remain subsequently approved;
- c. Developing and maintaining the state list of eligible training providers, which is compiled from information submitted by the regional workforce investment boards;
- d. Verifying the accuracy of the information on the state list;
- e. Removing training providers who do not meet program performance levels;
- f. Disapproving training providers who provide inaccurate information; and
- g. Disapproving training providers who violate any provision of the Workforce Investment Act.

**7.14(6)** Initial provider approval. Upon completion of the application, initial approval shall be granted to:

- a. Postsecondary educational institutions that are eligible to receive funds under Title IV of the Higher Education Act of 1965 and provide a program that leads to an associate or baccalaureate degree, certificate, or diploma; and
- b. Entities that carry out apprenticeship programs registered under the National Apprenticeship Act.
- c. Other public and private providers of training services that currently provide a training program shall be required to submit additional information to the regional workforce investment board in the region in which they desire to provide training services.

The department shall accept documentation from the appropriate certification body for postsecondary educational institutions that are eligible to receive funds under Title IV and National Apprenticeship programs, who do not provide a program of training services at the time of application.

**7.14(7)** Other public and private providers of training services that currently do not provide a program of training services at the time of application must:

- a. Document the needs for the training based on specific employer needs in the region; and
- b. Develop a training curriculum with the agreement of local employers.

Once the training provider's program is approved, the training provider shall be included on a statewide list that will be available to customers seeking training services.

**7.14(8)** To be eligible effective July 1, 2000, interested training providers must submit their applications to the regional workforce investment board in their region. The application date shall be established by each regional workforce investment board. All approved applications must be submitted to the department by May 31, 2000. The department has 30 days from the receipt of the regionally approved applications to review and verify the information provided. Initial approval for all training providers shall be effective until November 30, 2001.

**7.14(9)** If a training provider has been determined to be initially eligible and desires to continue its eligibility, it must submit performance information to the regional workforce investment board and meet performance levels annually.

**7.14(10)** Each regional workforce investment board shall maintain a list of all approved training providers, including providers for on-the-job and customized training in the region and make the list available statewide. The regional workforce investment board shall submit all approved applications to the department after the applications are received locally. The department shall be responsible for maintaining the statewide list of all approved training providers. The list will be updated at least annually or as needed and made available to participants in employment and training activities and others through the regional workforce development center system. The regional workforce invest-

ment board has the responsibility of notifying all known providers of training in the board's region regarding the process and time line for accepting applications. The department may approve training providers from other neighboring states when requested.

**7.14(11)** Application process for initial approval.

a. Postsecondary educational institutions that are eligible to receive funds under Title IV of the Higher Education Act of 1965 and entities that carry out programs under the National Apprenticeship Act must submit an application as required by the regional workforce investment board. The regional workforce investment board may develop its own application procedures or adopt the procedure developed by the department for other public and private training providers.

b. Other public or private providers of a program of training services shall be required to complete and submit an application to the regional workforce investment board in each region as specified below. The application requires identifying information on the training provider and enrollment periods, as well as the following information:

- (1) The name and description of the training program(s) to be offered.
- (2) The cost of each training program (tuition; books; supplies, including tools; uniforms; fees, including laboratory; rentals, deposits and other miscellaneous charges) to complete a certificate or degree program or an employer identified competency skill.
- (3) A description of the facility and organization of the school.

c. Program completion rate for all individuals participating in the applicable program conducted by the provider. A program completer is a person who has obtained a certificate, degree, or diploma; or received credit for taking the program; or received a passing grade in the program; or finished the required curriculum of the program.

d. Percentage of all students in the program who obtained unsubsidized employment.

e. Average wages of all students in unsubsidized employment.

For initial approval, the regional workforce investment board may require additional information.

**7.14(12)** Required information for subsequent approval. To remain an approved training provider, all training providers must have their performance information reviewed by the regional workforce investment board on an annual basis. The required performance information for subsequent approval includes the following information:

- a. Program completion rate for all individuals participating in the applicable program conducted by the provider.
- b. Percentage of all students who obtained unsubsidized employment.

c. Average wages of all students who obtained unsubsidized employment. (If a training provider is using the unemployment insurance database to calculate wages, the average starting wage will be calculated by a national Department of Labor formula that converts quarterly unemployment insurance wages into an hourly rate.)

d. Where applicable, the rates of licensure or certification, attainment of academic degrees or equivalents, or attainment of other measures of skill of the graduates of the training program.

e. Percentage of WIA participants who obtained unsubsidized employment;

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f. Percentage of WIA participants who have completed the training program and who are placed in unsubsidized employment;

g. Retention rates in unsubsidized employment, for six months after the first day of employment, of WIA participants who have completed the training program;

h. Average wages, six months after the first day of employment, received by WIA participants who have completed the training program;

i. Average actual cost of training, including tuition, fees, and books, for WIA participants to complete the training program.

The department shall publish, on an annual basis, guidelines on acceptable performance measures for training providers.

**7.14(13) Nonapproval.** The department, in consultation with the regional workforce investment board, determines whether or not to approve a training provider. If the regional workforce investment board determines that the training provider does not meet the established performance levels, a written recommendation shall be sent to the division administrator of the division of workforce development center administration. The division administrator shall make a determination whether the training provider is disapproved and removed from the list. Regional workforce investment boards and the department must take into consideration the following factors when determining subsequent approval:

a. The specific economic, geographic, and demographic factors in the region in which the training providers seeking approval are located; and

b. Characteristics of the populations served by the training providers seeking approval, including difficulties in serving such populations, where applicable.

If it is determined that an eligible provider or an individual supplying information on behalf of the provider intentionally supplies inaccurate information, the department shall terminate the approval of the training provider for a minimum of two years. If either the regional workforce investment board or the department determines that an eligible provider substantially violates any requirement under the Act, it may terminate approval to receive funds for the program involved or take other such action as determined to be appropriate. A provider whose approval is terminated under any of these conditions is liable to repay all WIA training funds it received during the period of noncompliance.

**7.14(14) Appeal process.** If a training provider has been determined to be ineligible by failing to meet performance levels, intentionally supplying inaccurate information, or violating any provision of the Act, it has the right to appeal the denial of approval to the department. The training provider shall follow appeal procedures as defined in 7.22(13).

**877—7.15(84A,PL105-220) Financial management.** Allowable costs shall be determined in accordance with the Office of Management and Budget (OMB) circulars applicable to the various entities receiving grant funds from the department. Nothing in this rule shall supersede the requirements placed on each entity as promulgated by the applicable OMB circular including factors which affect allowability of costs, reasonable costs, allocable costs, applicable credits, direct costs, indirect or facility and administrative costs, allowable costs as defined in "selected items of costs," in accordance with the appropriate OMB circular.

Additional regulations applicable to contractors are found in 29 CFR Part 97 for State and Local Governments and Part 95 for Institutions of Higher Education, Hospitals and other

Non-Profit Organizations. Exceptions to those regulations are that:

1. Procurement contracts and other transactions between local boards and units of state and local governments must be conducted only on a cost reimbursement basis;

2. Program income shall be calculated based on the methods outlined in 7.15(2).

3. Any excess revenue over expenditures incurred for services provided by a governmental unit or non-profit must be considered program income.

**7.15(1)** General requirements of a financial management system. Financial management systems should provide fiscal controls and accounting procedures that conform to generally accepted accounting principles (GAAP) as they relate to programs administered. A financial management system must also have certain procedures in place to ensure that the system meets the requirements of state and federal laws and regulations.

**7.15(2)** Program income means income generated by a program-supported activity or earned only as a result of the contract.

a. Program income includes:

(1) Income from fees for services performed and from conferences;

(2) Income from the use or rental of property acquired with contract funds;

(3) Income from the sale of commodities or items fabricated under a contract;

(4) Income generated due to revenue in excess of expenditures for services rendered, when provided by a governmental unit or nonprofit entity.

b. Program income does not include:

(1) Interest earned on grant funds, rebates, credits, discounts, refunds, or any interest earned on any of them. (Such funds shall be credited as a reduction of costs if received during the same funding period. Any credits received after the funding period must be returned to the department.);

(2) Taxes, special assessments, levies, fines, and other governmental revenues raised by a contractor;

(3) Income from royalties and license fees, copyrighted material, patents, patent applications, trademarks, and inventions developed by a contractor;

(4) Any other refunds or reimbursements, such as Pell Grant reimbursement. (Such funds shall be credited back to the program that incurred the original costs.);

(5) Any other funds received as the result of the sale of equipment. (Such funds shall be credited back to the program that incurred the original costs.)

c. Costs incidental to the generation of program income must be deducted, if not already charged to the grant, from gross program income to determine net program income. Net program income earned may be retained and not sent back to the department, if such income is added to the funds committed to the particular program under which it was earned. Net program income must be used for allowable program purposes, and under the terms and conditions applicable to the use of that program's funds. Program income generated may be used for any allowable activity under the program that generated that income.

d. All net program income generated and expended must be reported to the department each month on the financial status report. Documentation of the use of net program income must be maintained on file. Any net program income not used in accordance with the requirements of this rule must be returned to the department.

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e. The classification of costs, including cost limitations, apply to net program income. Net program income must be disbursed prior to requesting additional cash payments. Net program income not disbursed prior to the submittal of the annual closeout reports must be returned to the department.

f. If the net program income cannot be used by the region that generated such income for allowable purposes the funds must be returned to the department. The department may permit another region to use the net program income for allowable purposes.

**7.15(3)** Working capital advance payments of federal funds.

a. Reimbursement is the preferred method for payment. However, the subrecipient may provide working capital advance payments of federal funds only to contractors, not vendors or training providers, after determining that:

(1) Reimbursement is not feasible because the contractor lacks sufficient working capital;

(2) The contractor meets the standards of this rule governing advances to contractor;

(3) Advance payment is in the best interest of the grantee or subrecipient; and

(4) The reason for needing an advance is not the unwillingness or inability of the grantee or subrecipient to provide timely reimbursements to meet the contractor's actual cash disbursements.

b. If the conditions in 7.15(3)"a" are met, working capital advance payments may be made to contractors by use of one of the two procedures outlined below:

(1) Cash is only advanced (through check or warrant) to the contractor to cover its estimated disbursement needs for an initial period, generally geared to the contractor's disbursement cycle, but in no event may the advance exceed 20 percent of the contract amount. After the initial advance, the contractor is only reimbursed for its actual cash disbursements; or

(2) Cash is advanced electronically on a weekly basis similar to the system maintained between the department and its contractors. Drawdowns and expenditures must be timed in a way that minimizes the delay between the receipt and actual disbursement of those funds.

**7.15(4)** Cost allocation. The methods of cost allocation identified in this subrule are not all inclusive. Any method chosen must be consistent with cost allocation principles as defined in the OMB circular applicable to the contractor.

a. Any single cost which is properly chargeable to more than one program or cost category is allocated among the appropriate programs and cost categories based on the benefits derived. Contractors that receive WIA funds are required to maintain a written cost allocation for WIA expenditures. A cost allocation plan is the means by which costs related to more than one program or cost category are distributed appropriately. All costs included in a cost allocation plan must be supported by formal accounting records that substantiate the propriety of eventual charges. Each subrecipient must develop a written plan that addresses how joint costs will be allocated during the fiscal year. The plan must include:

(1) The time period involved;

(2) Programs that must be allocated;

(3) Basis to be used for allocation; and

(4) Exceptions to the general rules.

Any cost that cannot be identified as a direct cost of a particular program or a cost category is allocated based on one of the acceptable methods discussed above and must be included in the cost allocation plan.

b. Cost allocation plans are based on a documented basis. The basis upon which a given cost is allocated is relevant to the nature of the cost being allocated, and whether the cost is a legitimate charge to the program(s) and cost category to which it is being allocated. The basis upon which costs are allocated is consistent throughout the fiscal year.

c. Possible acceptable actual bases for allocating costs include:

(1) Staff timesheet allocation basis (fixed or variable).

(2) Service level allocation basis (fixed or variable).

(3) Usage rate allocation basis (fixed or variable).

(4) Full time employees (FTE) basis (fixed only).

d. Funds received under various programs may be allocated using the cost pooling method. Under a cost pooling method, expenditures that cannot be identified to a particular cost category or program may be pooled and allocated in total on a monthly basis. If this method is established, the expenditures must be allocated to each program based upon the benefit derived by each program. Cost pools may be established for a cost category, a line item in an agency's budget or to include multiple programs. The process used to allocate pool costs must ensure that no program or cost category is charged an amount in excess of what is allowed by law or regulation. Examples include:

(1) Administrative, program services or combined cost category pool (An administrative pool may be used if an entity also has administrative costs associated with programs other than WIA Title I programs.).

(2) Facility or supplies line item cost pool.

(3) Workforce (multiple) programs.

e. Cost allocation plans must be submitted by August 31 of each year to Bureau of Administrative Support, Budgeting and Reporting, Department of Workforce Development, 1000 E. Grand Avenue, Des Moines, Iowa 50309.

**7.15(5)** Indirect costs may be charged to programs, if the contractor has an approved indirect cost agreement with a federal cognizant agency or another state agency and the agreement covers the term of the grant. The plan must be in compliance with the applicable OMB circular for the entity charging indirect costs.

**7.15(6)** Time and attendance documentation must be maintained for any individual who receives any part of the individual's wage from programs funded by WIA and for all participants receiving payments based in whole or in part on attendance in programs funded by WIA.

**7.15(7)** A contractor receiving federal or state funds from the department and conducting its own procurement must have written procurement procedures. The procedures must be consistent with applicable state and local laws and regulations; the procurement standards set forth in this subrule; and the regulations as described in 29 CFR Part 95 for institutions of higher education and nonprofit organizations; or 29 CFR Part 97 for state and local government organizations.

a. State and federal procurement laws and regulations, including the procurement standards set forth in this subrule, take precedence over any contractor procurement policies and procedures.

b. The written procurement policies and procedures of each contractor must include, at a minimum, the following elements:

1. Authority to take procurement actions;

2. Standards of conduct;

3. Methods of procurement;

4. Solicitation procedures; and

5. Documentation requirements.

c. There are three types of allowable procurement procedures: request for quotations (RFQ), request for proposals

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(RFP), and sole source. Contractors must conduct competitive procurement except as outlined in "d" below.

d. The circumstances or situations under which sole source procurement is allowable are limited to the following:

- (1) Any single purchase of supplies, equipment, or services totaling less than \$2,000 in the aggregate;
- (2) Single participant work experience, vocational exploration, limited internship and on-the-job training contracts;
- (3) Enrollment of individual participants in institutional skills training;
- (4) All other individual training or services contracts involving only one participant, except where such contracts include the purchase of property. Such property must be purchased through competitive procedures;
- (5) Activities and services that are provided by the fiscal agent, designated service provider, or subrecipient when a determination of demonstrated performance clearly documents the staff's ability to provide the training or services;
- (6) A modification to a contract that does not substantially change the statement of work of that contract;
- (7) After solicitation of an adequate number of sources, only one acceptable response was received;
- (8) Any single service or workshop costing less than \$5,000 identified in the regional customer service plan;
- (9) Supplies, property and services which have been determined to be available from a single source; and
- (10) An emergency situation for which the department or applicable governing boards provide written approval.

**7.15(8)** Property purchased with funds received through the department must be acquired in accordance with the department standards.

a. Prior approval must be obtained from the department before purchasing:

- (1) Any property with a unit acquisition value of \$5,000 or more.
- (2) All personal computer logic units (e.g., hard drives, servers, routers, hubs) and monitors.

b. Real property (real estate and land) shall not be purchased with funds received through the department.

c. Title to all property purchased with the department funds, including participant property, is vested with the state if the state is the majority owner. (If more than one agency contributed funds for the purchase of property, the majority owner is the entity that provided the largest portion of funds. In instances in which entities contributed the same amount of funding, the state is considered the majority owner.)

d. Prenumbered department property tags shall be affixed to all property with a unit acquisition value of \$2,000 or more, and to all personal computer logic units and monitors. Unnumbered department property tags shall be affixed to all property with a per-unit cost of less than \$2,000. Prenumbered and unnumbered tags will be provided to each region.

e. At a minimum, an inventory of all property must include the following:

1. Property tag number;
2. Description of the property;
3. Stock or identification number, including model and manufacturer's serial number, when applicable;
4. Manufacturer;
5. Purchase date;
6. Purchase order number, when applicable;
7. Unit cost;
8. Location of property;
9. Condition of property;
10. Disposition of property as applicable; and
11. Grant agreement number.

f. A physical observation of all property must be conducted by the program operator prior to the end of each fiscal year (June 30). A complete inventory list must be provided to the department in each fiscal year's close-out package.

g. All property purchased with the department funds or transferred from programs under the authority of the department must be used to meet program objectives and the needs and priorities identified in the regional customer service plan. Property purchased with the department funds must be used by the coordinating service provider or program operator in the program or project for which it was acquired, as long as it is needed for that project or program. When no longer needed for the original program or project, the property may be used in other activities supported by the department.

h. The department-purchased property may be made available for use on other projects or programs providing such use does not interfere with the work on the project or program for which it was originally acquired. Priority should be given to other programs or projects supported by the department.

i. Disposition of any property, including participant property, is allowable only with the written concurrence of the department. The request to dispose of property must be in writing and include:

1. A description of the property;
2. Its purchase price;
3. Property tag number;
4. Current condition; and
5. Preference for the method of disposal.

j. The method of disposal may be the outright disposal by local waste agencies of items that are either unusable or unsafe or are currently of immaterial value. Those items that do not fit this definition may be sold locally, using a public process, to generate program income.

k. Requests to dispose of property are to be sent to Business Management, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

l. Any funds generated from sale of property are to be considered program income and must be used to further the objectives of the program(s) that paid for that property originally. If that funding source no longer exists, then the program income generated must be used for other allowable employment or training activities. In cases where the property was purchased from multiple funding sources, the program income generated may be attributed to the funding source that paid the greatest share of the cost of the property. Otherwise, the program income must be allocated by the same percentages as were used to purchase the property originally.

**7.15(9)** Certifications. All contractors must certify, as a condition to receive funding, compliance with the following laws and implementing regulations:

- a. Workforce Investment Act of 1998 (P.L. 105-220) and all subsequent amendments.
- b. U.S. Department of Labor implementing regulations.
- c. Iowa Code chapters 84, 84A, and 96.
- d. Iowa Administrative Code 877—Chapter 11.
- e. Iowa Civil Rights Act of 1965.
- f. OMB Circular A-87 for State and Local Governments.
- g. OMB Circular A-122 for Non-Profit Entities.
- h. OMB Circular A-21 for Institutions of Higher Education.
- i. Appendix E of 45 CFR Part 74 for hospitals receiving research and development grants.
- j. 29 CFR Part 97 for State and Local Governments.

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k. 29 CFR Part 95 for Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

l. Age Discrimination Act of 1975 (42 USC 6101 et seq.).

m. Section 504 of the Rehabilitation Act of 1973 (29 USC 794).

n. Americans with Disabilities Act of 1990.

o. Title IX of the Education Amendments of 1972 (20 USC 1681 et seq.).

p. Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.).

q. Debarment and suspension; restrictions on lobbying (29 CFR Part 93).

r. Drug-Free Workplace (29 CFR Part 98).

s. Other relevant regulations as noted in the department's handbook for grantees and contracts for services with the department.

**7.15(10) Unallowable costs.** WIA funds shall not be spent on the following:

a. Wages of incumbent employees during their participation in economic development activities provided through a statewide workforce investment system;

b. Expenses prohibited under any other federal, state or local law or regulation;

c. Foreign travel, if the source of funds is formula funds under Subtitle B, Title I of WIA;

d. Financial assistance for any program involving political activities;

e. The encouragement of a business to relocate from any location in the United States if the relocation results in any employees losing their jobs at the original location;

f. Customized, skill, or on-the-job training or company-specific assessments of job applicants or employees of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employees losing their jobs at the original location.

**877—7.16(84A,PL105-220) Auditing.**

**7.16(1)** State and local governments, non-profits, institutes for higher education and hospitals. Contractors that expend \$300,000 or more in a fiscal year in federal funds shall have a single or program-specific audit conducted for that year. Contractors that expend \$300,000 or more in federal funds in a fiscal year shall have a single audit conducted except when they elect to have a program-specific audit conducted. Program-specific audits are allowed under the following circumstances:

a. A contractor expends federal funds under only one federal program; and

b. Federal program laws, regulations, or grant agreements do not require a financial statement audit of the contractor.

Contractors that expend less than \$300,000 in federal funds in a fiscal year are exempt from federal audit requirements for that year. However, records must be made available for review or audit by the state and federal agencies and the general accounting office.

**7.16(2)** Commercial organizations. If such entities expend more than \$300,000 in federal funds in their fiscal year, then either an OMB Circular A-133 (A-133) audit or a program-specific audit must be conducted.

**7.16(3)** Vendors. In most cases, contractors need only ensure that procurement, receipt, and payment for goods or services comply with the laws, regulations, and the provisions of contracts or agreements. However, the contractor is responsible for ensuring compliance for vendor transactions

which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine compliance. If these transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of the contract or agreement.

**7.16(4)** Relation to other audits. Audits performed in accordance with A-133 are in lieu of any financial audit required under individual federal awards. To the extent that this audit meets a federal agency's needs, it shall rely upon and use such audits. However, this does not limit the authority of the federal agency, including the General Accounting Office, to conduct or arrange for additional audits. Federal agencies that conduct additional audits shall ensure that they build upon audit work previously conducted and be responsible for costs incurred for the additional audit work.

**7.16(5)** Frequency of audits. With the following exceptions, the audit is normally conducted on an annual basis. Entities which are required by constitution or statute, in effect on January 1, 1987, to have audits performed less frequently are permitted to undergo audits biennially. Also, nonprofit entities that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, are permitted to undergo audits biennially.

**7.16(6)** Completion and submittal. The audit must be completed and data collection/reporting package forms are to be submitted the earlier of 30 days after the completion of the audit or within nine months after the period covered by the audit. The data collection form and reporting package must also be submitted to the federal clearinghouse designated by the Office of Management and Budget. In addition, one copy of the reporting package and any management letters issued by the auditors are to be submitted to Budgeting and Reporting Bureau, Department of Workforce Development, 1000 E. Grand Avenue, Des Moines, Iowa 50319. Each contractor shall provide one copy of the reporting package to the contracting entity that provided the contractor with WIA funds.

**7.16(7)** Data collection form. Each contractor shall submit a data collection form to the contracting entity that provided the contractor with WIA funds. This form should state whether the audit was completed in accordance with A-133 guidelines and provide information concerning the federal funds and the results of the audit. The form used shall be approved by the Office of Management and Budget, available from the clearinghouse designated by OMB, and include a signature of a senior level representative of the contractor. Also, a certification must be submitted which states that the entity audited complied with the requirements of A-133, that the form was prepared in accordance with A-133, and that the form, in its entirety, is accurate and complete.

The auditors must sign a statement to be included with the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, the form is not a substitute for the reporting package, and the content of the form is limited to the data elements prescribed by OMB.

**7.16(8)** Reporting package. Auditors are required to complete a reporting package that includes:

1. Financial statements and schedule of expenditures of federal awards;
2. Summary schedule of prior audit findings;
3. Auditor's report(s); and
4. Corrective action plan.

## WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

**7.16(9) Records retention.** One copy of the data collection form and one copy of the reporting package must remain on file for three years from the date of submission to the federal clearinghouse.

**7.16(10) Audit resolution.** If an audit is completed with no findings, the department shall receive a notification of audit letter from the appropriate audit firm. The auditee shall be notified of the acceptance of that letter. In no case shall the date from receipt of an acceptable audit report or notification letter to the date of the final determination exceed 180 days. The department shall issue an initial determination within 30 days of receipt of each audit report with negative findings. Such initial determination shall identify costs questioned under the audit and either propose corrective actions to be taken or request additional documentation from the auditee.

a. Each initial determination shall include:

- (1) Relevant statutory, regulatory or grant agreement citations supporting the findings and determinations;
- (2) Necessary corrective actions required by the auditee to achieve compliance;
- (3) A request for additional documentation, as necessary, to adequately respond to the findings; and
- (4) Notice of the opportunity for an audit resolution conference with the department.

Each auditee shall be allowed a 30-day period in which to respond. An additional 30 days in which to respond may be requested in writing prior to the end of the initial 30 days. Such request shall include the reason the extension is needed and the date by which the response will be completed. Such a request must be received by the department no later than 30 days after the issuance of the initial determination. The auditee shall be notified in writing of the approval or disapproval of the request.

b. Within 30 days after the due date of the response to the initial determination, a final determination shall be issued and sent to the auditee. A final determination shall be issued whether or not a response to the initial determination has been made. The final determination shall include:

- (1) Identification of those costs questioned in the audit report that will be allowed and an explanation of why those costs are allowed;
- (2) Identification of disallowed costs, a listing of each disallowed cost and a description of the reasons for each disallowance;
- (3) Notification to the chief elected official board and auditee of final determination and debt establishment, if relevant; and
- (4) Information on the auditee's and chief elected officials board's right to appeal through the department's appeals process.

When a debt has been established, the final determination will be used to set up a debt account in the amount of the debt.

**7.16(11)** The decision to impose the disallowed cost sanction shall take into consideration whether or not the funds were expended in accordance with that program's rules and regulations, the contract agreement, the Iowa Administrative Code and generally accepted accounting practices. Ignorance of the requirements is not sufficient justification to allow a previously questioned cost nor will the auditee's inability to pay the debt be a consideration in the decision to impose the disallowed cost sanction.

**7.16(12)** An audit file shall be maintained for each audit or notification letter received from each auditee. The audit may not be considered closed until such time as the federal

clearinghouse designated by the Office of Management and Budget accepts the state's resolution report.

**877—7.17(84A, PL105-220) Debt collection procedures.**

**7.17(1)** Debt collection begins once the debt has been established by either an audit final determination or financial/program monitoring final decision letter. Debts arising from other forms of oversight will be identified through written communication to the chief elected official board.

**7.17(2)** If the debt is appealed, debt collection is suspended until that appeal is resolved. If the appeal is granted, debt collection shall not be established.

**7.17(3)** No earlier than 15 days, but not later than 20 days, after the debt has been established, an initial demand for repayment letter shall be sent to the chief elected official board by certified mail with return receipt requested. The initial demand letter informs the chief elected official board that a debt has been established and references the previous letter that established the debt. When applicable, instructions for requesting a waiver from debt shall be provided in the letter. The chief elected official board shall be granted 15 days from the date of the initial demand letter either to submit payment in full or to forward the applicable request for waiver. If the chief elected official board refuses those options, does not accept the letter, or if no response is received within the required time frame, a final demand for payment shall be issued.

**7.17(4)** The final demand letter, also sent by certified mail with return receipt requested, shall ask for payment within 10 days from the date of that letter. If the chief elected official board refuses the options identified in the final demand letter, does not accept the letter or does not respond, legal action shall be taken. Such action will seek payment of the debt as well as applicable court costs and accrued interest.

**7.17(5)** The debt collection process is suspended if a request for waiver is received by the department in accordance with waiver policies applicable to that program. If the request for waiver is denied, the debt collection process will continue.

**7.17(6)** Payment options. Payment options include the following:

a. Payment in full. Payment of debts is generally a one-time cash payment due at the time of final determination by the department. In cases of documented financial hardship or for other reasons as allowed by law, the department may grant repayment as outlined in "b" or "c" below. However, the department may charge interest on debts from the date they are established.

b. Repayment agreement. A repayment agreement may be negotiated for a time period not to exceed one year. The agreement must be written and signed by both parties. The agreement must include a schedule of payments which includes exact payment dates, amount of debt and each payment, interest, dates of agreement and a requirement for payment in full for breach of the agreement by the chief elected official board.

c. Allocation reduction. Where allowable, a reduction may be made in a chief elected official board's budget to offset a debt. This may be done in cases where the misexpenditure of funds was not due to willful disregard of the Act or regulations, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure. Such allocation reductions will come from administrative funds only.

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**877—7.18(84A,PL105-220) Grantee report requirements.**

**7.18(1) Financial reports.** Financial status reports, fund source pages and funds verification forms are tools used by the department for oversight of financial activity, as well as providing the documentation necessary to complete state and federal reports. Failure to report in a timely manner may result in advance payment delays, negative performance evaluations or possible termination of the contract.

a. Financial status reports/fund source pages. Expenditures must be reported according to the programs and cost categories identified in the budget summary section of each contract. Revenue is reported according to the amount drawn from the department, via wire transfer, at the end of the reporting period. At least quarterly (September, December, March and June reports) expenditures must be reported on an accrued cost basis. Expenditures should further be reported on a modified first-in, first-out basis, which means the oldest year's funds, by cost category, are to be expended first. Financial status reports and fund source pages are to be submitted to Department of Workforce Development, Bureau of Financial Management, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

b. Funds verification forms. Funds drawn by the contractor from the department are done so by electronic funds transfer. The funds are generally requested on Monday of each week and distributed on Friday of the same week. Exceptions are made for weeks that include holidays and those are addressed on a case-by-case basis. The financial management bureau of the department shall notify contractors in advance of call-in date changes. Funds are requested by preparation of an electronic funds verification form that is attached to an E-mail request. This is sent to the financial management bureau and is the basis for the Friday wire transfer. In order to establish a wire transfer system for a contractor, bank account information must be received by the department two weeks prior to the first wire transfer of funds. The timing of the contractor's receipt of funds and the disbursement of those funds must be done in a manner that minimizes the time that elapses between those two transactions.

**7.18(2) Program reports.** The information entered into the department's management information system is the official database to be used for reporting. Reports are to be submitted to the program coordinator responsible for each individual program. Monthly expenditure reports are due on the twentieth of the month following the month that is being reported. Final federal program reports for adult and dislocated worker programs are due August 15 of each year. Final federal program reports for youth programs are due May 15 of each year.

**7.18(3) Performance reports.** Progress on performance objectives must be reported to the department on a quarterly basis. Quarterly progress reports are due from each regional workforce investment board on October 30, January 31, and April 30 of each year. The annual progress report is due from each region to the department on August 15 of each year.

**877—7.19(84A,PL105-220) Compliance review system.** The department shall conduct annual financial, program, and quality reviews.

**7.19(1) Financial compliance reviews.** An annual financial compliance review shall be conducted by the department. The on-site reviews will be of all programs administered through written agreement between the department, the subrecipient, and the fiscal agents. Monitoring of non-fiscal agent entities will be limited to those subcontractors of the department that receive \$100,000 or more during the fiscal

year. The monitoring will be performed to ensure compliance with, but is not limited to, federal and state laws and regulations, the workforce development center system handbook, welfare-to-work handbook, contractual agreements with the department, and generally accepted accounting principles, memorandum(s) of understanding, resource sharing agreements and cost allocation plans.

**7.19(2) Program compliance reviews.** An annual program compliance review shall be conducted by the department. The reviews will focus on the designated service providers for various programs. The on-site reviews include, but are not limited to, the following: activities and services; applicant and participant processes; participant eligibility; participant file review; procurement procedures; management information systems; local plans; and verifications of program performance. The review will ensure local compliance with the applicable state and federal laws and regulations.

**7.19(3) Initial determination.** Separate initial determination letters are completed for each on-site visit. The report shall include a description of findings, which includes specific references to the standards, policies or procedures which have been violated; if necessary, recommended and required corrective action to be implemented by the contractor, designated service provider or coordinating service provider; a description of any questioned costs, including the amount; and time frames for completing any corrective action and responding to the initial report. Responses to the initial determination letter shall be submitted to the department within 20 days from the date of receipt of the letter.

**7.19(4) Final determination.** A final determination letter shall be issued to the subrecipient within 20 days after receipt of the response from the fiscal agent. The letter shall state the department's determination on all findings that required a response and the notification of the right to appeal the final determination. If any findings are unresolved or if costs are disallowed, the letter shall also include a description of the unresolved finding(s); a citation or reference to the applicable regulations or policies on which the finding was based; the final determination of the department on each unresolved finding; and, if there are disallowed costs, the amount of costs disallowed and notification that an initial demand letter shall be sent. Copies of the final determination letter shall be sent to each region's regional workforce investment board, chief elected official board, and coordinating service provider chairs.

**7.19(5) Follow-up.** Follow-up on findings identified shall be conducted during the following fiscal year's review. The department's follow-up will review corrective actions taken in response to those findings.

**7.19(6) Appeals.** The subrecipient may submit an appeal of a final determination within ten days of receipt of the final determination. The appeal may be on behalf of a designated service provider, coordinating service provider or the fiscal agent. The appeal must be directed to the Division Administrator, Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309. The request for an appeal must also include a copy of the final determination and the basis for the appeal. Appeals shall be reviewed by a three-member appeal committee which shall include one staff member from three different bureaus in the department. Appeals shall be reviewed by staff not actually involved in the on-site monitoring that resulted in the original finding and subsequent final determination. A decision on the appeal shall be rendered by a majority vote of the appeal com-



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mittee. If the appeal committee cannot arrive at a decision, the division administrator shall make the final decision.

**7.19(7) Quality reviews.** The department shall conduct annual quality reviews. The reviews will focus on overall workforce development center system performance, customer satisfaction, and continuous improvement.

a. System performance measures will be reviewed with the coordinating service provider to identify areas of strength and areas that may need improvement. The review will include an interview with the required workforce development center system partners individually or the partners as a group, or both. The regional customer service plan will also be reviewed to determine what progress is being made to meet the needs and priorities identified by the regional workforce investment board and chief elected official board. In the event system performance standards are not being met, the objective of the review will be to help identify methods for improvement. Should the same issues be identified for two consecutive years, a corrective action plan will be required by the department. All other issues will be referred to the regional workforce investment board for its action.

b. The memorandum(s) of understanding between the workforce development center system partners and the regional workforce investment board will be reviewed. The purpose is to ensure that the products and services offered through the system are available, accessible, and being used.

c. The review will look at efforts being made to coordinate workforce development services throughout the region, to build new partnerships, and to assess the results of these efforts. This may include, but is not limited to, joint grant applications, efforts to integrate services and minimize duplication from the system, level of participation in the system by required and voluntary partners, and unique funding or service delivery methods involving multiple service providers.

d. Overall customer satisfaction of the workforce development center system is to be evaluated. Randomly selected program participants and employers identified in the common intake system will be interviewed. The interview will include, at a minimum, a review of the customer file as presented on the common intake system, the customers' overall perception of how they were treated, an evaluation of the services offered as compared to the needs of the customer, and a review of the case file with the case manager.

e. An exit interview will be conducted to review the findings with the regional workforce investment board and coordinating service provider. Methods for improving systems will be discussed and an agreement reached on their implementation. The coordinating service provider will have 14 days to respond to the findings and recommendations, at which time a final report will be prepared and delivered to the chair of the regional workforce investment board.

**877—7.20(84A,PL105-220) Equal opportunity compliance.** Reserved.

**877—7.21(84A,PL105-220) Regional level complaint procedures.** Each coordinating service provider must establish procedures for grievances and complaints. At a minimum, the local procedures must provide:

**7.21(1)** A process for dealing with grievances and complaints from participants and other interested parties affected

by the local workforce investment system, including one-stop partners and service providers;

**7.21(2)** An opportunity for an informal resolution and a hearing to be completed within two days of the filing of the grievance or complaint;

**7.21(3)** A process which allows an individual alleging a labor standards violation to submit a grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and

**7.21(4)** An opportunity for a local level appeal to the department when:

a. No decision is reached within 60 days; or

b. Either party is dissatisfied with the local hearing decision.

**7.21(5)** Participants, service providers and other interested individuals must be informed of the local complaint procedure in writing, as well as the ability and procedures to appeal local decisions to the department.

**877—7.22(84A,PL105-220) Department complaint procedures.** Complaints may be filed with the department to resolve alleged violations of the Act, federal or state regulations, grant agreement, contract or other agreements under the Act. The department's complaint procedure may also be used to resolve complaints with respect to audit findings, investigations or monitoring reports.

**7.22(1)** Grievances and complaints from customers and other parties related to the regional workforce development center system and regional programs shall be filed through regional complaint procedures. Any party which has alleged violations at the regional level, and has filed a complaint at the regional level, may request review by the department if that party receives an adverse decision or no decision within 60 days of the date the complaint was filed at the regional level.

**7.22(2)** Any interested person, organization or agency may file a complaint. Complaints must be filed within 90 calendar days of the alleged occurrence. Complaints must be clearly portrayed as such and meet the following requirements:

a. Complaints must be legible and signed by the complainant or the complainant's authorized representative;

b. Complaints must pertain to a single subject, situation or set of facts and pertain to issues over which the state has authority (unless appealed from the regional level);

c. The name, address and telephone number (or TDD number) must be clearly indicated. If the complainant is represented by an attorney or other representative of the complainant's choice, the name, address and telephone number of the representative must also appear in the complaint;

d. Complaints must state the name of the party or parties complained against and, if known to the complainant, the address and telephone number of the party or parties complained against;

e. Complaints must contain a clear and concise statement of the facts, including pertinent dates, constituting the alleged violations;

f. Complaints must cite the provisions of federal or state regulations, grant agreements, or other agreements believed to have been violated, if applicable;

g. Complaints must state the relief or remedial action(s) sought;

h. Copies of documents supporting or referred to in the complaint must be attached to the complaint; and

i. Complaints must be addressed to Complaint Officer, Division of Workforce Development Center Administration,

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Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

**7.22(3)** A complaint is deemed filed with the department when it has been received by the complaint officer and meets the requirements outlined in 7.22(2). Upon receipt of a complaint, the department will send a copy of the complaint and a letter of acknowledgment and notice to the complainant and any persons or entities cited in the complaint within seven calendar days. The letter of acknowledgment and notice shall contain the filing date and notice of the following opportunities:

a. The opportunity for informal resolution of the complaint at any time before a hearing is convened; and

b. The opportunity for a party to request a hearing by filing with the complaint officer within seven calendar days of receipt of the acknowledgment of the complaint.

**7.22(4)** Failure to file a written request for a hearing within the time provided constitutes a waiver of the right to a hearing, and a three-member panel shall rule on the complaint based upon the information submitted. If a hearing is requested within seven calendar days of receipt of the acknowledgment of the complaint, the hearing shall be held within 20 calendar days of the filing of the complaint. The party(ies) to the complaint shall have the opportunity to submit written evidence, statements, and documents in a time and manner prescribed by the complaint officer.

**7.22(5)** The complaint officer shall convene a review panel of three agency staff members to review complaints within 20 calendar days of the receipt of the complaint. The review panel may, at its discretion, request oral testimony from the complainant and the parties complained against. Within 30 calendar days of the receipt of the complaint, the review panel shall issue a written decision, including the basis for the decision and, if applicable, remedies to be granted. The decision shall detail the procedures for a review by the director if the complainant is not satisfied with the decision.

**7.22(6)** Party(ies) may appeal the decision by filing an appeal with the complaint officer no later than 10 calendar days from the issuance date of the decision. The complaint officer will forward the complaint file to the director for review. If no appeal of the decision is filed within the time provided, the decision shall become the final agency decision.

**7.22(7)** A complaint may, unless precluded by statute, be informally settled by mutual agreement of the parties at any time before a hearing is convened. The settlement must be effected by a settlement agreement or a statement from the complainant that the complaint has been withdrawn or resolved to the complainant's satisfaction. The complaint officer must acknowledge the informal settlement and notify the parties of the final action. With respect to the specific factual situation which is the subject of controversy, the informal settlement constitutes a waiver by all parties of the formalities to which they are entitled under the terms of the Iowa administrative procedure Act, Iowa Code chapter 17A, the Act, and the rules and regulations of the Act.

**7.22(8)** Upon receipt of a timely request for a hearing, the complaint officer shall assign the matter to a panel. The panel will give all parties at least seven days' written notice either by personal service or certified mail of the date, time and place of the hearing. The notice may be waived in case of emergency, as determined by the panel, or for administrative expediency upon agreement of the interested parties.

a. The notice of hearing shall include:

(1) A statement of the date, time, place, nature of the hearing;

(2) A brief statement of the issues involved; and

(3) A statement informing all parties of their opportunities at the hearing.

b. All parties are granted the following opportunities at hearing:

(1) Opportunity for the complainant to withdraw the request for hearing before the hearing;

(2) Opportunity to reschedule the hearing for good cause, provided the hearing is not held later than 20 days after the filing of the complaint;

(3) Opportunity to be represented by an attorney or other representative of choice at the complainant's expense;

(4) Opportunity to respond and present evidence and bring witnesses to the hearing;

(5) Opportunity to have records or documents relevant to the issues produced by their custodian when such records or documents are kept by or for the state, contractor or its subcontractor in the ordinary course of business and where prior reasonable notice has been given to the complaint officer;

(6) Opportunity to question any witnesses or parties;

(7) The right to an impartial review panel; and

(8) A final written agency decision shall be issued within 60 days of the filing of the complaint.

**7.22(9)** An appeal to the director must be filed within 10 calendar days from the issuance date of the decision and include the date of filing the appeal and the specific grounds upon which the appeal is made. Those provisions upon which an appeal is not requested shall be considered resolved and not subject to further review. Appeals must be addressed to Complaint Officer, Division of Workforce Development Center Administration, Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309.

Upon receipt of an appeal, the complaint officer shall forward the complaint file to the director. The complaint officer shall give written notice to all parties of the filing of the appeal and set a deadline for submission of all written evidence, statements, and documents. The director shall consider all timely filed appeals, exceptions, statements, and documents at the time the decision is reviewed. With the consent of the director, each party may present oral argument. The director may adopt, modify or reject the review panel's decision or remand the case to the review panel for the taking of such additional evidence and the making of such further findings of fact, decision and order as the director deems necessary.

Upon completing the review of the review panel's decision, the director shall issue and forward to all parties a final written decision no later than 60 days after the filing of the initial complaint.

**7.22(10)** The director's decision is final unless the Secretary of Labor exercises the authority of federal review in accordance with 20 CFR Part 667. Federal level review may be accepted by the Secretary if the complaint meets the requirements of 20 CFR Part 667. Upon exhaustion of the state's grievance and complaint procedure, or when the Secretary has reason to believe that the state is failing to comply with the Act, the state plan, or the region's customer service plan, the Secretary must investigate the allegation or belief and determine within 120 days after receiving the complaint whether such allegation or complaint is true.

**7.22(11)** Any party receiving an adverse decision at the regional level may file an appeal within 10 calendar days to the department's complaint officer. In addition, any complaint filed at the regional level with no decision within 60 days of the date of the filing may be reviewed by the department. The request to review the complaint must be filed with the complaint officer within 15 calendar days from the date

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on which the decision should have been received. The appeal or request for review must comply with the procedures as prescribed in 7.22(2) for filing a complaint. The parties involved shall be afforded the rights and opportunities for filing a state level complaint.

The complaint officer shall review all complaints filed within seven calendar days. If the subject and facts presented in the complaint are most relevant to regional policy, the complaint officer shall remand the complaint to the coordinating service provider of the appropriate region for resolution.

Failure to file the complaint or grievance in the proper venue does not negate the complainant's responsibility for filing the complaint in the appropriate time frames.

**7.22(12)** A unit or combination of units of general local governments or a rural concentrated employment program grant recipient that requests, but is not granted automatic or temporary and subsequent designation as a local workforce investment area, may appeal to the state workforce development board within 30 days of the nondesignation. If the state workforce development board does grant designation on appeal, the decision may be appealed to the Secretary of Labor within 30 days of the written notice of denial. The appeal must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210. The appellant must establish that it was not accorded procedural rights under the appeal process described in the state plan or establish that it meets the requirements for designation in the Act. The Secretary shall take into account any comments submitted by the state workforce development board.

**7.22(13)** Training providers have the opportunity to appeal denial of eligibility by a regional workforce investment board or the department, termination of eligibility or other action by a regional workforce investment board or the department, or denial of eligibility as a provider of on-the-job training or customized training by the coordinating service provider. All appeals must be filed with the department within 30 days of receipt of written notice of denial or termination of eligibility. Appellants must follow the proce-

dures for a complaint described in 7.22(2). Appeals shall be handled in the same manner as a complaint. State decisions issued under this subrule may not be appealed to the Secretary of Labor.

**7.22(14)** WIA participants subject to testing for use of controlled substances and WIA participants who are sanctioned after testing positive for the use of controlled substances may appeal to the department using the procedures for a complaint described in 7.22(2). State decisions issued under this subrule may not be appealed to the Secretary of Labor.

**7.22(15)** A workforce development region may appeal nonperformance sanctions to the Secretary of Labor under the following conditions:

a. The region has been found in substantial violation of WIA Title I, and has received notice from the governor that either all or part of the local plan will be revoked or that a reorganization will occur; or

b. The region has failed to meet regional performance measures for two consecutive years and has received the governor's notice of intent to impose a reorganization plan. Revocation of the regional plan or reorganization does not become effective until the time for appeal has expired or the Secretary has issued a decision. An appeal must be filed within 30 days after receipt of written notification of plan revocation or imposed reorganization. It must be submitted by certified mail, return receipt requested, to Secretary of Labor, Attention: ASET, U.S. Department of Labor, Washington, D.C. 20010. A copy of the appeal must be simultaneously provided to the governor. In deciding the appeal, the Secretary may consider comments submitted in response from the governor. The Secretary will notify the governor and appellant in writing of the Secretary's decision within 45 days after receipt of the appeal filed under 7.22(15)"a" above; and within 30 days after receipt of appeals filed under 7.22(15)"b" above.

These rules are intended to implement Iowa Code sections 84A.1 to 84A.1B, Iowa Code chapter 96, and the Workforce Investment Act of 1998.

## ARC 9659A

## DENTAL EXAMINERS BOARD[650]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 5, "Organization"; Chapter 6, "Public Records and Fair Information Practices"; Chapter 9, "Declaratory Orders"; Chapter 25, "Continuing Education"; Chapter 31, "Complaints and Investigations"; and Chapter 51, "Contested Cases," Iowa Administrative Code.

The amendments change references to the board's office address.

In compliance with Iowa Code subsection 17A.4(2), the Board finds that notice and public participation are unnecessary in that the amendments reflect a change of office location and mailing address and such amendments have been previously identified as a category of rules exempt from notice.

The Board also finds, pursuant to Iowa Code subparagraph 17A.5(2)"b"(2), that the normal effective date of these rules should be waived and the rules should become effective immediately upon filing. These changes confer a benefit to the public and to persons regulated by the Board by ensuring that references to the Board's location and mailing address are correct. The Board's offices relocated in October 1999.

These amendments were approved at the January 20, 2000, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapter 17A.

These amendments became effective January 21, 2000.

The following amendments are adopted.

Amend rule 650—5.5(153); subrule 6.3(1); rule 650—9.1(17A); subrule 9.3(3); rule 650—9.5(17A); subrule 9.6(2); subrule 25.4(3); rule 650—25.10(153); rule 650—31.3(153); subrule 51.13(4); and subrule 51.13(5) by striking "Executive Hills West, 1209 East Court, Des Moines, Iowa 50319" and inserting "400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687."

[Filed Emergency 1/21/00, effective 1/21/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

## ARC 9678A

## LABOR SERVICES DIVISION[875]

## Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 17A.3(1) and Iowa Code Supplement section 94A.5, the Labor Commissioner hereby amends Chapter 38, "Employment Agency Licensing," Iowa Administrative Code.

The amendments relate to licensing and operating procedures for employment agencies. The amendments implement legislation enacted by 1999 Iowa Acts, House File 521 [Iowa Code Supplement chapter 94A]. The legislation narrows the scope of private employment agency licensing.

These amendments remove provisions no longer applicable under the new legislation which exempts the licensing re-

quirement for employment agencies charging fees only to employers. Additionally, the rules set forth activities not considered to constitute an employment agency.

The purposes of these amendments are to implement the statute; further the legislative goals; and improve administrative efficiency and effectiveness.

No waiver provision is included because the Division of Labor Services has filed a Notice of Intended Action regarding the adoption of agencywide waiver rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 25, 1999, as ARC 9289A. No public comments were received.

These amendments are different from the Notice of Intended Action. A definition of "agency" is added; numerous nonsubstantive editing changes have been made; additional language describing the documents that must accompany an application form is added; changes to make the rules more consistent with the statute have been made; child support noncompliance is added as a basis for denial, revocation or suspension of a license; and rule 875—38.9(94) is rescinded.

Pursuant to Iowa Code section 17A.5(2)"b"(2), these amendments will become effective upon publication on February 9, 2000. The Labor Commissioner finds that these amendments remove restrictions on a segment of the public.

These amendments will become effective on February 9, 2000.

These amendments are intended to implement Iowa Code Supplement chapter 94A.

The following amendments are adopted.

ITEM 1. Amend 875—Chapter 38 by changing the parenthetical implementation statute from chapter "94" or chapter "95" to "94A" wherever it appears.

ITEM 2. Amend 875—Chapter 38 by striking all rule implementation clauses and inserting at the end of the chapter the following language: "These rules are intended to implement Iowa Code Supplement chapter 94A."

ITEM 3. Amend rule 875—38.1(94A) by striking the definitions "applicant," "licensee" and "private employment agency (agency)" and inserting the following new definitions in alphabetical order:

"Agency" means employment agency.

"Employee" means a person who seeks employment or who obtains employment through an employment agency.

"Employment agency" means a person who brings together those desiring to employ and those desiring employment and who receives a fee, privilege, or other consideration directly or indirectly from an employee for the service. "Employment agency" does not include a person who furnishes or procures theatrical, stage, or platform attractions or amusement enterprises.

ITEM 4. Amend subrule 38.2(1) to read as follows:

**38.2(1) Application.** An application ~~PEA-1(3096164)~~ for a license must be made in writing to the commissioner upon ~~forms designated by the commissioner Form PEA-1(309-6164).~~ ~~Forms to be completed include the~~ The application and affidavit form and shall be accompanied by two copies each of the employer employee-paid fee and applicant-paid fee schedules ~~schedule Form PEA-2(309-6164); \$75 nonrefundable fee; and all contract forms to be signed by an employee. The application shall also be accompanied by a surety company bond in the sum of \$30,000, to be approved by the commissioner and conditioned to pay any damages that may accrue to any person due to a wrongful act~~

LABOR SERVICES DIVISION[875](cont'd)

or violation of law on the part of the applicant in the conduct of business.

ITEM 5. Amend subrule 38.2(2) to read as follows:

**38.2(2) Name.** No licensee agency shall use any name, symbol or abbreviation deceptively similar to or reasonably likely to be confused with the name used by an existing licensee agency, any governmental agency unit, or nonprofit agency organization.

ITEM 6. Amend subrule 38.2(3) by striking "Iowa Code section 95.2" and inserting in lieu thereof "Iowa Code Supplement chapter 94A."

ITEM 7. Amend subrules 38.2(4) and 38.2(5), 38.6(3) to 38.6(5), 38.8(1) and 38.8(3) by striking the word "licensee" or "licensees" and inserting in lieu thereof the word "agency" or "agencies" as appropriate.

ITEM 8. Rescind subrules 38.2(7), 38.6(6), and 38.8(4) and rules 875—38.3(94,95,17A) to 38.5(94,95,17A), 38.7(94), 38.9(94) and 38.10(95).

ITEM 9. Adopt new rule 875—38.3(94A) as follows:

**875—38.3(94A) Non-employment agency activity.** The following activities do not require an employment agency license:

1. Appraisal of an employee's qualifications.
2. Development of career goals and marketing plans.
3. Preparation and printing of résumés.
4. Instruction on interview techniques and networking.
5. Counseling on negotiating pay and fringe benefits.
6. Assistance in obtaining employment when provided by schools, colleges, trade unions, and similar organizations for their students or members if any fees paid are for tuition, training, or dues and would be charged even if the student or member did not attempt to utilize the organization's employment search services.
7. Furnishing or procuring theatrical, stage, or platform attractions or amusement enterprises.
8. Any activity by a governmental unit.

ITEM 10. Adopt new rule 875—38.4(94A) as follows:

**875—38.4(94A) Complaints.** Written complaints by an aggrieved party will be investigated. The commissioner will notify the aggrieved party in writing of the outcome of the investigation. The commissioner may take any appropriate action including denial, revocation, reprimand, and suspension.

ITEM 11. Adopt new rule 875—38.5(17A,94A,252J) as follows:

**875—38.5(17A,94A,252J) Denials, revocations, reprimands and suspensions.**

**38.5(1)** The commissioner may deny, revoke, or suspend a license or issue a reprimand when the commissioner finds that any of the following conditions exist:

- a. The license applicant has violated any of the provisions of Iowa Code Supplement chapter 94A or the rules of this chapter; or
- b. The child support recovery unit of the department of human services has issued a certificate of noncompliance to an employment agency; or
- c. The license application or its required attachments are inaccurate, incomplete or otherwise insufficient.

**38.5(2)** Contested cases shall be governed by Iowa Code chapter 17A and Iowa Administrative Code 875—Chapter 1, Division V.

ITEM 12. Amend subrules 38.6(1), 38.6(2), 38.6(5), and 38.8(3), paragraph "b," by striking the last sentence regarding licenses exempted under Iowa Code section 94.6.

ITEM 13. Amend subrules 38.6(1) to 38.6(3), 38.6(5), 38.8(1), and 38.8(3) by striking the words "applicant", "applicants" or "applicant's" and inserting the words "employee", "employees" or "employee's" as applicable.

ITEM 14. Amend subrule 38.6(4) as follows:

**38.6(4)** Each licensee agency shall keep conspicuously posted at its place of business a copy of each the agency's schedule of fees on file with the commissioner. The schedules shall be printed in not less than 8-point type.

ITEM 15. Amend paragraph 38.8(2)"c" by striking the telephone number "(515)281-3606" and inserting in lieu thereof the number "(515)281-8493".

[Filed Emergency After Notice 1/21/00, effective 2/9/00]  
[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

**ARC 9639A**

## TREASURER OF STATE[781]

### Adopted and Filed Emergency

Pursuant to the authority of 1999 Iowa Acts, chapter 177, section 5, the Treasurer of State hereby amends Chapter 4, "Linked Investments for Tomorrow (LIFT)," Iowa Administrative Code.

New rule 781—4.11(78GA,ch177) replaces the current procedures governing the participation, forms, and use of proceeds in the Value-Added Agriculture LIFT program.

In compliance with Iowa Code section 17A.4(2), the Treasurer finds that notice and public participation are contrary to the public interest due to the current state of the agricultural economy. This rule confers an immediate benefit to the people of Iowa by providing producers with access to capital for value-added agriculture as quickly as possible.

Pursuant to Iowa Code section 17A.5(2)"b"(2), this amendment became effective on January 18, 2000. The Treasurer finds that this amendment confers a benefit on the people of Iowa by providing producers with access to capital for value-added agriculture as quickly as possible, due to the current state of the agricultural economy.

This amendment is intended to implement Iowa Code Supplement section 12.43B (1999 Iowa Acts, chapter 177, section 5).

The amendment became effective on January 18, 2000.

The following amendment is adopted.

Rescind 781—4.11(12) and adopt the following new rule:

**781—4.11(12) LIFT – value-added agriculture linked investment loan program.**

**4.11(1) Definitions.**

"Agricultural commodities" means corn, soybeans, oats, hay, hogs, cattle, dairy cattle, milk, sheep, chicken, turkey and eggs.

"Economic development officials" means value-added agriculture experts from the Iowa department of economic development, the department of agriculture and land stew-

TREASURER OF STATE[781](cont'd)

ardship and any other governmental, academic and industry groups involved in promoting value-added agriculture.

“Value-added agriculture” means processing agricultural commodities raised in Iowa into a more highly valued state by the addition of capital and labor inputs in which the form of the original agricultural commodity is changed or the agricultural commodity is produced for a new market.

“Value-added project” means specific company or business operation that qualifies for the value-added linked investment program.

**4.11(2) Eligibility.**

a. The value-added project, business or farming operation, borrower, and lender must be located in Iowa.

b. The borrower must be at least 18 years of age.

c. A borrower that is currently participating in any LIFT program or that has previously participated in any LIFT program in the state treasurer’s office, other than traditional livestock, is not eligible.

**4.11(3) Terms and conditions.**

a. A borrower who qualifies for a value-added linked investment loan may use the loan proceeds for new debt directly related to a value-added agriculture project approved by the state treasurer’s office. The borrower may not refinance debt under this program.

b. A borrower who qualifies for a value-added linked investment loan may not use the loan proceeds for financing of vehicles.

c. The maximum any value-added project can receive from all borrowers shall be \$1,000,000. The treasurer may increase this amount for a specific project, in consultation with economic development officials, when unique or compelling circumstances merit such an action.

d. The maximum amount that a borrower may borrow from this program is \$250,000.

e. For a value-added linked investment, the initial certificate of deposit for a given borrower shall have a maturity of one year. The certificate of deposit may be renewed on an annual basis for a total term not to exceed five years.

**4.11(4) Application process and evaluation.**

a. A lender shall use Form 655-0217 to apply for the program and verify that the borrower qualifies for the program.

b. The treasurer of state recognizes this program is part of a state effort to develop and promote value-added agriculture. Economic development officials will make recommendations to the treasurer’s office on the type of projects that they believe would best suit the LIFT value-added program. The treasurer will give stronger consideration to these types of projects.

c. Applications will be reviewed by the treasurer’s office to determine that they meet the requirements under the Iowa Code and administrative rules.

d. Prospective projects that are not part of the economic development officials’ recommendations will be forwarded to one or more economic development officials for review and comment.

e. The recommendations of the economic development officials will be given full and fair consideration but they are not conclusive.

This rule is intended to implement Iowa Code Supplement section 12.43B.

[Filed Emergency 1/14/00, effective 1/18/00]

[Published 2/9/00]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

**ARC 9682A****AGRICULTURE AND LAND  
STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 159.5(11), the Department of Agriculture and Land Stewardship rescinds Chapter 10, "Rural Revitalization Program," Chapter 11, "Apple Grading," Chapter 15, "Pilot Lamb and Wool Management Education Project," Chapter 21, "Multiflora Rose Eradication Program for Cost Reimbursement," Chapter 70, "Contracts for Dairy Inspection Services," and Chapter 75, "Production and Sale of Eggs," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 3, 1999, as **ARC 9463A**. The adopted amendment is identical to the one published under Notice of Intended Action. No public comment was received on the proposed amendment.

This amendment will become effective March 15, 2000.

This amendment is intended to implement Iowa Code section 159.5(11).

The following amendment is adopted.

Rescind and reserve **21—Chapters 10, 11, 15, 21, 70 and 75.**

[Filed 1/21/00, effective 3/15/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

**ARC 9683A****AGRICULTURE AND LAND  
STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 159.5(11), 159.6(2), 163.1(1), and 166D.1, the Department of Agriculture and Land Stewardship hereby amends Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

These amendments require testing of all swine premises in the Stage II area during the first eight months of 2000, require testing of off-site nursery units located in counties with a pseudorabies prevalence of 3 percent or greater as a condition of animals' being allowed to move off site, and require permitting of movements other than to slaughter in infected herds.

A waiver does not exist as the Department feels that a waiver would hamper the progress toward eradication of pseudorabies.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 15, 1999, as **ARC 9546A**. Two written comments were received during the comment period. All parties providing comments were invited to participate in a discussion of the proposed rules at the Iowa Pseudorabies Advisory Committee meeting held January 12, 2000, at the Iowa Pork Producers Association. Additional concerned parties and individuals also attended.

In response to public comment, the only changes made from the Notice of Intended Action were that Items 4 and 5, requiring restricted movement under seal to slaughter only for infected herds and instituting test and removal for breeding herds, were deleted. Also, in Item 2, the requirement for testing of off-site nurseries will apply only to nurseries residing in counties with a pseudorabies prevalence of 3 percent or greater.

These amendments are intended to implement Iowa Code chapters 163 and 166D.

These amendments will become effective on March 15, 2000.

The following amendments are adopted.

ITEM 1. Amend rule 21—64.153(166D) by adopting the following **new** subrule:

**64.153(6)** All premises containing swine which are located in the Stage II area of Iowa must have a monitoring test for the premises conducted between January 1, 2000, and August 31, 2000.

ITEM 2. Amend subrule **64.156(2)** by adopting the following **new** paragraph:

f. Nursery units located in counties with a county pseudorabies prevalence of 3 percent or greater and not in the vicinity of the breeding herd are required to maintain a monitored status on the nursery unit in order for the swine to be eligible to move to a finishing premises, irrespective of whether there is a change of ownership. These testing requirements also apply to swine eligible for relocation movement.

ITEM 3. Amend subparagraph **64.157(2)"c"(5)** as follows:

(5) Feeder pig movement or relocation from the premises of origin must be detailed in writing in the herd cleanup plan. If this movement, or relocation, involves more than one district veterinarian's area, all participants must concur with the cleanup plan. *Effective March 15, 2000, all movements from infected premises, except to slaughter, shall be accompanied by an Iowa Restricted Movement Permit. "Movement" in this paragraph includes movement to a premises in the production system not in the vicinity of the current location, irrespective of whether there is a change of ownership;*

[Filed 1/21/00, effective 3/15/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

**ARC 9638A****ARCHITECTURAL EXAMINING  
BOARD[193B]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby amends Chapter 2, "Registration," Iowa Administrative Code.

The amendments to Chapter 2 outline the requirements for applying to take the architecture registration examination or applying for registration by reciprocity.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 20, 1999, as **ARC 9422A**.

## ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Board on January 11, 2000.

Waivers from provisions of these rules may be sought pursuant to 193B—Chapter 9.

These amendments are intended to implement Iowa Code chapter 544A.

These amendments will become effective March 15, 2000.

The following amendments are adopted.

ITEM 1. Amend rule 193B—2.1(544A,17A), introductory paragraph and subrule 2.1(1), as follows:

**193B—2.1(544A,17A) Application for registration by reciprocity.** Applicants for registration *by reciprocity* are required to make application to the National Council of Architectural Registration Boards (NCARB), 1735 New York Avenue NW, Washington, D.C. 20006, for a council record certificate. A completed state application form (available through NCARB) and a completed NCARB council certificate record shall be transmitted to and filed in the board office before an application will be considered by the board. ~~If prerequisite to examination, the state application form and the council record shall be filed in the board office prior to the date scheduled to take the examination.~~

**2.1(1)** The board, by approval of three of its members who are registered architects, may waive examination requirements for architects registered during the current year in another state or country where the qualifications prescribed at the time of original registration were *equal substantially equivalent* to those prescribed in Iowa. For the purpose of determining substantially equivalent qualifications, applicants *who were originally registered in another state after July 1, 1984, shall have a NAAB-accredited professional degree and applicants registered after June 1, 1991, shall have met the Training Requirements for Intern-Architect Development Program (IDP).* Applicants shall be deemed to have met the ~~“Training Requirements for Intern-Architect Development Program (IDP)”~~ requirement regardless of the date of completion of the required experience, provided the experience was completed prior to filing an application for Iowa registration. The board shall find probable cause for disciplinary action if the registrant's registration in any other state is revoked for statutory reasons or incompetence.

ITEM 2. Rescind and reserve subrule 2.1(2).

ITEM 3. Amend rule 193B—2.2(544A,17A), introductory paragraph, as follows:

**193B—2.2(544A,17A) Admittance to examination Application for registration by examination.** To be admitted to the examination, an applicant for registration shall have completed eligibility requirements of education and training standards for NCARB certification and attained an NCARB council record. *A completed NCARB council record shall be transmitted to and filed in the board office prior to the scheduling of an examination. Applicants shall also file a state eligibility form and pay a \$100 application fee for processing of examination results.*

ITEM 4. Adopt new subrule 2.2(3) as follows:

**2.2(3)** To qualify for registration, all applicants shall pass all divisions of the Architectural Registration Examination (ARE) prepared and provided by the National Council of Architectural Registration Boards (NCARB). Applicants who have previously passed any portion of formerly required

NCARB examinations will be granted credit for those portions passed in accordance with procedures established by NCARB. Divisions of the examination may be passed or failed separately in accordance with procedures established by NCARB.

ITEM 5. Amend rule 193B—2.3(544A,17A) as follows:

**193B—2.3(544A,17A) Reinstatement.** An expired certificate of registration can be reinstated by completing ~~all~~ *one* of the following options:

**2.3(1) Option 1.**

1. Paying a reinstatement fee of \$50 per year of expired registration, up to a maximum of \$350.

2. Paying the current renewal fee.

3. Submitting documented evidence of completion of 12 contact hours (8 hours in public protection subjects) of continuing education for each year of expired registration in compliance with the requirements in 193B—Chapter 3 up to a maximum of 48 contact hours (32 hours in public protection subjects).

**2.3(2) Option 2.** *File a new application for registration as prescribed in rule 193B—2.1(544A,17A) and subrules 2.1(1) and 2.2(3).*

~~2.3(1) Rescinded IAB 12/2/98, effective 1/6/99.~~

~~2.3(2) Rescinded IAB 12/2/98, effective 1/6/99.~~

[Filed 1/12/00, effective 3/15/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

## ARC 9661A

## DENTAL EXAMINERS BOARD[650]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 1, “Definitions,” Iowa Administrative Code.

The Board of Dental Examiners ratified a recommendation by the Dental Hygiene Committee of the Board to proceed with rule making that affirmatively allows dental hygienists to perform the activities described in the rules.

No waiver provision has been provided in specific circumstances as the amendment defines the meaning of dental hygiene.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 15, 1999, as **ARC 9552A**. A public hearing on the amendments was held on January 5, 2000. No oral comments were received at the hearing. However, two written comments were received. In response to the written comments, the following two changes have been made:

1. In written comments, the Iowa Dental Hygienists' Association questioned the use of the statement, “However, the rules do not preclude the performance of such activities by other dental auxiliary,” which was in the preamble to the Noticed rules. This statement was used in the preamble to note that some of the services listed in the definition of dental hygiene may also be performed by other dental auxiliary personnel. However, in response to this comment, the Board's first change from the Notice of Intended Action is to add the following sentence to specify which services may only be delegated to a hygienist: “The following services may only



## DENTAL EXAMINERS BOARD[650](cont'd)

be delegated by a dentist to a dental hygienist: administration of local anesthesia, placement of sealants, and the removal of any plaque, stain, calculus, or hard natural or synthetic material except by toothbrush, floss, or rubber cup coronal polish." This clarification was supported by representatives from the Iowa Dental Hygienists' Association, Iowa Dental Assistants Association, and Iowa Dental Association at an informal meeting to discuss pending legislation to regulate dental assistants.

2. In response to written comments from the Iowa Dental Association, the Board's second change is to add the following phrase to clarify that hygienists perform services that have been delegated and are under the supervision of a licensed dentist, "which are delegated by and under the supervision of a dentist licensed pursuant to Iowa Code chapter 153."

These amendments were approved at the January 20, 2000, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code section 153.15.

These amendments will become effective on March 15, 2000.

The following amendments are adopted.

Amend **650—1.1(153)**, definition of "Practice of dental hygiene," as follows:

"Practice of dental hygiene" as defined in Iowa Code section 153.15 ~~includes assisting the dental profession in providing oral health care by performing the following services: means the performance of the following educational, therapeutic, preventive and diagnostic dental hygiene procedures which are delegated by and under the supervision of a dentist licensed pursuant to Iowa Code chapter 153.~~

1. Educational: ~~Issuing written and oral instructions for optimal oral health, including the teaching of proper brushing techniques and interdental stimulation; assess the need for, plan, implement and evaluate oral health education programs for individual patients and community groups. Assessing the need for, planning, implementing, and evaluating oral health education programs for individual patients and community groups; conducting workshops and in-service training sessions on dental health for nurses, school personnel, institutional staff, community groups and other agencies providing consultation and technical assistance for promotional, preventive and educational services.~~

2. Therapeutic: ~~Perform oral prophylaxis including removing supragingival and subgingival deposits and polishing restorations and removable prostheses; application or administration of medicaments prescribed by a licensed dentist; remove excess restorative materials, recognize and assist in management of medical and dental emergencies. Identifying and evaluating factors which indicate the need for and performing (a) oral prophylaxis, which includes supragingival and subgingival debridement of plaque, and detection and removal of calculus with instruments or any other devices; (b) periodontal scaling and root planing; (c) removing and polishing hardened excess restorative material; (d) administering local anesthesia with the proper permit; (e) applying or administering medicaments prescribed by a dentist, including chemotherapeutic agents and medicaments or therapies for the treatment of periodontal disease and caries.~~

3. Preventive: ~~The topical application of medicaments and other methods for caries control. Applying pit and fissure sealants and other medications or methods for caries and periodontal disease control; organizing and administering fluoride rinse or sealant programs.~~

4. Diagnostic: ~~Provide diagnostic aids including taking and recording medical and dental histories; making impressions for diagnostic models; exposing radiographs; making occlusal registrations for mounting study casts; testing pulp vitality; recording vital signs; making and analyzing dietary surveys; and indexing dental and periodontal disease, and any other abnormal conditions; perform oral inspection. Reviewing medical and dental health histories; performing oral inspection; indexing dental and periodontal disease; making occlusal registrations for mounting study casts; testing pulp vitality; analyzing dietary surveys.~~

*The following services may only be delegated by a dentist to a dental hygienist: administration of local anesthesia, placement of sealants, and the removal of any plaque, stain, calculus, or hard natural or synthetic material except by toothbrush, floss, or rubber cup coronal polish.*

[Filed 1/21/00, effective 3/15/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

**ARC 9660A****DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 10, "General," and Chapter 29, "Deep Sedation/General Anesthesia, Conscious Sedation and Nitrous Oxide Inhalation Analgesia," Iowa Administrative Code.

Chapters 10 and 29 are amended to rescind a portion of subrule 10.3(1) and subrules 29.6(4) and 29.6(5) relating to dental hygienists and the monitoring of nitrous oxide inhalation analgesia. These subrules were considered by the members of the Administrative Rules Review Committee on September 15, 1999, and the Committee voted to impose a session delay on **ARC 9274A**. On January 4, 2000, the Administrative Rules Review Committee voted to lift the session delay on subrule 29.6(6), which was a part of **ARC 9274A**.

The rules do not provide a specific provision for waiver as the amendments rescind existing rules that are currently under session delay.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 15, 1999, as **ARC 9553A**. A public hearing on the amendments was held on January 5, 2000. No written or oral comments were received.

These amendments were approved at the January 20, 2000, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code sections 153.33 and 153.34.

These amendments will become effective on March 15, 2000.

The following amendments are adopted.

ITEM 1. Amend subrule 10.3(1) as follows:

**10.3(1)** ~~The monitoring of nitrous oxide inhalation analgesia pursuant to 650—29.6(153) and the administration of local anesthesia shall only be provided under the direct supervision of a dentist. Direct supervision of the dental hygienist requires that the supervising dentist be present in the treatment facility, but it is not required that the dentist be physically present in the treatment room.~~

DENTAL EXAMINERS BOARD[650](cont'd)

ITEM 2. Rescind and reserve subrules 29.6(4) and 29.6(5).

[Filed 1/21/00, effective 3/15/00]
[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

ARC 9685A

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 amends Chapter 51, "Self-Employment Loan Program," Iowa Administrative Code.

Item 1 increases the income restriction from 125 percent to 200 percent of the poverty level guidelines as annually published by the Department of Health and Human Services. This revision will enable more low-income clients to access the program.

Item 2 updates the list of business training available and also establishes a minimum length of time for the training sessions. The amendment rescinds references to training programs that are no longer in existence and adds a list of programs currently offered. A minimum amount of training is needed in order to prepare the applicant to develop a business plan and open a business. A number of clients for this program do not have postsecondary education; therefore, training in accounting, marketing, and some of the other key aspects of opening a business are important.

Item 3 removes the limitation on the amount of management assistance a business may receive each year. This amendment permits the Department to assign more assistance to those businesses that need it and helps improve the sustainability of a business. The type of assistance that is typically provided is comprehensive management assistance. Under this type of assistance, a contractor is hired to assist the business owner with any problems that may be encountered in connection with marketing, bookkeeping, and other business-related activities.

These amendments were Adopted and Filed Emergency and published as ARC 9475A on November 17, 1999. Notice of Intended Action to solicit comment on that submission was published in the Iowa Administrative Bulletin as ARC 9474A on November 17, 1999. A public hearing was held on December 7, 1999. No comments were received. The final amendments are identical to the proposed amendments.

The Iowa Department of Economic Development Board adopted these amendments on January 20, 2000.

These amendments will become effective on March 15, 2000, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code section 15.241.

The following amendments are adopted.

ITEM 1. Amend subrule 51.3(3), introductory paragraph, as follows:

51.3(3) Income. To qualify to apply for a loan, an applicant must have annualized household family income that is

equal to or less than 125 200 percent of the most current poverty guidelines as published on an annual basis by the Department of Health and Human Services (DHHS). For purposes of calculating family income, exclusions are:

ITEM 2. Amend subrule 51.3(7) as follows:

51.3(7) Experience. Prior to applying for SELP funding, an applicant must have successfully completed a comprehensive business training program no less than four weeks in length including, but not limited to, programs such as SEID Next Level, WEDGE FasTrack, Drake's Minority Business Venture FirstStep, or other programs developed by a John Papajohn Entrepreneurial Center, Small Business Development Center, or the Institute for Social and Economic Development and Kirkwood Community College's Rural Development Center; or be able to demonstrate a basic knowledge of business strategy and planning documented by previous successful business management or ownership; or be willing to enroll in a business training program; or agree in writing to accept and utilize ongoing technical assistance.

ITEM 3. Amend 51.3(8)"e"(3) as follows:

(3) Disbursement. Each eligible business may receive up to \$2,500 funding for individualized management assistance per year. All funds under the comprehensive management assistance program will be paid directly to the service provider. No funds will be given directly to the business.

[Filed 1/21/00, effective 3/15/00]
[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

ARC 9667A

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby rescinds Chapter 3, "Declaratory Rulings," and adopts a new Chapter 3, "Declaratory Orders," Iowa Administrative Code.

This amendment is necessary to bring the Board's rules into compliance with Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.

Notice of Intended Action was published in the Iowa Administrative Bulletin as ARC 9403A on October 6, 1999. A public hearing on the proposed rules was held on November 12, 1999. No one attended this hearing, and no written comments were received.

These rules are identical to those published under Notice of Intended Action.

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.

These rules will become effective March 15, 2000.

The following new chapter is adopted.

CHAPTER 3

DECLARATORY ORDERS

The board of educational examiners hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

**282—3.1(17A) Petition for declaratory order.** Throughout the rule, in lieu of the words “(designate agency)”, insert “the Board of Educational Examiners, Grimes State Office Building”. In lieu of the words “(AGENCY NAME)”, in the heading on the petition insert “BEFORE THE BOARD OF EDUCATIONAL EXAMINERS”.

**282—3.2(17A) Notice of petition.** In lieu of the words “ \_\_\_ days (15 or less)”, insert “15 days”.

**282—3.3(17A) Intervention.**

**3.3(1)** In lieu of the words “ \_\_\_ days”, insert “15 days”.

**282—3.5(17A) Inquiries.** In lieu of the words “(designate official by full title and address)”, insert “Executive Director, Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147”.

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.

[Filed 1/21/00, effective 3/15/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

## ARC 9668A

### EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby rescinds Chapter 4, “Agency Procedure for Rule Making,” Iowa Administrative Code, and adopts a new Chapter 4 with the same title.

This amendment is necessary to bring the Board's rules into compliance with Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9404A** on October 6, 1999. A public hearing was held on November 12, 1999. No one attended this hearing, and no written comments were received.

These rules are identical to those published under Notice of Intended Action.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

These rules will become effective March 15, 2000.

The following new chapter is adopted.

#### CHAPTER 4

#### AGENCY PROCEDURE FOR RULE MAKING

The board of educational examiners hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

**282—4.3(17A) Public rule-making docket.**

**4.3(2)** Anticipated rule making. In lieu of the words “(commission, board, council, director)”, insert “board of educational examiners”.

**282—4.4(17A) Notice of proposed rule making.**

**4.4(3)** Copies of notices. In lieu of the words “(specify time period)”, insert “one year”.

**282—4.5(17A) Public participation.**

**4.5(1)** Written comments. In lieu of the words “(identify office and address)”, insert “Executive Director, Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147”.

**4.5(5)** Accessibility. In lieu of the words “(designate office and phone number)”, insert “the executive director at (515)281-5849”.

**282—4.6(17A) Regulatory analysis.**

**4.6(2)** Mailing list. In lieu of the words “(designate office)”, insert “Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147”.

**282—4.11(17A) Concise statement of reasons.**

**4.11(1)** General. In lieu of the words “(specify the office and address)”, insert “Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147”.

**282—4.13(17A) Agency rule-making record.**

**4.13(2)** Contents. In lieu of the words “(agency head)”, insert “executive director”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 1/21/00, effective 3/15/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

## ARC 9669A

### EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby rescinds Chapter 11, “Complaints—Rules of Practice and Procedure Before the Board,” and adopts in lieu thereof the following new Chapter 11, “Complaints, Investigations, Contested Case Hearings,” Iowa Administrative Code.

Adoption of the new chapter is necessary to bring the Board's rules into compliance with Iowa Code section 17A as amended by 1998 Iowa Acts, chapter 1202.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9405A** on October 6, 1999. A public hearing was held on October 28, 1999. No one attended this hearing, and one written comment was received from one agency.

These rules are identical to those published under Notice of Intended Action.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and chapter 272.

These rules will become effective on March 15, 2000.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 11] is being omitted. These rules are identi-

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

cal to those published under Notice as **ARC 9405A**, IAB 10/6/99.

[Filed 1/21/00, effective 3/15/00]  
[Published 2/9/00]

[For replacement pages for IAC, see IAC Supplement 2/9/00.]

**ARC 9671A****EDUCATIONAL EXAMINERS BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby adopts amendments to Chapter 17, "Renewal of Licenses," Iowa Administrative Code.

The amendments change the wording of the description of the staff development officer responsible for licensure from "staff development" to "licensure renewal" to clarify the specific nature of this position and to alleviate the confusion between this position and other staff development positions. These amendments also eliminate the need for one college credit in order to renew a practitioner's license.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9406A**, on October 6, 1999. A public hearing on the amendments was held on November 16, 1999. Seven letters were received and five persons presented oral testimony. Public comment centered on two areas: (1) to allow more flexibility in the design of coursework for licensure renewal programs, and (2) to clarify the wording in the requirements for a licensure renewal coordinator.

Due to the comments received, a few changes were made to the Noticed amendments. In subrule 17.11(4), first unnumbered paragraph, the phrase "the AEA's license renewal courses" was changed to "approved license renewal programs." The sentence now reads as follows: "The following indicators of quality will be used in evaluating the approved license renewal programs." The word "or" was inserted at the end of subparagraphs 17.11(4)"a"(1) and (2) to allow for an option among the three indicators of quality listed. Also, in subparagraph (2), the phrase "evidenced through student performance" was not adopted. The subparagraph now reads as follows: "The courses assist teachers in improving student learning, or".

In subrule 17.11(6), paragraph "a," first sentence, the term "PK-12" was changed to the phrase "(elementary or secondary)" for clarification. The words "and who shall serve in this capacity at least 50 percent of the time" were stricken. The sentence now reads as follows: "Each agency or organization offering an approved licensure renewal program shall identify a licensed (elementary or secondary) professional staff member who shall be designated as coordinator of the program."

These amendments will become effective on September 1, 2000.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are adopted.

ITEM 1. Amend rule 282—17.5(272) as follows:

**282—17.5(272) Renewal requirements for an educational license.** Six units are needed for renewal. These units may be earned in any combination listed below.

1. One unit may be earned for each semester hour of credit completed which leads toward the completion of a planned master's, specialist's, or doctor's degree program.

2. One unit may be earned for each semester hour of credit completed which may not lead to a degree but which adds greater depth/breadth to present endorsements held.

3. One unit may be earned for each semester hour of credit completed which may not lead to a degree but which leads to completion of requirements for an endorsement not currently held.

4. One unit may be earned upon completion of each ~~staff development licensure renewal~~ course or activity approved through guidelines established by the board of educational examiners. ~~A maximum of five units may be earned from this section.~~

5. Four units may be earned for successful completion of the National Board for Professional Teaching Standards certification. This may be used one time for either the educational or the professional teacher's license.

ITEM 2. Amend rule 282—17.7(272) as follows:

**282—17.7(272) Renewal requirements for a professional administrator's and area education agency administrator's license.** Four units are needed for renewal. These units may be earned in any combination listed below.

1. to 3. No change.

4. One unit may be earned upon completion of each ~~staff development licensure renewal~~ course or activity approved through guidelines established by the board of educational examiners.

ITEM 3. Amend rule 282—17.9(272) as follows:

**282—17.9(272) Renewal requirements for a substitute license.** Meet one of the requirements listed below:

1. Verification of at least 30 days of substitute teaching during the term of the license.

2. Completion of a local education agency or area education agency course approved through ~~staff development licensure renewal~~ guidelines established by the board of educational examiners.

3. Completion of a community college, college, or university course.

ITEM 4. Amend rule 282—17.11(272) as follows:

**282—17.11(272) Staff development programs for license renewal Licensure renewal programs.**

**17.11(1)** Application process. These rules are to be followed in the preparation and submission of proposals for ~~staff development licensure renewal programs for renewal of licenses~~. The application materials must be returned to the board of educational examiners for review and approval.

Once the application has been submitted, it will be reviewed, and the applicant agency will be notified of approval or nonapproval and any deficiencies.

**17.11(2)** No change.

**17.11(3)** Authority. The acceptance of ~~staff development licensure renewal credit for license renewal~~ is provided in 17.5"5 4," 17.6"5 4" and 17.7"5 4."

**17.11(4)** Staff development Licensure renewal courses.

a. ~~Staff development Licensure renewal~~ courses for licensure renewal are planned experiences, activities, and studies designed to ~~increase professional educators' knowledge and improve their skills.~~ develop skills, techniques, knowl-

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

*edge, and understanding of educational research and best practice, and model best practices in professional and organizational development. These courses support school improvement processes and practices and provide for the development of leadership in education. Approved courses and programs must be designed to follow the terms of the renewal requirements set forth for teacher and administrator renewal in 17.5“3 4,” 17.6“3 4” and 17.7“3 4.”*

*The courses must be based on documented need, clearly developed program objectives, and the means to evaluate the attainment of these objectives.*

*The following indicators of quality will be used in evaluating the approved license renewal programs.*

*(1) The courses address specific student, teacher, and school needs evidenced in local school improvement plans, or*

*(2) The courses assist teachers in improving student learning, or*

*(3) The courses assist teachers in improving teaching evidenced through the adoption or application of practices, strategies, and information.*

*b. Approved teacher ~~staff development~~ licensure renewal programs must offer and conduct a minimum of ten different courses for teachers during the calendar year, and approved administrative ~~staff development~~ licensure renewal programs must conduct a minimum of five different courses for administrators during the calendar year.*

*c. Clock hours. Fifteen scheduled clock hours of contact with the instructor equal one renewal unit. Only whole units may be submitted to the board of educational examiners for license renewal.*

*d. Only renewal units offered through board of educational examiners approved ~~staff development~~ licensure renewal programs will be accepted for license renewal.*

**17.11(5) ~~Staff development~~ Licensure renewal advisory committee.** *Staff development Licensure renewal programs for license renewal must be developed with the assistance of a ~~staff development~~ licensure renewal advisory committee.*

*a. Membership of the advisory committee. Once the advisory committee is established, matters pertaining to the term of membership shall be spelled out through established procedures. The advisory committee shall consist of no fewer than five members. The ~~staff development~~ licensure renewal coordinator shall forward the current updated list of ~~staff development~~ licensure renewal advisory committee members to the board of educational examiners no later than ~~January 15~~ December 1 of each year.*

*(1) The ~~staff development~~ licensure renewal advisory committee shall include the following persons for teacher/administrator renewal programs:*

*1. Elementary and secondary classroom teachers.*

*2. Local administrators: elementary or secondary principals, curriculum director or superintendent.*

*3. Higher education representative from a college or university offering an approved teacher education program.*

*4. Other categories may be appointed: community college teaching faculty, students, area education agency staff members, school board members, members of educational professional organizations, business/industry representatives, community representatives, representatives of substitute teachers.*

*(2) The make-up of the membership should reflect the ratio of teachers to administrators within an agency or organization offering an approved ~~staff development~~ licensure renewal program. The membership should reflect the gener-*

*al population by a balance of gender and race and shall be balanced between urban and rural districts.*

*(3) The ~~staff development~~ licensure renewal coordinator shall be a nonvoting advisory committee member.*

*(4) Disputes about the appropriate composition of the membership of the ~~staff development~~ licensure renewal advisory committee shall be resolved through local committee action.*

*b. Responsibilities of ~~staff development~~ licensure renewal advisory committee.*

*(1) ~~Staff development~~ Licensure renewal advisory committee shall be involved in:*

*1. The ongoing area education agency, local district, or other agency staff development needs assessment.*

*2. The design and development of an original application for a license renewal program.*

*3. The development of criteria for the selection of course instructors, and these criteria shall include, but not be limited to, academic preparation, experience and certification status.*

*4. The annual evaluation of ~~staff development~~ licensure renewal programs.*

*(2) The advisory committee shall meet at least twice annually and shall maintain records of each meeting. These records shall be available for review by board staff and kept on file in the ~~staff development~~ licensure renewal coordinator's office.*

**17.11(6) ~~Staff development~~ coordinator.** *Licensure renewal coordinator.*

*a. Each agency or organization offering an approved ~~staff development~~ licensure renewal program shall identify a licensed (elementary or secondary) professional staff member who shall be designated as coordinator for the program and who shall serve in this capacity at least 50 percent of the time. This function must be assigned; no application will be approved unless this responsibility has been assigned.*

*b. Responsibility of ~~staff development~~ licensure renewal coordinators.*

*(1) File all reports as requested by the board of educational examiners.*

*(2) Submit an annual report on program offerings, participants and related information annually on or before December 1.*

*(3) Serve as a contact person for the board of educational examiners.*

*(4) Be responsible for the development of ~~staff development~~ licensure renewal programs which address the professional growth concerns of the clientele.*

*(5) Be responsible for the approval of all courses or units offered for ~~staff development~~ license renewal licensure renewal.*

*(6) Maintain records of approved courses as conducted and of the names of the qualifying participants.*

*(7) Maintain a list of all course offerings and approved instructors and forward the list to the board of educational examiners.*

*(8) Provide a record of credit for each participant and maintain a cumulative record of credits earned for each participant for a minimum of ~~ten~~ five years.*

*(9) Be responsible for informing participants of the reporting procedures for renewal credits/units earned.*

**17.11(7) Organization and administration.**

*a. Local school districts are encouraged to work cooperatively with their respective area education agency in assessing needs and designing and conducting courses.*

*b. The board of educational examiners reserves the right to evaluate any course, to require submission of evaluation*

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

data and to conduct sufficient on-site evaluation to ensure high quality of ~~license renewal staff development~~ *licensure renewal* programs.

c. Agencies or institutions developing new programs shall submit a letter of intent prior to the submission of an application. The application must be filed at least three months prior to the initiation of any planned ~~staff development li-~~ *icense licensure* renewal program.

d. Once a program is approved, the coordinator shall approve all course offerings for ~~staff development li-~~ *censure* renewal units.

e. Initial approval may be for one to three years. Continuing approval may be granted for five-year terms. Continuing approval may involve board of educational examiners sponsored team visits.

f. Records retention. Each approved staff development agency/institution shall retain program descriptions, course activities, documentation of the qualifications of delivery personnel, evaluation reports, and completed renewal units for a period of ~~ten~~ *five* years. This information shall be kept on file in the offices of the area education agency ~~staff devel-~~ *opment licensure renewal* coordinators and shall be made available to the board of educational examiners upon request.

g. Monitoring and evaluation. Each approved ~~staff de-~~ *velopment licensure renewal* program will be monitored by the board of educational examiners to determine the extent to which the program meets/continues to meet program standards and is moving toward the attainment of program objectives. This will include an annual report *which shall include an annotated description of the courses provided, evidence of the collaborative efforts used in developing the courses, evidence of the intended results of the courses, and the data for demonstrating progress toward the intended results.*

**17.11(8)** Application for ~~license renewal~~ *licensure* renewal program.

a. Application approval. The application shall contain evidence that the local board of directors (the board of directors in consortium-based applications) has given formal approval to the development and implementation of the program and the allocation of program resources.

b. The application shall identify the criteria used in selecting faculty/instructors for the ~~staff development li-~~ *censure renewal* programs. These criteria shall include qualifications, experiences (relevant to the nature of the program), preparation and licensure status.

c. There must be evidence of a current survey of staff needs and an explanation of procedures used to derive such needs; this documentation must be furnished as a part of the application for a ~~license renewal staff development~~ *licensure renewal* program.

d. Programs developed by eligible agencies shall be based on evidence gathered from a survey of staff needs of the personnel to be served by the ~~staff development li-~~ *censure renewal* program.

e. Program objectives must be derived from identified staff needs in the district or districts or special groups to be served; these objectives shall be developed by the eligible agency seeking approval under ~~license renewal staff devel-~~ *opment licensure renewal* programs.

f. Each application must include procedures for program evaluation; this evaluation must include faculty/instructor as well as course/activity evaluation. Program and course/activity evaluation shall include, but not be limited to, participant perceptions.

g. Evaluation. The evaluation shall include participant

perception and, whenever possible, observation data collection techniques and analyses are required for each approved ~~staff development~~ *licensure renewal* program.

[Filed 1/21/00, effective 9/1/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

**ARC 9640A****EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5) and section 17A.3 as amended by 1998 Iowa Acts, chapter 1202, the State Board of Education amends Chapter 63, "Educational Programs and Services for Pupils in Juvenile Homes," Iowa Administrative Code.

These amendments align existing rules with statute. The amendments incorporate uniform accounting procedures and uniform practices in the administration of instructional programs for juvenile homes. The amendments allow the Area Education Agencies (AEAs) greater flexibility in determining the appropriate program to serve the needs of their student populations. The amendments reflect current practices based on accounting publications, update financial language, lower pupil-to-staff ratios, reduce unnecessary restrictions and data burden, and provide waiver provisions.

Waivers are provided for student characteristics in subrules 63.13(4), 63.13(6), and 63.13(7). Waivers are provided in rule 281—63.21(282) for limitations on selected expenditures under paragraphs 63.18(1)"d," 63.18(3)"a," 63.18(3)"b," 63.18(3)"e," and 63.18(3)"g," and subrules 63.18(4) and 63.18(5). Other rules in this chapter reflect statutory provisions; therefore, a waiver of those rules or any portion of those rules would conflict with state law or a waiver would not be in the public interest.

Notice of Intended Action was published in the November 17, 1999, Iowa Administrative Bulletin as **ARC 9465A**.

Revisions were made to the amendments published in the Notice of Intended Action. Revisions were made for clarification, to provide for staffing in classes containing 20 through 30 students, and to allow greater flexibility in staffing due to student characteristics. The waiver provision related to rent was revised to exempt it from an annual request. A procedure was written into the rules which would allow the AEA to request a review of any waiver denial. These revisions were made based on public and Administrative Rules Review Committee (ARRC) comments. Most public comments were related to clarifications. Mixed comments were received regarding paying rent directly to juvenile homes. Other comments were related to billing resident districts for special education costs, which is a requirement under the Iowa Code. Juvenile home providers expressed an interest in having instructional program standardization.

These amendments were approved during the January 13, 2000, meeting of State Board of Education.

These amendments will become effective on March 15, 2000.

These amendments are intended to implement Iowa Code sections 282.30 and 282.31.

The following amendments are adopted.

EDUCATION DEPARTMENT[281](cont'd)

Amend **281—Chapter 63** as follows:

CHAPTER 63

EDUCATIONAL PROGRAMS AND SERVICES  
FOR PUPILS IN JUVENILE HOMES

**281—63.1(256 282) Scope.** These rules apply to the provision of educational programs in juvenile shelter care homes and juvenile detention homes.

**281—63.2(256 282) Definitions.**

**63.2(1)** Special programs cited in 1987 1999 Iowa Code Supplement section 282.30 shall be referred to as juvenile shelter care homes and juvenile detention homes, and shall be referred to jointly as juvenile homes.

**63.2(2)** For purposes of this chapter, "school corporation" shall refer to school districts, area education agencies, and community colleges.

**63.2(3)** For purposes of this chapter, "aides" shall refer to aides and para-educators as defined in Iowa Code section 272.12.

**281—63.3(256 282) Forms.** The department of education shall provide forms to area education agencies (AEAs) for use by the juvenile home facilities requesting educational services, for submitting program and budget proposals, and for submitting claims. The annual dates for filing forms with the department of education are January 1 of the prior fiscal year for AEAs to submit proposed programs program and budgets budget proposals, and August 1 of the subsequent fiscal year for AEAs to file claims. The department of education shall review and approve or modify the program and proposed budget proposals and shall notify the AEA by February 1.

The department of education shall also provide forms to AEAs for use by the juvenile homes requesting educational services. These forms must be filed with the AEA annually by December 1 of the fiscal year prior to the school year for which services are being requested.

**281—63.4(282) Budget amendments.** An AEA shall amend the budget during the fiscal year in which actual classrooms implemented are different than budgeted or there is a significant decrease or increase in the student membership that would change the number of teachers or aides necessary to support the average daily membership. An amendment shall also be required if actual expenditures vary significantly from expenditures which were budgeted. A significant variance in actual expenditures means that the amount of funding which would be reverted to or due from the state equals or exceeds 10 percent of the advance payments in the subsequent year prior to adjustments.

**281—63.4(256) 281—63.5(282) Area education agency responsibility.** An AEA shall provide or make provision for an appropriate educational program for each child living in the following types of facilities located within its boundaries:

1. An approved or licensed shelter care home, as defined in Iowa Code subsection 232.2(34).

2. An approved juvenile detention home, as defined in Iowa Code subsection 232.2(32).

The educational programs are assigned to the AEAs with the program responsibility to be assigned by the AEA administrator within the AEA or with program responsibility to be assigned to another school corporation by a contractual agreement authorized by the AEA board of directors.

The provision of the educational program shall be pursuant to a written agreement which identifies the responsibilities of the AEA, juvenile home, and any other agency with

which the AEA contracts to provide the educational program.

**281—63.5(256) 281—63.6(282) Educational program.**

**63.5(1) 63.6(1) Methods of program provision.** The AEA may provide the educational program by one of the following:

a. Enrolling the child in the child's district of residence of the child.

b. ~~Delivering~~ Obtaining the educational program course of study of the child's district of residence of the child for use in the district juvenile home where the child is living.

c. Enrolling the child in the district where the child is living.

d. Enrolling the child in the educational program provided in the juvenile home facility.

e. A delivery method not encompassed by "a" through "d" immediately above preceding, with approval of the department of education.

In accordance with Iowa Code section 273.2, an AEA shall contract, whenever practicable, with other school corporations for the use of personnel, buildings, facilities, supplies, equipment, programs, and services.

**63.5(2) 63.6(2) Final determination.** In the absence of a decision of a court regarding a child's educational placement, the AEA where the child is living shall make the final determination regarding the provision of the appropriate educational program for the child, in consultation with the district of residence of the child and with the juvenile home. In making this determination, consideration shall be given to:

a. A preference for continuance of the child's educational program that was in place prior to the child's placement in the facility home.

b. Placement into the least restrictive environment.

c. Development of a plan for future educational programming.

d. The provisions of the court order if the child was placed in the facility by a court.

e. Factors, including, but not limited to, the child's emotional or physical state, the child's safety and the safety of others, the child's identified or assessed academic abilities, and the projected duration of stay in the facility home.

**63.5(3) 63.6(3) Cooperation with area education agency.** The AEA of the child's district of residence, the school district of residence, the school district in which the home is located, other AEAs, the juvenile home and other appropriate agencies involved with the care or placement of the child shall cooperate with the AEA where the child is living in sharing educational information, textbooks, curriculum, assignments, and materials in order to plan and to provide for the appropriate education of the child living in the facility home and to grant academic credit to the child for instructional time earned upon discharge from the home.

**63.6(4) Summer school programs.** Summer school programs, as distinguished from extended year programming, may be operated pursuant to Iowa Code subsection 282.31(5), and shall be considered as separate programs in each home. The fiscal year for a juvenile home program is from July 1 through June 30. Program and budget proposals submitted to the department of education prior to January 1, pursuant to Iowa Code section 282.31, may include requests for summer school programs, or portions of summer school programs, commencing July 1 of the subsequent fiscal year and summer school programs, or portions of summer school programs, ending June 30 of the subsequent fiscal year.

EDUCATION DEPARTMENT[281](cont'd)

~~281—63.6(256)~~ **281—63.7(282) Special education.** The AEA shall establish policies and procedures for screening and evaluating students living in juvenile homes who may require special education.

~~63.6(1)~~ **63.7(1) Assignment.** A diagnostic-educational team shall be assigned by the AEA in which each program is located. This diagnostic-educational team shall include individuals who are appropriately qualified to conduct special education evaluations and to assist in planning programs for students who are ~~handicapped~~ *provided a special education program pursuant to an individualized education program (IEP).*

~~63.6(2)~~ **63.7(2) Duties.** The duties of this diagnostic-educational team shall include the screening of all students for potential special education needs, identifying children in need of special education, providing needed special education support services and assisting in the implementation of needed special education programs.

~~63.6(3)~~ **63.7(3) Role of director of special education.** It is the responsibility of the AEA director of special education to ensure that all procedures related to due process, protection in evaluation, least restrictive environment, development of individual educational programs and other requirements specified in 281—Chapter 41 are adhered to for ~~handicapped~~ *students provided a special education program pursuant to an IEP who are served in juvenile homes.* In addition, the director is responsible for coordinating the activities of the special education program with other programs and services provided.

~~281—63.7(256)~~ **281—63.8(282) Educational services.**

~~63.7(1)~~ **63.8(1) Assignment.** Personnel from the educational services division of the local AEA shall be made available to each program.

~~63.7(2)~~ **63.8(2) Duties.** Personnel from the educational services division shall assist with curriculum development as well as provide all other services that are made available to local education agencies within the particular AEA.

~~281—63.8(256)~~ **281—63.9(282) Media services.**

~~63.8(1)~~ **63.9(1) Assignment.** Personnel from the media services division of the local AEA shall be made available to each program.

~~63.8(2)~~ **63.9(2) Duties.** All services that are made available to local education agencies within the particular AEA shall be made available to these programs and students.

~~281—63.9(256)~~ **281—63.10(282) Other responsibilities.**

In addition to the above-mentioned responsibilities, AEA personnel shall assist with coordination of program curricula with the curricula of the local district in which the ~~facility home~~ is located and with the transition of students from these programs to subsequent program placement. This *coordination* shall include the establishment of procedures for ensuring that appropriate credit is available to the students while participating in the program.

~~281—63.10(256)~~ **281—63.11(282) Curriculum.**

Each program shall use the minimum curriculum requirements for approved or accredited schools as a guide to developing specific content for each student's educational program. The content of each student's program shall be sufficient to enable the student to earn credit while participating in the program.

~~281—63.11(256)~~ **Facilities, materials and equipment.**

~~63.11(1)~~ **Equivalent to school districts.** ~~Facilities, supplies, materials and equipment necessary to carry out the educational program shall be at least equivalent to those pro-~~

~~vided to a comparable number of students by the local school district in which the facility is located. Adequate work space shall be provided for itinerant and permanently assigned staff and shall be regularly available for their use. Secretarial and clerical assistance and telephone service shall also be provided.~~

~~281—63.12(282)~~ **Disaster procedures.**

~~63.11(2)~~ **Plan for emergencies.** Each facility *home* shall maintain a written plan containing emergency and disaster procedures ~~which will be that are~~ clearly communicated to and periodically reviewed with staff.

~~281—63.12(256)~~ **281—63.13(282) Maximum class size.**

~~63.12(1)~~ **63.13(1) Maximum class size in shelter care homes.** The following *maximum class size-to-staff formula ratio* shall be used in ~~determining staff-to-pupil ratios~~ shelter care homes:

Average Daily Enrollment Membership	Full-Time Teacher	Educational Aide(s)
10 or less <del>fewer</del>	1	<del>5 aide with 5 or fewer students</del> 1 aide with more than 5 students 1 aide
<del>11</del> More than 10 through 20	2	1 aide with fewer than 11 students <del>1-5 aides 1 aide with 11 through 14 students more than 10 but fewer than 15 students</del> 2 aides with 15 through 20 students
More than 20 through 30	3	2 aides with more than 20 but fewer than 25 3 aides with 25 through 30 students

~~When a single class is located in an off-site facility, a full-time educational aide shall be assigned.~~

**63.13(2) Maximum class size in detention homes.** *The class size-to-staff ratio used in detention homes shall be the same as that defined in subrule 63.13(1) unless the needs of the students in the class require a lesser ratio. If the needs of students in the class require a lesser ratio, it shall be no greater than the following class size-to-staff ratio:*

Average Daily Membership	Full-Time Teacher	Educational Aide(s)
Fewer than 10	1	1 aide with 5 or fewer students 2 aides with more than 5 students
10 through 20	2	2 aides with fewer than 15 students 3 aides with 15 through 20 students





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

plant services, student transportation services, and interfund transfers for indirect costs. Supplies and equipment necessary to provide the educational program shall be equivalent to those provided to a comparable number of students by the district in which the juvenile home is located. Classroom space shall be adequate for the number and needs of children in the juvenile home instructional program.

~~63.17(1)~~ **63.18(1)** Instructional expenditures. Instructional expenditures may include:

a. Salaries and employee benefits of employees providing instructional services. Included are teachers, substitutes, other instructional personnel, and aides performing non-teaching duties.

b. Purchased services, supplies, capital outlay, and other expenses equipment, which are customarily considered instructional expenditures. Examples include, but are not limited to, travel, equipment repair, textbooks, student supplies, and audio-visual equipment.

c. Use Intrafund transfers, and internal service charges for instructional services and material provided by other programs of the AEA. Examples include, but are not limited to, printed material and audio-visual equipment.

d. The department of education shall annually determine the maximum amount that may be expended on instructional expenditures. Total expenditures for instructional services for each continuing classroom, other than salary and employee benefits, which are not provided pursuant to an IEP shall not exceed 10 percent of the state average expenditure on instructional salaries and employee benefits in the juvenile home program in the year prior to the base year. New classrooms in the first year of operation shall not exceed twice the maximum amount calculated.

~~63.17(2)~~ **63.18(2)** Student and instructional staff support services and student transportation services expenditures. Student and instructional services programs are those comparable to accounting definitions provided to the local school districts for "student services" and for "instructional services." Among the services included in these categories are guidance services, transportation services, and program coordination services. curriculum development, library and instructional technology. "Student services" are defined as those designed to assess and improve the well-being of pupils and to supplement the teaching process. "Instructional services" are defined as those designed to direct, manage, and supervise the improvement of instructional services. Student and instructional services expenditures Expenditures may include salaries, employee benefits, purchased services, supplies, capital outlay, other expenses, use transfers equipment, and intrafund transfers, and internal service charges associated with services of AEA staff or other school corporation staff assigned directly to the juvenile home educational program.

**63.18(3)** Administrative support services, operation and maintenance of plant services, and interfund transfers. Administrative support services, operation and maintenance of plant services and interfund transfer expenditures may include:

a. Use Intrafund transfers and from the general fund for actual costs of general administration services provided to the juvenile home program. The amount shall be no greater than that determined by using the restricted indirect cost rate calculated in the department of education's "Uniform Financial Accounting for Area Education Agencies." Expenditures for general administrative costs shall correspond to the amount of the administrator's time assigned and provided to the juvenile home program.

b. Use Intrafund transfers and from the general fund for actual costs of division administrative services provided to the juvenile home program. Proposed program and budget forms shall explain in detail the necessity for division administrative costs and the expenses shall be correlated Expenditures for division administrative costs shall correspond to the amount of the administrator's time assigned and provided to the juvenile home program.

c. Expenditures for the administrative services of administrative staff assigned directly to the juvenile home program. Proposed program and budget forms shall explain in detail the necessity for program administrative costs. Added justification is required if both program and division administrators are included.

d. Expenditures for business administration services provided to the juvenile home program. The juvenile home program may be charged for costs of providing business administration services. If the juvenile home program is charged for providing business administration services, the amount shall be either actual costs or the amount determined by using the restricted indirect cost rate applied to allowable juvenile home program expenditures.

e. The total of all expenditures for administrative services shall be no greater than the actual cost determined by the AEA's accounting records or 10 percent of the total expenditures in the juvenile home program, whichever is less.

f. Expenditures for operation and maintenance of plant services except as restricted in subrule 63.18(4).

g. The total of all expenditures for administrative services and for operation and maintenance of plant services shall be no greater than the actual cost determined by the AEA's cost accounting system or 20 percent of the total expenditures in the juvenile home program, whichever is less.

~~63.17(3)~~ Tuition expenses. Tuition expenses may include:

a. Tuition expenses for juvenile home students not requiring special education who attend a local school district, other than the district of residence, calculated in the manner prescribed for determining tuition costs for any nonresident student.

b. Tuition expenses for students requiring special education, to be paid by the district of residence of each child requiring special education, in accord with the rules of special education.

~~63.17(4)~~ **63.18(4)** Unauthorized expenditures. Expenditures shall not include expenditures for debt services, for facilities acquisition and construction services including remodeling and facility repair, or for operation and maintenance of plant services except for rental expenditures for classroom facilities when adequate space is not available at the juvenile home or AEA.

**63.18(5)** Charges for AEA services. As required by rules 63.6(256), 63.7(256 282), and 63.8(256 282), and 63.9(282), juvenile home students shall have available to them special education support services, educational services, and media services comparable to those services made available to other students in the AEA; however, expenditures for these services are inherent costs to the respective AEA programs and are not to be assessed to the juvenile home educational program.

~~281—63.18(256)~~ **281—63.19(282)** Expenditure claims Claims. AEAs shall submit program and budget proposal proposals claim forms and expenditure claim forms claims consolidating all juvenile home education programs within each AEA. Separate accounting will be required for summer

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

~~school programs.~~ Certain program information may be required for each separate juvenile home.

*The number of classrooms being provided by each AEA shall be reported on the budget proposals and claims. The number is to be expressed in terms of full-time equivalent (FTE) classrooms. One FTE represents a full-time teacher providing a program during the normal school year. One-tenth FTE shall be added for each month of summer school taught on a daily full-time basis. A full school year and three months of summer school is calculated as 1.3 FTE.*

*Pursuant to Iowa Code section 294.4, each teacher shall keep a daily register which shall include the name, age, attendance, and enrollment status of each student.*

*The average daily membership of students of school age living in juvenile homes who are being provided an educational program shall be reported on the budget proposals and claims. "Average daily membership (ADM)" shall mean the average obtained by dividing the total of the aggregate days of attendance plus the aggregate days of absence by the total number of student contact days. Student contact days are the days during which the educational program is provided and students are under the guidance and instruction of the instructional professional staff. "Aggregate days" means the sum of the number of days of attendance and days of absence for all pupils who are enrolled during the school year. A student shall be considered enrolled after being placed in a juvenile home and taking part in the educational program. A student is considered to be in membership from the date of enrollment until the date of leaving the juvenile home or receiving a high school diploma or its equivalent, whichever occurs first. ADM shall be calculated on the regular school year exclusive of summer session. School age is defined pursuant to Iowa Code chapter 282.*

~~281—63.19(256) Summer school programs. Summer school programs, as distinguished from extended year programming, may be operated pursuant to Iowa Code subsection 282.31(5), and shall be considered as separate programs in each facility. The fiscal year for a juvenile home program is from July 1 through June 30. Program and budget proposals submitted to the department of education prior to January 1, pursuant to 1987 Iowa Code Supplement section 282.31, may include requests for summer school programs, or portions of summer school programs, commencing July 1 of the subsequent fiscal year and summer school programs, or portions of summer school programs, ending June 30 of the subsequent fiscal year.~~

~~Proposed budget and program applications shall include detailed information substantiating the valid educational reasons for a summer program. The reasons shall demonstrate that the necessity for a summer program beyond the regular school year is based upon identified student needs.~~

~~281—63.20(282) Audits. AEA's must make the records related to providing educational services for juvenile homes available to independent auditors, state auditors and department of education staff on request.~~

~~281—63.21(282) Waivers. A waiver may be requested by an AEA which presents evidence of a need for a different configuration of expenditures under paragraph 63.18(1)"d," 63.18(3)"a," 63.18(3)"b," 63.18(3)"e," or 63.18(3)"g," or subrule 63.18(4) or 63.18(5). The AEA must annually request the waiver and must include the waiver request and the evidence required by this rule with the program and budget proposal or budget amendment submitted pursuant to rule 63.3(282) or rule 63.4(282). An approved waiver related to rent payment to the juvenile home does not require an annual~~

*waiver request except in any year that the rental contract terms change from the rental contract terms in the previous year.*

*If the department denies a waiver request, the AEA which was denied may request within ten days of notification of the denial that the director of the department of education review the denial of the waiver request.*

*It is the intent of the department of education to waive requirements only when it is determined that they would result in unequal treatment of the AEA's or cause an undue hardship to the requesting AEA and the waiver clearly is in the public interest.*

*These rules are intended to implement Iowa Code subsection sections 256.7(5) 282.30 and 282.31.*

[Filed 1/18/00, effective 3/15/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

**ARC 9637A****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed**

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

The Council on Human Services adopted these amendments January 12, 2000. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on December 1, 1999, as **ARC 9489A**.

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

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

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

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

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

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

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

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

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

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

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

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 234.12.

These amendments shall become effective April 1, 2000. The following amendments are adopted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Filed 1/12/00, effective 4/1/00]

[Published 2/9/00]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

**ARC 9646A**

**INSURANCE DIVISION[191]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 505.8 and Iowa Code Supplement section 522A.7, the Insurance Division hereby amends Chapter 10, “Licensing of Insurance Producers,” Iowa Administrative Code.

The amendment adopts rules governing the qualifications and procedures for licensing of car rental companies and

## INSURANCE DIVISION[191](cont'd)

their counter employees that desire to sell insurance to car rental customers. The rules implement Iowa Code Supplement chapter 522A, which imposed a license requirement on all car rental companies that wished to sell insurance to car rental customers. There are currently no rules in place to govern this process or give guidance to persons who wish to become licensed.

Notice of Intended Action was published in the December 1, 1999, Iowa Administrative Bulletin as **ARC 9506A**. In response to comments received, proposed rule 191—10.61(522A) was not adopted. In all other respects, the adopted rules are the same as the noticed rules.

This amendment will become effective March 15, 2000.

This amendment is intended to implement Iowa Code Supplement chapter 522A.

The following amendment is adopted.

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

## DIVISION II

LICENSING OF CAR RENTAL COMPANIES AND EMPLOYEES  
(Effective March 15, 2000)

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

**191—10.52(522A) Definitions.**

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

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

“Division” means the Iowa insurance division.

“Filed” means received at the Iowa insurance division.

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

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

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

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

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

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

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

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

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

**191—10.55(522A) Counter employee licenses.**

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

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

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

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

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

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

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

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

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

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

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

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

**191—10.57(522A) License renewal.**

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

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

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

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

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

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

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

## INSURANCE DIVISION[191](cont'd)

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

**191—10.60(522A) Violations and penalties.**

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

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

Rules 10.51(522A) to 10.60(522A) are intended to implement Iowa Code Supplement chapter 522A.

[Filed 1/20/00, effective 3/15/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

**ARC 9680A****LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3(1) and 91.6, the Labor Commissioner amends Chapter 4, "Recording and Reporting Occupational Injuries and Illnesses," Iowa Administrative Code.

These amendments relate to filing of first report of injury forms and implement Iowa Code section 88.6(3)"b."

These amendments are necessary because the Division of Industrial Services has been renamed the Division of Workers' Compensation; to facilitate electronic document filing; to make the rules of the Division of Labor Services more consistent with rules of the Division of Workers' Compensation; to ensure prompt and efficient reporting of injuries and illnesses; and to better protect employee safety and health. First reports of injury are required by Iowa Code section 86.11; therefore, no waiver provision is included.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 25, 1999, as **ARC 9287A**. A public hearing was scheduled for September 22, 1999. No comments were received.

The adopted amendments differ from the amendments published in the Notice of Intended Action. To make these rules more consistent with the rules of the Division of Workers' Compensation and to facilitate electronic document filing, Item 1 has been changed and subrule 4.4(3) proposed in Item 2 of the Notice was not adopted. Changes to Item 1 include striking the words "in writing" and the sentence, "The form to be used for reporting under this subrule is the Iowa Form No. L-1/WC-1(309-5012)." and including the sentence, "First reports of injury are to be filed in the form and manner required by the division of workers' compensation."

The amendments will become effective March 15, 2000.

These amendments are intended to implement Iowa Code sections 88.2, 88.6(3), and 88.18.

The following amendments are adopted.

ITEM 1. Amend subrule 4.4(2) to read as follows:

**4.4(2)** All employers shall report ~~in writing~~ to the Iowa ~~industrial commissioner of the department of workforce development, division of industrial services~~ *division of workers' compensation*; any occupational injury or illness which temporarily disables an employee for more than three days or which results in permanent total disability, permanent partial disability or death. This report shall be made within four days from such event when such injury or illness is alleged by the employee to have been sustained in the course of the employee's employment. ~~The form to be used for reporting under this subrule is the Iowa Form No. L-1/WC-1(309-5012).~~ *First reports of injury are to be filed in the form and manner required by the division of workers' compensation.* A report to the ~~department of workforce development, division of industrial services~~ *workers' compensation*, is considered to be a report to the ~~department of workforce development, division of labor services.~~ The division of ~~industrial services~~ *workers' compensation* shall forward all reports to the division of labor services. This rule does not excuse employers from notifying the division of labor services of fatality or multiple hospitalization accidents as required by rule 875—4.8(88).

ITEM 2. Amend rule ~~875—4.19(88)~~, numbered paragraph "3," to read as follows:

3. Obligation to report to the Iowa ~~industrial commissioner~~ *division of workers' compensation* under subrule 4.4(2) any occupational injury or illness which temporarily disables an employee for more than three days or which results in permanent total disability, permanent partial disability, or death.

[Filed 1/21/00, effective 3/15/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

**ARC 9679A****LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.5 and 91.6, the Labor Commissioner amends Chapter 9, "Discrimination Against Employees," Iowa Administrative Code.

The amendment makes rule 9.4(88) more consistent with current statutory language in order to protect employee safety and health more effectively. No waiver provision is included as the rule paraphrases the Iowa Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 25, 1999, as **ARC 9286A**. A public hearing was scheduled for September 22, 1999. No comments were received. This amendment is identical to that published under Notice of Intended Action.

The amendment will become effective March 15, 2000.

The amendment is intended to implement Iowa Code section 88.9(3).

The following amendment is adopted.

Amend rule 875—9.4(88), first sentence, to read as follows:

**875—9.4(88) Persons prohibited from discriminating.** Iowa Code section 88.9(3) ~~specifically states that "no provides that a person shall not discharge or in any manner dis-~~

LABOR SERVICES DIVISION[875](cont'd)

criminate against an employee<sup>22</sup> because the employee has exercised rights under the Act.

[Filed 1/21/00, effective 3/15/00]  
[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

**ARC 9654A**

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

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455G.4(3)"a" and 455G.11(1)"c," the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby rescinds Chapter 10, "Eligibility for Insurance," adopts a new Chapter 10, "Restructure of Insurance Board and Transfer of Assets and Liabilities of Insurance Fund," and amends Chapter 11, "Remedial or Insurance Claims," Iowa Administrative Code.

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

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

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 1, 1999, as **ARC 9503A**. Public comments were received on these amendments. The adopted amendments have been changed since the Notice. The rules in Chapter 10 as originally noticed referenced certain effective dates (March 1, 2000, and January 31, 2000). In accordance with Iowa Code section 17A.5, the rules will become effective March 15, 2000. Accordingly the March 1, 2000, date was changed and flexibility given to the board to prevent being in violation of these rules in the event the referenced dates become impracticable. A change was made to rule 591—10.3(455G) to clarify the action to be taken by the board pursuant to this rule.

These amendments were approved January 12, 2000. These amendments shall become effective March 15, 2000.

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

The following amendments are adopted.  
ITEM 1. Rescind 591—Chapter 10 and adopt the following new chapter in lieu thereof:

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

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

**591—10.2(455G) Transfer of insurance fund assets and liabilities.** Effective March 15, 2000, or as soon thereafter as the board determines is reasonably practicable, the comprehensive petroleum underground storage tank fund board shall transfer all assets and liabilities of the underground storage tank insurance fund to Petroleum Marketers Mutual Insurance Company (PMMIC). The method of transfer shall be pursuant to a memorandum of understanding by and between the board and Petroleum Marketers Mutual Insurance Company. Said memorandum of understanding shall be prepared by and executed no later than January 31, 2000, or as soon thereafter as a memorandum of understanding acceptable to both PMMIC and the board can be drafted and approved.

**591—10.3(455G) Approval of new insurance fund.** The transfer of all assets and liabilities of the insurance fund to be made pursuant to this chapter is contingent upon Petroleum Marketers Mutual Insurance Company receiving certification from the commissioner of insurance.

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

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

**CHAPTER 11  
REMEDIAL OR INSURANCE CLAIMS**

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

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

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

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

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

**11.2(3)** Owner or operator compliance with regulatory and program requirements shall be evaluated as part of the investigation. The failure to meet regulatory and program standards shall not bar recovery hereunder. However, failure to meet regulatory and program requirements which exist at the time of payment may result in cost recovery claims as provided under Iowa Code section 455G.13.

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

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

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

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

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

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

[Filed 1/20/00, effective 3/15/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

## ARC 9651A

### PUBLIC HEALTH DEPARTMENT[641]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby adopts new Chapter 131, "Emergency Medical Services Provider Education/Training/Certification," and amends Chapter 132, "Emergency Medical Services," Iowa Administrative Code.

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

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

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

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

Notice of Intended Action was published in the December 1, 1999, Iowa Administrative Bulletin as **ARC 9522A**.

The Department of Public Health held a public meeting over the Iowa Communications Network (ICN) on Tuesday, December 21, 1999, from 1 to 2 p.m. No comments were received prior to the hearing; however, one verbal and one written comment were presented during the hearing. The verbal comment expressed support for the amnesty rule allowing previously certified EMS providers a process to reinstate their certification. The written comment asked for clarification of new definitions, "critical care paramedic," and "paramedic specialist" and further clarification of the existing definition of "physician designee."

There has been one change from the noticed rules. Within the definition of "physician designee" in Chapter 131, the term "advanced" has been deleted from the phrase "advanced emergency medical care personnel." The term had been inadvertently placed in the definition. The definition now reads as follows: "Physician designee" means a registered nurse licensed under Iowa Code chapter 152, or a physician's assistant licensed under Iowa Code chapter 148C and approved by the board of physician's assistant examiners, who holds a current course completion card in ACLS. The physician designee may act as an intermediary for a supervising physician in directing the actions of emergency medical care personnel in accordance with written policies and protocols.

The State Board of Health adopted these amendments January 12, 2000.

These amendments will become effective March 15, 2000.

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

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Ch 131, 132.1, 132.2(4), 132.3 to 132.6, 132.7(6), 132.8(1), 132.10(16), 132.11 to 132.13] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 9522A**, IAB 12/1/99.

[Filed 1/20/00, effective 3/15/00]

[Published 2/9/00]

[For replacement pages for IAC, see IAC Supplement 2/9/00.]

## ARC 9648A

### RACING AND GAMING COMMISSION[491]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby amends Chapter 1, "Organization and Operation," Chapter 10, "Thoroughbred Racing," and Chapter 26, "Rules of the Games," Iowa Administrative Code.

Item 1 adopts the waiver rule required by Executive Order Number 11.

Item 2 defines a certified bleeder.

Item 3 allows a trial period to evaluate a proposed new gambling game.



## RACING AND GAMING COMMISSION[491](cont'd)

These amendments are identical to those published under Notice of Intended Action in the December 15, 1999, Iowa Administrative Bulletin as **ARC 9537A**.

A public hearing was held on January 4, 2000. No comments were received.

These amendments will become effective March 15, 2000.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

**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 [1.8, 10.6(1)"g," 26.18] is being omitted. These amendments are identical to those published under Notice as **ARC 9537A**, IAB 12/15/99.

[Filed 1/20/00, effective 3/15/00]  
[Published 2/9/00]

[For replacement pages for IAC, see IAC Supplement 2/9/00.]

**ARC 9649A****RACING AND GAMING  
COMMISSION[491]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby amends Chapter 5, "Applications for Track Licenses and Racing Dates," Chapter 7, "Greyhound Racing," Chapter 9, "Harness Racing," Chapter 10, "Thoroughbred Racing," Chapter 13, "Occupational and Vendor Licensing," Chapter 24, "Accounting and Cash Control," and Chapter 25, "Riverboat Operation," Iowa Administrative Code.

Items 1, 2, 12, 13, and 15 change incorrect rule references.

Item 3 requires the paddock judge to report all delays to the stewards.

Item 4 requires the paddock judge to supervise the greyhounds from paddock to post.

Item 5 requires the brakeman to ensure that the lure is secured and the arm is fully extended.

Item 6 requires the brakeman to inspect the rail to ensure it is in perfect repair and free of debris.

Item 7 requires the brakeman to ensure that the arm has been retracted and stop the lure at the finish of the race.

Item 8 allows a kennel owner to request a change in the racing weight of a greyhound.

Item 9 eliminates an official timer, placing judges and the photo finish technician from the list of racing officials.

Item 10 defines an outrider.

Item 11 makes an outrider a racing official.

Item 14 outlines additional duties for the stewards.

Item 16 establishes the duties of an outrider.

Item 17 does not allow a jockey to intimidate any other horse during a race.

Item 18 does not allow a horse to enter a race if it appears on the starter's list, steward's list or veterinarian's list.

Item 19 establishes rules as to when a horse is required to have a workout prior to starting in an official race.

Item 20 does not allow a change in the equipment used on a horse unless permission has been granted by the stewards.

Item 21 requires an owner and trainer to be licensed one hour prior to the scheduled post time of the race in which the horse is entered.

Item 22 eliminates unnecessary language.

Item 23 requires a Commission representative to conduct an investigation of any jackpot in excess of \$100,000.

Item 24 adds baccarat as an approved game and changes the definition of "video machine" for racetrack enclosures.

Item 25 establishes rules for the reporting of incidents by the licensees to the Commission.

These amendments are identical to those published under Notice of Intended Action in the November 17, 1999, Iowa Administrative Bulletin as **ARC 9488A**.

A public hearing was held on December 7, 1999. No comments were received.

These amendments will become effective March 15, 2000.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

**EDITOR'S NOTE:** Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [5.15(9), 7.9, 7.13(7), 9.2(1), 10.1, 10.2, 10.4, 10.5, 13.2(5), 13.19(5), 24.29(11), 25.11(2), 25.14(3)] is being omitted. These amendments are identical to those published under Notice as **ARC 9488A**, IAB 11/17/99.

[Filed 1/20/00, effective 3/15/00]  
[Published 2/9/00]

[For replacement pages for IAC, see IAC Supplement 2/9/00.]

**ARC 9681A****SOIL CONSERVATION  
DIVISION[27]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 161A.4(1), the Division of Soil Conservation hereby amends Chapter 10, "Iowa Financial Incentive Program for Soil Erosion Control," Iowa Administrative Code.

These amendments have been adopted to allow cost sharing on grade stabilization structures with other public funds at a cost-share rate greater than 50 percent, but not exceeding 75 percent. A corrective change for Chapter 10 summer construction incentive dates has also been made.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 15, 1999, as **ARC 9528A**.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 161A.

The amendments will become effective on March 29, 2000.

The following amendments are adopted.

**ITEM 1.** Amend rule **27—10.41(161A)**, second unnumbered paragraph, as follows:

Except for the programs authorized in subrules 10.41(2), 10.41(4), 10.41(5), ~~and~~ 10.41(8), *and* 10.41(9), these funds

SOIL CONSERVATION DIVISION[27](cont'd)

shall not be used alone or in combination with other public funds to provide a financial incentive payment greater than 50 percent of the approved cost for permanent soil conservation practices.

ITEM 2. Adopt **new** subrule 10.41(9) as follows:

**10.41(9)** Funds distributed to annual programs and provided to districts may be used in combination with other public funds on grade stabilization structures, in accordance with the following:

a. The maximum cost-share rate realized by the landowner shall not exceed 75 percent when state cost-share funds appropriated to the division and districts are utilized in combination with other public funds.

b. Funds utilized by districts in conjunction with such projects shall come from the district's regular allocation.

c. Only grade stabilization structures established in accordance with procedures pursuant to the rules shall be eligible for financial incentive programs.

d. The recipient will be required to sign an agreement as stated in subrule 10.74(5).

ITEM 3. Amend subrule 10.60(2) as follows:

**10.60(2)** Summer construction incentives. Commissioners may enter agreements providing for cost sharing up to 60 percent of the cost of establishing approved, permanent soil and water conservation practices where the establishment of that practice involves a construction project which begins after June 1 but before ~~August 15~~ *September 15* of any calendar year. Commissioners shall not use state cost-sharing funds to pay such incentives when requests for cost sharing at the 50 percent level are sufficient to use all of the district's allocation for that fiscal year.

[Filed 1/21/00, effective 3/29/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

**ARC 9645A**

**TRANSPORTATION  
DEPARTMENT[761]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on January 19, 2000, adopted Chapter 717, "General Aviation Airport Infrastructure Program," Iowa Administrative Code.

Notice of Intended Action for these rules was published in the December 15, 1999, Iowa Administrative Bulletin as **ARC 9527A**.

The general aviation airport infrastructure program provides funding for improvements to the vertical infrastructure at general aviation airports in Iowa. The source of funds is a \$500,000 appropriation in 1999 Iowa Acts, chapter 204, section 11, subsection 2, from the rebuild Iowa infrastructure fund. The legislation requires the Department to adopt rules to administer a program for disbursement of these funds.

These rules do not provide for waivers; the Department developed these rules in consultation with an airport advisory committee and believes the rules are workable as written.

These rules are identical to those published under Notice of Intended Action.

These rules are intended to implement Iowa Code sections 8.57 and 328.12 and 1999 Iowa Acts, chapter 204, section 11, subsection 2.

These rules will become effective March 15, 2000.

Rule-making action:

Adopt the following **new** chapter:

**CHAPTER 717  
GENERAL AVIATION AIRPORT  
INFRASTRUCTURE PROGRAM**

**761—717.1(328) Purpose.** The purpose of the general aviation airport infrastructure program is to provide funding for improvements to the vertical infrastructure at Iowa's 103 general aviation airports. The source of funds is an appropriation in 1999 Iowa Acts, chapter 204, section 11, subsection 2, from the rebuild Iowa infrastructure fund.

**761—717.2(328) Definitions.** The definitions in Iowa Code section 328.1 and rule 761—700.1(328) apply to these rules. In addition:

"General aviation airport" means a public airport that is owned by a governmental subdivision of the state of Iowa and that does not have scheduled commercial air service.

"Primary general aviation airport" is an airport identified as such in the 1999 Iowa Aviation System Plan.

"Vertical infrastructure" is defined in Iowa Code section 8.57, subsection 5.

**761—717.3(328) Information.** Program information, instructions, and forms may be obtained from the Office of Program Management, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1190.

**761—717.4(328) Eligible airports.** Eligible airports are those general aviation airports that are listed in the 1999 Iowa Aviation System Plan and that have a current airport layout plan.

**761—717.5(328) Eligible project activities.** Activities that are eligible for reimbursement include, but are not limited to, the following:

**717.5(1)** Hangar renovation or construction including associated design, land acquisition, grading, foundation work, floor slabs and utilities.

**717.5(2)** Fuel facilities including associated design, land acquisition, grading, foundation work, floor slabs and utilities.

**717.5(3)** Terminal building renovation or construction including associated design, land acquisition, grading, foundation work, floor slabs and utilities.

**761—717.6(328) Ineligible project activities.** Activities that are not eligible for reimbursement include, but are not limited to, the following:

**717.6(1)** Runway, taxiway, or apron paving. This includes any apron paving directly adjacent to terminal buildings or hangars.

**717.6(2)** Automobile parking lot grading, paving, or lighting.

**717.6(3)** Routine maintenance of pavements or buildings.

**761—717.7(328) Funding.**

**717.7(1)** The funding ratio for all projects is 70/30 (70 percent state funds, 30 percent local funds).

## TRANSPORTATION DEPARTMENT[761](cont'd)

**717.7(2) Maximum state participation.** Using the appropriated funds, the maximum state participation is \$50,000 per airport per year.

**761—717.8(328) Project priorities.** Priority shall be given to projects which produce revenue for the airport such as hangars and fuel facilities. Rehabilitation of existing infrastructure where feasible shall have priority over new construction. Primary general aviation airports shall have priority over other general aviation airports. The department shall rank projects as shown in the following table, with number 1 having the highest priority:

<u>Project Type</u>	<u>Primary General Aviation Airport</u>	<u>Other General Aviation Airport</u>
Rehabilitation of aircraft storage or maintenance hangars	1	2
New or expanded aircraft storage or maintenance hangars	3	4
New or expanded fuel facilities	5	6
Rehabilitation of office, terminal, vehicle or service facilities	7	8
New or expanded office, terminal, vehicle or service facilities	9	10

**761—717.9(328) Project applications.**

**717.9(1)** Project applications shall be submitted through the local transportation center planners to the office of program management.

**717.9(2)** Each application shall contain:

a. General information, including the airport sponsor's name, contact person, mailing address and telephone number.

b. A capital improvement program (CIP) data sheet. The CIP data sheet shall include a sketch of the project, a brief description of the project and its purpose, and cost information including total project cost and an itemized breakdown of project components.

c. A resolution from the airport sponsor endorsing the project and authorizing the necessary local match funding.

**761—717.10(328) Review and approval.** Department staff shall review and rate project applications and submit its recommendations to the transportation commission. The transportation commission shall be responsible for determining the projects to be funded and the amount to be funded for each project. If two or more projects have the same priority ranking, but not all of those projects can be funded, priority may be given to those projects at airports that have the larger numbers of based aircraft.

**761—717.11(328) Project administration.**

**717.11(1)** After a project has been approved by the commission, the department shall enter into an agreement with the airport sponsor.

**717.11(2) Payments.** Payments to the airport sponsor for eligible project costs shall be made on a cost reimbursement basis.

**717.11(3) Cost overruns.** Costs in excess of the percentage match and the total amount approved by the commission are the responsibility of the airport sponsor.

These rules are intended to implement Iowa Code sections 8.57 and 328.12 and 1999 Iowa Acts, chapter 204, section 11, subsection 2.

[Filed 1/20/00, effective 3/15/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

**ARC 9662A****UTILITIES DIVISION[199]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3, 476.1, 476.2, and 476.6(15), the Utilities Board (Board) gives notice that on January 20, 2000, the Board issued an order in Docket No. RMU-99-11, In Re: Natural Gas Supply and Cost Review, "Order Adopting Rule Making," and adopted certain revisions to the Board's existing rule, 199 IAC 19.11(476). Before this rule making, 199 IAC 19.11(476) required the Board to conduct an annual proceeding and required each utility to file a 12-month plan and a five-year natural gas procurement plan by November 1 of each year. In 1998, the legislature amended Iowa Code section 476.6(15) to allow the Board discretion in determining the appropriate interval between reviews of a rate-regulated utility's natural gas procurement and contracting practices. The amendment to the statute removed specific review criteria and states that the utilities must file information, as the Board deems appropriate.

In this rule making, the Board amends 199 IAC 19.11(476) to state that the Board shall periodically conduct a contested case proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated utility's natural gas procurement and contracting practices. The Board will notify the utilities 90 days prior to the time the utilities will be required to file a plan. In addition, in the years in which the Board does not conduct a contested case proceeding, it may require the utilities to file some information for the Board's review. The amendments to the rule remove the specific evaluation criteria from 199 IAC 19.11(4).

Notice of Intended Action for the proposed rule making was published in the Iowa Administrative Bulletin on November 3, 1999, as **ARC 9441A**. Written comments were filed on or before November 23, 1999, and a public hearing to receive oral comments was held on December 7, 1999.

Written comments were filed by MidAmerican Energy Company (MidAmerican), the Consumer Advocate Division of the Department of Justice (Consumer Advocate), IES Utilities Inc. (IES), Interstate Power Company (Interstate), and Peoples Natural Gas Company, Division of UtiliCorp United Inc. (Peoples).

All of the commenters supported the amendments to the rules. Peoples stated it supported the adoption of the proposed amendments and urged the Board to implement performance-based natural gas procurement policies and procedures at some appropriate time in the future. Consumer Advocate requested the Board amend the rule to allow an interested party to petition the Board to commence a contested case in any year. The Board finds it is not necessary to affirm that specific authority in this rule. Pursuant to Iowa Code chapter 476 and 199 IAC 6, Consumer Advocate or any in-

UTILITIES DIVISION[199](cont'd)

terested person has the authority to file a complaint with the Board at any time it finds it is necessary.

MidAmerican expressed a concern that the amendments to the rule could result in a repetitious review of long-term existing contracts. The Board will adopt the amendments as proposed. 199 IAC 19.11(1)"f" requires only a listing of all contracts executed since the last review. 199 IAC 19.11(1)"b" requires utilities to file contracts and arrangements executed or in effect for the future 12-month and 3-year periods. Together, these requirements will give the Board all of the information necessary to review the utilities' procurement practices.

These amendments will become effective March 15, 2000.

These amendments are intended to implement Iowa Code section 476.6(15).

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 [19.11] is being omitted. These amendments are identical to those published under Notice as ARC 9441A, IAB 11/3/99.

[Filed 1/21/00, effective 3/15/00]
[Published 2/9/00]

[For replacement pages for IAC, see IAC Supplement 2/9/00.]

ARC 9686A

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development amends Chapter 2, "Mission and Structure," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as ARC 9534A on December 15, 1999. No comments concerning the amendment were received from the public. The amendment is identical to that published under Notice of Intended Action.

The new rule allows for waivers in compliance with Executive Order Number Eleven and is intended to provide greater access to Division programs and services.

The Workforce Development Board adopted the new rule on January 21, 2000.

This rule will become effective on March 15, 2000.

This rule is intended to implement Iowa Code chapter 17A and Executive Order Number Eleven.

The following amendment is adopted.

Amend 877—Chapter 2 by adopting the following new rule:

877—2.4(17A, ExecOrd11) Requests for waiver of rules. Requests for waiver of a rule in the Workforce Development Board/Services Division[877] of the Iowa Administrative Code shall be made to the Division Administrator, Division of Workforce Development Center Administration, 150 Des Moines Street, Des Moines, Iowa 50309.

2.4(1) Waivers from division rules shall not be granted unless the following circumstances are met:

- a. The department has exclusive rule-making authority to promulgate the rule from which waiver is requested; and
b. No statute or rule otherwise controls the grant of a waiver from the rule from which waiver is requested.

2.4(2) The person that requests waiver of the rule must provide clear and convincing evidence that:

- a. Compliance with the rule will create an undue hardship on the person requesting the waiver.
b. Substantially equal protection of health and safety will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.
c. The waiver will not harm other persons and will not adversely affect the public interest.

2.4(3) The director shall grant or deny the waiver within 60 days of the date the request is filed with the department after review and recommendation of the division administrator. A denial of a request for a waiver is absolutely final and is not appealable. The director shall deny the request for waiver of a state or federal statute. If the request for waiver relates to a time requirement of a rule, the request must be received before the time specified in the rule has expired. The director may deny the request if the request does not comply with the provisions of this rule.

2.4(4) Waivers are granted at the complete discretion of the director after consideration of all relevant factors including, but not limited to, the following:

- a. The need of the person or entity directly affected by the exception. Exceptions will be granted only in cases of extreme need.
b. Whether there are exceptional circumstances justifying an exception to the general rule applicable in otherwise similar circumstances.
c. Whether granting the exception would result in a net savings to the state or promote efficiency in the administration of programs or service delivery. Net savings or efficiency will make an exception more likely.
d. In the case of services, assistance, or grants, whether other possible sources have been exhausted. Exceptions will not generally be granted if other sources are available.
e. The cost of the exception to the state and availability of funds in the department's budget.

2.4(5) All requests for waiver must substantially conform to the following form:

Form with fields: (Name of person requesting waiver), REQUEST FOR WAIVER OF (SPECIFY RULE FOR WHICH WAIVER IS REQUESTED).

Reasons for requesting waiver:

Name, address, telephone number and signature of person submitting waiver request.

The specific rule to which an exception is requested or the substance thereof.

The specific waiver requested.

The nature of the waiver requested, including any alternative means or other proposed condition or modification proposed to achieve the purpose of the rule.

2.4(6) The director may condition the grant of a waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

2.4(7) A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director may, at any time, cancel a waiver

## WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

upon appropriate notice if the director finds the facts as stated in the request appear not true, material facts have been withheld, the alternative means of compliance provided in the waiver has failed to achieve the objectives of the statute, or the person requesting the waiver has failed to comply with conditions set forth in the waiver approval.

**2.4(8)** All grants of waivers shall be indexed and available to members of the public in the Division of Workforce Development Center Administration, 150 Des Moines Street, Des Moines, Iowa 50309. In addition, the director shall notify the workforce development board of any ruling to grant a waiver at its next regularly scheduled meeting following the ruling.

This rule is intended to implement Iowa Code chapter 17A and Executive Order Number Eleven.

[Filed 1/21/00, effective 3/15/00]

[Published 2/9/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/00.

\*SUMMARY OF DECISIONS  
THE SUPREME COURT OF IOWA  
FILED JANUARY 20, 2000

*Note:* Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA, 50319, for a fee of 40 cents per page.

**No. 99-1574. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. MORRIS.**

On review of report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by McGiverin, C.J., and Carter, Neuman, and Cady, JJ., and Harris, S.J. Opinion by Cady, J. (6 pages \$2.40)

The Grievance Commission found respondent James B. Morris III violated the Code of Professional Responsibility by willfully failing to pay withholding taxes on wages paid to an employee of his law office and failing to file the required withholding forms. It recommended Morris' license be suspended for at least six months. **OPINION HOLDS:** I. We believe Morris' conduct, like the failure to file tax returns, constitutes serious professional misconduct. It not only violates a criminal statute, but involves moral turpitude. It is tantamount to taking an employee's money. We conclude Morris violated the ethical provisions identified by the commission. II. The nature of this misconduct is serious enough to warrant a suspension. We are also mindful that Morris has been disciplined in the past. Conversely, we consider the medical and financial problems Morris has suffered, which do not excuse misconduct but may impact the appropriate sanction. In view of all the circumstances and relevant factors, we indefinitely suspend Morris' license to practice law in Iowa, with no possible reinstatement for six months from the filing of this opinion. As a condition of reinstatement, Morris must prove he has not practiced law during this period and has met client notification requirements. Costs are assessed to Morris.

**No. 99-1573. IOWA SUPREME COURT BOARD OF PROF'L ETHICS & CONDUCT v. ERBES.**

On review of the report of the Grievance Commission. **LAWYER REPRIMANDED.** Considered by McGiverin, C.J., and Carter, Neuman, Cady, JJ., and Harris, S.J. Opinion by Neuman, J. (6 pages \$2.40)

Respondent David Erbes failed to file required annual or final reports in one estate, one trust and three guardianships in which he served as attorney for the fiduciaries. The Board of Professional Ethics and Conduct charged Erbes with neglect of a client's legal matter in each case. It also charged that Erbes failed to respond to the Board's investigation of these probate delinquencies. Erbes conceded the misconduct. The grievance commission recommended a public reprimand. **OPINION HOLDS:** We perceive no attempt by Erbes or his counsel to excuse or minimize the neglectful conduct. Instead, Erbes has faced his dilatory behavior head-on through counseling and the record now reveals substantial improvement in his ability to effectively serve his clients. We note that Erbes' delinquencies, though inexcusable, came to light via routine notices rather than client complaints or losses. Moreover, although this is not Erbes' first time before this court, the misconduct predates his most recent reprimand. Under these circumstances, we concur in the commission's recommendation and reprimand Erbes for the misconduct.

**No. 97-1962. DATA DOCUMENTS v. POTTAWATTAMIE COUNTY.**

Appeal from the Iowa District Court for Pottawattamie County, Leo F. Connolly, Judge. **AFFIRMED ON APPEAL; CROSS-APPEAL MOOTED.** Considered by McGiverin, C.J., and Carter, Neuman, and Cady, JJ., and Harris, SJ. Opinion by McGiverin, C.J. (11 pages \$4.40)

An association of Iowa county treasurers (the Group) solicited a bid from Data Documents, Inc., for the production of motor vehicle license renewal notices. The parties agreed to a price and a quantity of notices to be distributed from July 1989 to June 1990. In July 1990, Data informed the Group that it still had unmailed notices and some envelopes left. Data sent the Group an invoice to cover the alleged contract price for unused notices and envelopes. The Group refused to pay or accept delivery, and suggested Data contact Midwest Printing Services (Midwest) to sell the overstock. Data made one offer to Midwest, which Midwest declined. Data sued Pottawattamie County, a member of the Group, alleging breach of contract. After a bench trial, the district court entered judgment in favor of the county. Data appeals and the county cross-appeals. **OPINION HOLDS:** I. We believe substantial evidence supports the district court's conclusion that there was a written contract between Data and the Group which the Group breached. II. We find that Data failed to produce sufficient evidence that it made a reasonable effort to resell the goods at a reasonable price or that such effort would be unavailing, and we agree that one attempt to sell Data's overstock did not constitute a reasonable effort. The court properly found that Data was not entitled to recover the amount pursuant to the contract under Iowa Code section 554.2709 (1989). III. We find Data presented no evidence concerning the market price of the overstock envelopes, any profits it made or would have made from the contract, or any expenses it saved as a result of the Group's alleged breach of contract. Thus, Data's damages were too speculative, and we conclude the district court properly determined that Data was not entitled to recover damages under Iowa Code section 554.2708. In light of this conclusion, we need not address the county's cross-appeal. We affirm.

**No. 98-932. STATE v. SMITH.**

Appeal from the Iowa District Court for Black Hawk County, Walter W. Rothschild and Joseph Moothart, District Associate Judges. **REVERSED.** Considered by McGiverin, C.J., and Carter, Lavorato, Neuman, and Ternus, JJ. Per curiam. (3 pages \$1.20)

Following his release from prison, Antoine Smith was required to register as a sex offender pursuant to Iowa Code section 692A.3 (1997). Smith later served a one-year jail sentence on a different charge, and upon his release, failed to file a new change of address with the county sheriff. As a result, a warrant was issued for his arrest, and he was subsequently charged with and convicted of failure to register, punishable pursuant to section 692A.7(1). Smith has appealed. **OPINION HOLDS:** Based on our recent holding in *State v. Reiter*, 601 N.W.2d 372 (Iowa 1999), the failure to notify the sheriff of a change of address is not punishable as a failure to register under section 692A.7(1). We therefore reverse Smith's conviction.

**No. 98-938. SERGEANT BLUFF-LUTON SCH. DISTRICT v. CITY COUNCIL OF THE CITY OF SIOUX CITY.**

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Carter, Neuman, and Cady, JJ., and Harris, SJ. Opinion by McGiverin, C.J.  
(10 pages \$4.00)

In 1987, the defendant city council of Sioux City established an urban renewal project, pursuant to Iowa Code chapter 403 (1993). A project amendment approved on December 19, 1994, included a residential real estate development known as the Virginia Meadows Addition. The city did not make a finding that the development constitutes a "slum area" or "blighted area," under Iowa Code section 403.4(1) but did state that the purpose of including Virginia Meadows in the project was for economic development. Due to Virginia Meadows' inclusion in the city's urban renewal project, the Sergeant Bluff-Luton School District school district, unlike the city, will receive less property tax revenue. The district court denied as inappropriate the school district's request for injunctive relief seeking to prevent the city council from assessing taxes based on inclusion of Virginia Meadows in the project. The ruling was affirmed by this court in *Sergeant Bluff-Luton School District v. City of Sioux City*, 562 N.W.2d 154 (Iowa 1997). The city budget based on the amended project ultimately resulted in an approved tax levy certified on August 8, 1996. On August 16, 1996, the school district filed a petition for writ of certiorari in district court challenging the city's property tax levy. The petition sought a declaration that any levy based upon inclusion of Virginia Meadows in the urban renewal project be declared a nullity as deriving from the city's act in 1994 of illegally placing Virginia Meadows in the urban renewal project. The district court ruled that the 30-day time period for filing a petition for writ of certiorari under Iowa rule of civil procedure 307(c) began to run on August 8, 1996, the date that taxes were levied. The court concluded the certiorari petition was timely filed. The court further concluded that the city had illegally included Virginia Meadows in the urban renewal project and that tax levies were likewise illegal. The city appealed. **OPINION HOLDS:** I. Because the school district is challenging the city's decision on December 19, 1994, to include the property in the project, that date is the one from which the 30-day time period under rule 307(c) began to run. Because the school district did not file its petition for writ of certiorari within this thirty-day period, the petition for writ of certiorari was untimely filed. The district court therefore should have dismissed the writ and declaratory judgment request based thereon. II. As to the school district's request for declaratory judgment, we conclude the district court erred in deciding the taxes levied were illegal because it was based on the untimely certiorari action. III. The city's decision to include Virginia Meadows in the urban renewal project was a single action rather than a continuing one. We reverse the decision of the district court and remand with instructions to dismiss the school district's petition.

**No. 98-1741. SCOTT v. IOWA DEP'T OF TRANSP.**

Appeal from the Iowa District Court for Dallas County, William H. Joy, Judge. **REVERSED AND REMANDED.** Considered by Larson, P.J., Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Ternus, J. (6 pages \$2.40)

William Scott was arrested for operating while intoxicated. Based on a chemical test with a result of .106, the Iowa Department of Transportation



**No. 98-1741. SCOTT v. IOWA DEP'T OF TRANSP.** (continued)

(DOT) revoked Scott's driver's license under the implied consent law. Scott challenged the revocation, claiming that, when the margin of error inherent in the intoxilyzer is deducted from the test results, as required by Iowa Code section 321J.12(6) (1997), his alcohol concentration falls below the required minimum level of .10. At the administrative hearing on Scott's challenge, Scott offered no proof on this claim, nor did the DOT introduce evidence on the margin of error. The agency held Scott bore the burden of proof and, accordingly, ruled he had failed to establish that the requirements for revocation did not exist. On judicial review, the district court concluded that the DOT had the burden of proof on this issue and had failed to prove a basis for the revocation. The court ordered the DOT to cancel its revocation. The DOT appeals. **OPINION HOLDS:** If a licensee claims that his alcohol concentration was not .10 or more as required to support the agency's revocation of his license, then the licensee bears the burden of proof on that claim. If the basis for the licensee's challenge is that the test results, when reduced by the established margin of error, do not meet the threshold level of .10, then the licensee must produce evidence of the established margin of error to prove this claim. Scott failed to produce such evidence, and therefore, the agency did not err in upholding the DOT's revocation. We reverse the district court's decision and remand for entry of an order affirming the DOT's revocation of Scott's driver's license.

**No. 98-965. THOMPSON v. EMBASSY REHABILITATION AND CARE CTR.**

Appeal from the Iowa District Court for Woodbury County, James D. Scott, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Carter, Neuman, and Cady, JJ., and Harris, S.J. Opinion by Carter, J. (7 pages \$2.80)

Plaintiff, Fred Thompson, brought an action to recover for alleged improper care at defendants' nursing facility. Thompson contended the defendants negligently managed a bedsore by failing to properly position him and by failing to seek inpatient hospital care and surgery when the need arose. The bedsore developed into a severe coccyx ulcer. Thompson failed to designate an expert witness to testify on the applicable standard of care. Based on this omission, the district court granted defendants a summary judgment. Thompson appeals. **OPINION HOLDS:** I. The time of the decision to perform surgery required a medical judgment. Assuming, without deciding, that defendants could be liable for an erroneous decision in that regard, such liability cannot attach in the absence of expert testimony on the proper standard of care. II. It is a closer question whether expert testimony was needed on Thompson's claim that the defendants' staff was negligent in not regularly repositioning him in response to instructions from a physician and nurse. Such acts on the surface appear to be ministerial and subject to a standard of proof not requiring expert testimony. But under the special circumstances of this case, which indicate Thompson resisted efforts to reposition him, we believe the proper course of action for defendants' staff was not a matter within the common understanding of a jury. We affirm the summary judgment.

**No. 98-194. EFCO CORP. v. NORMAN HIGHWAY CONSTRUCTORS, INC.**

Appeal from the Iowa District Court for Polk County, Gary G. Kimes and Linda R. Reade, Judges. **AFFIRMED.** Considered by McGiverin, C.J., and Carter, Neuman, and Cady, JJ., and Harris, S.J. Opinion by Carter, J.  
(8 pages \$3.20)

Norman Highway Constructors, a Texas corporation, entered into a written contract with EFCO Corp., an Iowa corporation, for the lease of concrete-forming equipment. A dispute later arose regarding the amount Norman owed EFCO, and Norman filed an action in Texas, alleging fraud, breach of contract and breach of express and implied warranties. One and one-half hours later, EFCO filed an Iowa action to recover unpaid lease payments. Norman moved to dismiss the Iowa action, claiming the Iowa court lacked in personam jurisdiction. The Iowa court upheld Iowa's in personam jurisdiction based on a choice-of-forum agreement contained in the contract. Following trial, Norman's counterclaims were either dismissed by the court or rejected by the jury, which found in EFCO's favor on the claim for lease payments. The court entered judgment for EFCO and later added an additional award for attorney fees. Norman has appealed. **OPINION HOLDS:** I. We conclude the district court was correct in assuming in personam jurisdiction over Norman. The contract between the parties specifically designates the Iowa courts as the forum of choice. We likewise find there was insufficient evidence the agreement was an adhesion contract. II. We reject Norman's claim the Iowa court should have abated the action before it as a matter of comity until the Texas action was concluded, since the separate actions were filed only one and one-half hours apart. III. We also conclude the district court did not err in refusing to submit Norman's negligent misrepresentation claim based on Texas law. Norman failed to follow the procedures set forth in Iowa Code section 622.61 (1997) to prove foreign decisional law as fact. IV. The attorney fees awarded by the district court were within the district court's discretion. We affirm the district court's judgment.

**No. 98-1775. STATE v. MILLER.**

Appeal from the Iowa District Court for Des Moines County, Mark Kruse, District Associate Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Carter, Neuman, and Cady, JJ., and Harris, S.J. Opinion by Harris, S.J.  
(3 pages \$1.20)

Defendant, Robert Miller, was convicted following a stipulated bench trial of operating a motor vehicle while intoxicated (third offense) for an offense committed in January 1998. The two prior convictions on which the enhancement was based occurred in March of 1988 and November of 1991. Citing a 1997 statutory change in the time frame for including prior OWI offenses, increasing it from six to twelve years, Miller contends the sentencing enhancement violates the ex post facto and double jeopardy provisions of the state and federal constitutions. **OPINION HOLDS:** I. We reject Miller's ex post facto claim on the basis of our holdings in *State v. Garcia*, 600 N.W.2d 320, 321 (Iowa 1999), and *State v. Stoen*, 596 N.W.2d 504, 507-08 (Iowa 1999). II. Because the present prosecution is not for any offense previously prosecuted, double jeopardy is not implicated.

**No. 98-1354. STATE v. CONROY.**

Appeal from the Iowa District Court for Greene County, William C. Ostlund and Kurt L. Wilke, Judges. **AFFIRMED.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Snell, J.

(6 pages \$2.40)

Defendant Duane Conroy and two friends were drinking heavily one night when, at around 3:00 a.m., Conroy suggested they find out where Richard Dagit lived. Upon arriving at Dagit's home, Conroy produced a firearm and fired a shot through the window of Dagit's truck, which was parked at the end of a lane overlooking a field. Conroy was charged with reckless use of a firearm and criminal mischief. Following his conviction of both offenses, he appeals. **OPINION HOLDS:** I. The offense of reckless use of a firearm requires that the discharge of a firearm occasion unreasonable risk to others; intent to cause harm is irrelevant. The district court correctly instructed the jury on the definition of recklessness. II. The jury weighed the evidence presented in light of the manner in which the weapon was discharged, and the relative distances between Conroy, Dagit's truck, and other structures in the area. Substantial evidence supports the jury's determination that Conroy's actions were reckless. III. We need not address the issue of ineffective assistance of trial counsel based on our resolution of the other issues. The district court judgment is affirmed.

**No. 99-176. IN RE T.B.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Clinton County, Nancy S. Tabor, Associate Juvenile Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Snell, J.

(6 pages \$2.40)

The father and mother appealed a district court order terminating their parental rights regarding two of their five children. The court of appeals reversed, concluding that the State failed to prove by clear and convincing evidence the twins could not be safely returned to their parents' care. We granted further review. **OPINION HOLDS:** We conclude the State has proven by clear and convincing evidence that the parties' parental rights should be terminated. The mother has shown a general apathy toward the twins. She admits a lack of attachment to them and claims she is unable to care for all five children. The mother has placed more emphasis on obtaining employment than the children's emotional needs. The father has not complied with the case permanency plan nor has he consistently complied with substance abuse counseling. His presence in the family home has been sporadic. We affirm the juvenile court order terminating parental rights.

**No. 98-1567. STATE v. GILLILAND.**

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge. **AFFIRMED.** Considered by Larson, P.J., and Lavorato, Snell, and Cady, JJ., and Harris, S.J. Opinion by Snell, J.

(4 pages \$1.60)

Gilliland, age seventeen, appeals from his sentence to a ten-year indeterminate term of imprisonment following his conviction of robbery in the second degree. **OPINION HOLDS:** I. The legislature has generally denied the

**No. 98-1567. STATE v. GILLILAND.** (continued)

courts authority to grant a deferred judgment for a forcible felony. An exception exists for juveniles charged in juvenile court and then waived to district court by the juvenile court. II. As Gilliland was seventeen at the time of the offense, he was charged in adult court for a forcible felony over which the juvenile court is excluded from jurisdiction by section 232.8(1)(c), therefore, the court has no discretion to grant Gilliland a deferred sentence pursuant to section 232.8(3) and 232.8(1)(c).

**No. 98-474. ROUSH v. MAHASKA STATE BANK.**

Appeal from the Iowa District Court for Lucas County, David L. Christensen, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by Larson, P.J., and Lavorato, Snell, and Cady, JJ., and Harris, S.J. Opinion by Cady, J. Dissent by Harris, S.J. (8 pages \$3.20)

Mahaska State Bank took possession of Shawn Roush's truck because it had a security interest in Howard Roush's business inventory and the truck was listed as part of that inventory. Shawn made repeated requests to the Bank for the truck. The Bank eventually released the truck to Shawn. Shawn commenced this action, captioned "Petition in Replevin" against the Bank for its alleged wrongful conduct in taking possession of the truck. The petition acknowledged that Shawn had possession of the truck and requested judgment for damages to the truck including depreciation, loss of use, punitive damages, and damages for emotional pain and suffering. The Bank moved for judgment on the pleadings claiming an action in replevin could not be instituted as a matter of law since Shawn had possession of the property when the action was commenced. The district court granted the motion and dismissed the petition. Shawn appeals. **OPINION HOLDS:** I. We agree with the district court that replevin is not available when the plaintiff is in actual possession of the property subject to the replevin. Although we recognize that some states permit an action for replevin based upon constructive possession, the facts of this case do not support such a cause of action. II. Shawn, however, did not limit his theory of recovery to replevin, but included other accepted theories of recovery to withstand a challenge to the pleadings. We recognize a replevin action may not be joined with other claims for recovery. The Bank chose not to seek the remedy for misjoinder but elected to obtain judgment on the pleadings which the court can grant on a portion of the claim. III. The district court properly granted judgment on the claim for replevin. Under notice pleading, however, the petition stated a viable claim for damages which was supported by other legal theories. We reverse the district court's order and remand the case for further proceedings on the petition and cross-claim against Howard Roush. **DISSENT ASSERTS:** Shawn insists he is pursuing a replevin remedy. When the replevin action falls, as it is agreed it must, any improperly attached claims fall with it. I think the district court was correct in so holding.

**No. 98-1528. STATE v. BIRTH.**

Appeal from the Iowa District Court for Polk County, Darrell Goodhue, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Carter, Neuman, Cady, JJ., and Harris, S.J. Opinion by Harris, S.J. (3 pages \$1.20)

During the defendant's trial for domestic abuse and related offenses, the district court allowed the State to impeach a defense witness by reason of her guilty plea to a criminal offense. On appeal, the defendant claims that this was improper under Iowa Rule of Evidence 609 because the witness had been granted a deferred judgment. **OPINION HOLDS:** Until probation is completed and a deferred judgment expunged, the guilty plea was appropriate for impeachment under rule 609(a). There was no error in the challenged ruling.

**No. 99-133. STATE v. BUCHANAN.**

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Carter, Neuman, and Cady, JJ., and Harris, S.J. Opinion by Harris, S.J. Neuman, J., dissents without opinion. (3 pages \$1.20)

Defendant was charged with possession of a firearm by a felon. He had previously been convicted of committing interference with official acts while armed, an aggravated misdemeanor. The district court granted defendant's motion to dismiss the charge, finding he did not have a prior "felony" conviction, as that term is defined in Iowa Code section 724.25 (1997). The State appeals, contending that because defendant's prior conviction involved a firearm it meets the definition of "felony" under section 724.25(1). **OPINION HOLDS:** The application of the statutory language "other than an offense involving a firearm" is not limited to crimes previously committed in other states. Instead, it is a legislative directive that those committing aggravated misdemeanors by use of firearms—as well as felons—are prohibited from possessing firearms. Defendant's prior misdemeanor conviction occurred while he was armed, and it brought him within the prohibition under section 724.26. The district's ruling to the contrary is reversed and the case remanded for further proceedings in conformance with this opinion.

**No. 98-1127. BENTON v. SLATER.**

Appeal from the Iowa District Court for Warren County, Richard D. Morr, Senior Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Carter, Neuman, and Cady, JJ., and Harris, S.J. Opinion by Neuman, J. (5 pages \$2.00)

Thomas Slater, an attorney and resident of Polk County, represented clients in a medical malpractice action. Slater engaged the services of Robert Benton, an attorney with a Warren County practice, to assist him. The two men reportedly agreed to share fees. Slater evidently settled the case on behalf of his clients without prior notice—or payment—to Benton. Benton then brought this suit in Warren County for breach of contract. Slater accepted service but expressed his belief that venue was improper. Prior to answer, he moved under Iowa Rule of Civil Procedure 175 for a change of venue to Polk County pursuant to Iowa Code section 616.17 (1997). The court determined that Slater was estopped from moving for change of venue by accepting service of Benton's action

**No. 98-1127. BENTON v. SLATER. (continued)**

filed in Warren County. We granted Slater's petition for interlocutory appeal. **OPINION HOLDS:** I. Slater's acknowledgment of receipt of Benton's petition and the acceptance of service does not constitute waiver of a litigant's rights under rule 175. The district court's contrary ruling must be reversed. II. Benton's suit for breach of contract is a personal action governed by the venue provision of section 616.17 requiring the suit be brought in the county of defendant's residence rather than the provision of section 616.18 permitting venue in the county where property damages are sustained. We reverse the ruling of the district court and remand for further proceedings in accordance with rule 175.

**No. 98-166. IN RE MARRIAGE OF WAGNER.**

Appeal from the Iowa District Court for Linn County, William R. Eads Lynne E. Brady, and David M. Remley, Judges. **MODIFIED AND AFFIRMED ON APPEAL; AFFIRMED ON CROSS-APPEAL.** Considered by Larson, P.J., and Lavorato, Snell, and Cady, JJ., and Harris, S.J. Opinion by Larson, J.  
(9 pages \$3.60)

Richard petitioned to dissolve his marriage to Carol, and she received temporary child support and alimony. After trial but before the judge issued a decree, Richard's attorney sent the judge a letter requesting a reduction in temporary child support and alimony. The dissolution decree ordered Richard to pay child support but not alimony. Carol requested a new trial, alleging the letter improperly influenced the judge. The court ordered a new trial on the issue of alimony, but denied her request as to the issue of child support. The court also denied her motion for a ruling that temporary alimony was in effect until a new decree was entered. Carol appealed. A new trial was held, and the court ordered Richard to pay alimony. Richard appealed, and the two appeals were consolidated. **OPINION HOLDS:** I. Since the court had limited parameters in setting child support under our child support guidelines, and since the letter was merely cumulative of information included in an application Richard filed in the district court, we believe Carol has not shown the court abused discretion in limiting the new trial to the alimony issue. II. When a support award in a final decree is vacated, a temporary award is automatically reinstated as if there had been no final decree, unless the court's order vacating the support award shows otherwise. We reverse the district court order denying temporary alimony pending entry of the final alimony award. III. The amounts of net income for child support purposes, as found by the district court, are appropriate, and support based on our guidelines is correct. We also agree with the district court's property division in the original decree and the alimony award following retrial. We modify on the appeal to include the amounts of unpaid temporary alimony. We affirm on all other issues on the appeal and the issues raised on Richard's cross-appeal.

**No. 98-73. MILLER v. WESTFIELD INS. CO.**

Appeal from the Iowa District Court for Jasper County, J.W. Jordan, Judge. **AFFIRMED.** Considered en banc. Opinion by Ternus, J. Dissent by Cady, J. (17 pages \$6.80)

Craig S. Miller, Sr., was injured in an accident caused by an uninsured motorist. At the time of the accident, Miller was riding a motorcycle that he owned and had insured through Midwest Mutual Insurance Company. The Midwest policy did not include uninsured motorists (UM) coverage, however, because Miller had expressly rejected, in writing, Midwest's offer of such coverage. Miller also owned a pickup that he had separately insured under a liability policy issued by Westfield Insurance Company. The Westfield policy included UM coverage. This action was commenced by Miller, his wife, and his children to recover benefits under the UM coverage. Westfield claimed that the owned-but-not-insured exclusion of its policy precluded any recovery. Although the Millers argued the exclusion was unenforceable as contrary to Iowa's uninsured motorist statute, Iowa Code chapter 516A, the district court applied the exclusion to preclude any recovery. The Millers appealed. **OPINION HOLDS:** I. Iowa's UM statute does not implement mandatory UM coverage; it merely mandates that such coverage be offered to all insureds purchasing motor vehicle liability insurance. Under a proper application of the rules of statutory interpretation, we conclude that actual duplication of benefits is not required by section 516A.2(1), which permits exclusions "designed to" avoid duplication of benefits. Our imposition of such a requirement in *Lindahl v. Howe*, 345 N.W.2d 548 (Iowa 1984), was clearly wrong, and *Lindahl* is overruled. II. Clearly, if Miller had purchased UM coverage under his motorcycle policy, there would have been a duplication of UM coverage. We conclude the exclusion satisfies the statutory requirement that it be "designed to avoid the duplication of insurance." Consequently, the exclusion is enforceable, and the trial court did not err in upholding the validity of the owned-but-not-insured exclusion in Westfield's UM coverage. **DISSENT ASSERTS:** I respectfully dissent. The majority overrules *Lindahl* by concluding it failed to properly apply the rules of statutory construction to accurately discern legislative intent of sections 516A.1 and 516A.2 on the duplication of benefits for uninsured motorist coverage. In overruling *Lindahl*, I believe the majority has improperly assumed the legislative lawmaking role when our legislature has had an opportunity to reject our statutory construction on this issue and failed to do so. Furthermore, *Lindahl* properly observed under section 516A.2 that there must be some actual, not fanciful, potential for duplication of insurance or benefits, which the exclusion is designed to avoid. Under *Lindahl*, Miller had a right to rely on the law in purchasing insurance, and we have done a disservice to him by changing that law.

**No. 98-892. ST. LUKE'S HOSP. v. GRAY.**

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Lavorato, Snell, and Cady, JJ. Opinion by Larson, J. (13 pages \$5.20)

Gray began working at St. Luke's as a nurse in 1988 and in April 1993 began noticing symptoms of latex allergy. A doctor recommended Gray not work in any setting involving the use of latex products. He opined that Gray has an underlying predisposition to latex allergy, but the exposure at St. Luke's increased her symptomatology. She left St. Luke's in 1994 to work for an insurance

**No. 98-892. ST. LUKE'S HOSP. v. GRAY. (continued)**

company that did not involve contact with latex. Gray filed a petition for workers' compensation benefits. A deputy industrial commissioner found Gray had "contacted a latex allergy due to latex exposure at work" and that she had suffered a permanent partial disability. The deputy found Gray was thirty-five percent industrially disabled and ordered St. Luke's to pay benefits. This decision was affirmed by the commissioner and on judicial review. St. Luke's appeals. **OPINION HOLDS:** I.A. We find St. Luke's waived its argument that chapter 85A was the proper chapter under which to proceed. St. Luke's did not raise this until the matter had been appealed to the commissioner, not in the prehearing report as required by the agency's rules. B. Under our broad definition of "injury," we believe the commissioner and the district court correctly held that allergic reactions may be considered injuries under chapter 85. II. Relying on the medical evidence, the commissioner determined that Gray's injury arose out of her employment with St. Luke's, and substantial evidence supports that finding. III. Substantial evidence supports that, while Gray will be employable in other settings, she is no longer able to engage in many positions similar to the one at St. Luke's and has therefore suffered a loss of earning capacity. The award of thirty-five percent industrial disability is affirmed.

**No. 98-1623. IBP, INC. v. AL-GHARIB.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, James W. Brown, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Lavorato, J. (23 pages \$9.20)

Raad Al-Gharib sought workers' compensation benefits from IBP for work-related physical and mental injuries (depression). The deputy commissioner found Raad had suffered the injuries from work and was permanently and totally disabled. On IBP's appeal, the commissioner concluded a psychologist is not a physician under Iowa law and therefore not qualified to express an opinion causally connecting a mental condition to a work injury. Thus, the commissioner ignored the testimony from Raad's psychologist and ultimately concluded there was insufficient evidence Raad's mental condition was work-related. Nevertheless, the commissioner found Raad was permanently and totally disabled. IBP sought judicial review of this finding, and Raad challenged the ruling on the psychologist's testimony and the finding that Raad's depression was not work-related. The district court upheld what it interpreted to be a ruling that Raad's physical injury caused permanent and total disability. The court found it unnecessary to consider Raad's mental injury claims, prompting Raad to file an Iowa Rule of Civil Procedure 179(b) motion asking the court to address the issue because IBP had not paid bills for psychological counseling. Before the court could rule, IBP appealed and Raad cross-appealed. The district court then ruled on the motion, finding the commissioner erred in not considering the psychologist's testimony. Meanwhile, the case on appeal was transferred to the court of appeals, which ultimately concluded that, by cross-appealing prior to the district court's ruling, Raad waived the issues in the rule 179(b) motion and in his cross-appeal. The court of appeals also found Raad's waiver cured the premature nature of IBP's appeal. The court of appeals reversed and remanded the case for the commissioner to apply appropriate factors in determining whether



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Raad suffered a permanent and total disability. We granted Raad's application for further review. **OPINION HOLDS:** I. A notice of cross-appeal filed in response to an improvidently taken notice of appeal does not act as a waiver of the cross-appealing party's pending posttrial motion unless an explicit waiver of the motion is contained in the notice. Both the interlocutory notice of appeal and cross-appeal are therefore subject to our discretion to accept or decline the appeal under Iowa Rule of Appellate Procedure 1(d). We disavow anything to the contrary in *Blunt, Ellis & Loewi, Inc. v. Ingram*, 319 N.W.2d 189 (Iowa 1982). II. We grant the interlocutory appeals in this case. We also find the district court had jurisdiction to address the pending rule 179(b) motion, and we consider its ruling part of the record on appeal. III. The commissioner erred in concluding that psychologists are incompetent under Iowa Code section 135.1(4) (1997) to give opinions about causation of a psychological condition. Under Iowa Rule of Evidence 702, the commissioner had discretion to admit the psychologist's opinion testimony on causation. The commissioner failed to exercise, and therefore abused, that discretion by applying a blanket exclusion of all such psychological testimony. IV. We conclude the evidence supports a finding that Raad was totally and permanently disabled because of his physical, work-related injury. V. We vacate the court of appeals' decision and affirm the district court's remand of the case for the commissioner to reconsider the admissibility of the psychologist's testimony and the weight to be given it. We also affirm the district court's decision upholding the commissioner's decision on the disability issue.

**No. 98-1604. HAFITS v. IOWA DEP'T OF TRANSP.**

Appeal from the Iowa District Court for Woodbury County, Robert C. Clem, Judge. **REVERSED AND REMANDED.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Larson, J. (6 pages \$2.40)

Harold Hafits was involved in a one-vehicle accident when his truck went off a retaining wall and caught fire. Emergency personnel at the scene described his behavior as fully alert. A doctor at the hospital, however, concluded that Hafits was intoxicated and certified he was incapable of making a decision consenting to or refusing a blood test. A blood test revealed a blood alcohol level of .193. The Department of Transportation revoked Hafits' license for 180 days, an administrative law judge sustained the revocation, and on administrative appeal, the DOT affirmed. Hafits sought judicial review, and the district court reversed. The court found there was insufficient evidence that Hafits was incapable of making a decision regarding the blood test, so a doctor's certification of incapability under Iowa Code section 321J.7 could not provide authority for the blood test. The State appeals. **OPINION HOLDS:** We conclude that the DOT's finding of incapability is supported by substantial evidence. We have previously held that the doctor's certification is strong evidence of incapability. The doctor concluded Hafits was incapable of consenting or refusing and conveyed that opinion to the officer, who then suggested the doctor consider signing a certificate under section 321J.7. Even Hafits' own evidence that he was alert is cast in some doubt by evidence that he did not remember the accident, even though he was burned as a result of it. We reverse the district court's contrary ruling and remand for reinstatement of the revocation.

**No. 98-1078. BALMER v. HAWKEYE STEEL.**

Appeal from the Iowa District Court for Lee County, John G. Linn, Judge.  
**AFFIRMED.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady,  
JJ. Opinion by Lavorato, J. (7 pages \$2.80)

Priscilla Balmer sued her employer, Hawkeye Steel, alleging that while employed, she was verbally and mentally harassed and abused, and Hawkeye did nothing to stop the conduct. She further alleged her employment conditions became so intolerable that she had to quit, resulting in what she claimed was a constructive discharge. However, she did not allege that Hawkeye breached an employment contract, or violated any state or federal civil rights laws or public policies of this state. At the close of Balmer's case, the court granted Hawkeye's motion for a directed verdict, finding she could not maintain her suit on the theory of constructive discharge alone. Balmer appeals. **OPINION HOLDS:** We find that constructive discharge of an at-will employee is actionable only when an express discharge would be actionable in the same circumstances. There must be an accompanying claim that the constructive discharge was the result of illegal conduct such as the violation of public policy or statutory law or breach of a unilateral contract of employment created through an employer's handbook or policy manual. Balmer's claim of constructive discharge, standing alone, is not an actionable tort.



**IOWA ADMINISTRATIVE BULLETIN**  
**Customer Service Center**  
**Department of General Services**  
**Hoover State Office Building, Level A**  
**Des Moines, Iowa 50319**

Bulk Rate  
U.S. Postage  
**PAID**  
Des Moines, Iowa  
Permit No. 1195

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