



IOWA ADMINISTRATIVE BULLETIN

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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.

Subscriptions and Distribution Telephone: (515)242-5120
Fax: (515)242-5974

KATHLEEN K. BATES, Administrative Code Editor Telephone: (515)281-3355
STEPHANIE A. HOFF, Assistant Editor (515)281-8157
Fax: (515)281-4424

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC
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441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

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

Schedule for Rule Making 2000

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 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>
12	Friday, November 24, 2000	December 13, 2000
13	Friday, December 8, 2000	December 27, 2000
14	Friday, December 22, 2000	January 10, 2001

PLEASE NOTE:

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

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

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, First Floor South, Grimes State Office Building or included with the documents submitted to the Governor's Administrative Rules Coordinator.

2. Alternatively, if you have Internet E-mail access, you may send your document as an attachment to an E-mail message, addressed to both of the following:

bcarr@legis.state.ia.us
kbates@legis.state.ia.us

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, Grimes State Office Building, First Floor South, Des Moines, Iowa 50319.

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ATTORNEY GENERAL[61]		
Crime victim compensation, 9.25 to 9.36 IAB 11/1/00 ARC 0242B	Conference Room Suite 100 100 Court Ave. Des Moines, Iowa	November 21, 2000 10 a.m.
DENTAL EXAMINERS BOARD[650]		
Dental hygienists—administration of nitrous oxide inhalation analgesia, 1.1, 10.3(1), 29.6 IAB 11/15/00 ARC 0255B	Conference Room Suite D 400 SW 8th St. Des Moines, Iowa	December 5, 2000 3 to 4 p.m.
Waivers; exemptions from waiver rule, 7.1, 7.2, 7.4, 7.5, 15.5, 27.12, 30.4 IAB 11/15/00 ARC 0261B	Conference Room Suite D 400 SW 8th St. Des Moines, Iowa	December 5, 2000 2 to 3 p.m.
Resident dental licenses and faculty permits—application requirements, 13.1, 13.2 IAB 11/15/00 ARC 0260B	Conference Room Suite D 400 SW 8th St. Des Moines, Iowa	December 5, 2000 2 to 3 p.m.
Prescribing, administering, and dispensing drugs, 16.1 to 16.7 IAB 11/15/00 ARC 0259B	Conference Room Suite D 400 SW 8th St. Des Moines, Iowa	December 5, 2000 2 to 3 p.m.
Disclosure of payment for advertising, 26.1 IAB 11/15/00 ARC 0258B	Conference Room Suite D 400 SW 8th St. Des Moines, Iowa	December 5, 2000 2 to 3 p.m.
Oral and maxillofacial pathology; accreditation, 28.1 to 28.9 IAB 11/15/00 ARC 0257B	Conference Room Suite D 400 SW 8th St. Des Moines, Iowa	December 5, 2000 2 to 3 p.m.
Renewal of permits for deep sedation/ general anesthesia, 29.5(5), 29.10(2) IAB 11/15/00 ARC 0256B	Conference Room Suite D 400 SW 8th St. Des Moines, Iowa	December 5, 2000 2 to 3 p.m.
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Emergency shelter grants program, 24.2, 24.3, 24.6, 24.7, 24.10(6), 24.12(4) IAB 11/15/00 ARC 0266B	Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	December 5, 2000 1:30 p.m.
Homeless shelter operation grants program, 29.1 to 29.12 IAB 11/15/00 ARC 0265B	Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	December 5, 2000 2 p.m.

EDUCATIONAL EXAMINERS BOARD[282]

Waivers or variances from administrative rules, ch 6 IAB 11/15/00 ARC 0291B	Room 3 South, Third Floor Grimes State Office Bldg. Des Moines, Iowa	December 5, 2000 1 p.m.
Adding endorsements to licenses, 14.6 IAB 11/15/00 ARC 0289B	Room 3 South, Third Floor Grimes State Office Bldg. Des Moines, Iowa	December 5, 2000 2 p.m.
Requirements for a professional administrator's license, 14.14 IAB 11/15/00 ARC 0290B	Room 3 South, Third Floor Grimes State Office Bldg. Des Moines, Iowa	December 5, 2000 2:30 p.m.
Behind-the-wheel driving instructor authorization, 21.1 to 21.6 IAB 11/15/00 ARC 0287B (See also ARC 0288B herein)	Room 3 South, Third Floor Grimes State Office Bldg. Des Moines, Iowa	December 5, 2000 1:30 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Animal feeding operations, ch 65, amendments to be proposed IAB 11/15/00 ARC 0278B	Lower Conference Room Sioux Center Public Library 327 First Ave. NE Sioux Center, Iowa	December 12, 2000 7 p.m.
	First National Bank Bldg. 211 First Ave. NW Hampton, Iowa	December 13, 2000 7 p.m.
	Room 101 Iowa Western Community College 906 Sunnyside Ln. Atlantic, Iowa	December 18, 2000 6:30 p.m.
	Conference Room—2nd Floor Wallace State Office Bldg. Des Moines, Iowa	December 19, 2000 1 p.m.
	Marland Room, Iowa Hall—2nd Floor Kirkwood Community College 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	December 20, 2000 1:30 p.m.
Solid waste comprehensive planning requirements, rescind chs 101, 109; adopt ch 101 IAB 11/15/00 ARC 0279B (ICN Network)	IDED 200 E. Grand Ave. Des Moines, Iowa	December 8, 2000 1:30 to 4:30 p.m.
	Carnegie-Stout Public Library 360 W. 11th St. Dubuque, Iowa	December 8, 2000 1:30 to 4:30 p.m.
	Northern Trails AEA 2 9184B 265th St. Clear Lake, Iowa	December 8, 2000 1:30 to 4:30 p.m.
	Spencer High School 800 E. Third St. Spencer, Iowa	December 8, 2000 1:30 to 4:30 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

Fort Dodge High School 819 N. 25th St. Fort Dodge, Iowa	December 8, 2000 1:30 to 4:30 p.m.
Iowa City Public Library 123 S. Linn St. Iowa City, Iowa	December 8, 2000 1:30 to 4:30 p.m.
Indian Hills Community College 651 Indian Hills Dr. Ottumwa, Iowa	December 8, 2000 1:30 to 4:30 p.m.

HUMAN SERVICES DEPARTMENT[441]

Medicaid coverage for services provided by local school districts and infants and toddlers with disabilities program, 77.43, 77.44, 78.49, 78.50, 79.1(2), 80.2(2), 88.5(3) IAB 11/1/00 ARC 0228B	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	November 22, 2000 10 a.m.
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IOWA FINANCE AUTHORITY[265]

Private activity bond allocation, 8.1, 8.3 to 8.5, 8.9, 8.10 IAB 11/15/00 ARC 0286B	Conference Room, Suite 250 100 E. Grand Ave. Des Moines, Iowa	December 5, 2000 9 a.m.
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LAW ENFORCEMENT ACADEMY[501]

Decertification or suspension actions, 1.1, 5.1, 6.2, 6.3(2) IAB 11/15/00 ARC 0276B	Conference Room Camp Dodge Johnston, Iowa	December 5, 2000 9 a.m.
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Hunting license, 15.1(1) IAB 11/1/00 ARC 0240B	Conference Room—5th Floor West Wallace State Office Bldg. Des Moines, Iowa	November 22, 2000 1 p.m.
Wildlife habitat promotion with local entities—grant review process, 23.5, 23.6(2), 23.7(3) IAB 11/1/00 ARC 0239B	Conference Room—5th Floor East Wallace State Office Bldg. Des Moines, Iowa	November 22, 2000 10 a.m.

PERSONNEL DEPARTMENT[581]

Uniform rules for waivers, ch 33 IAB 11/1/00 ARC 0238B	7401 Register Dr. Des Moines, Iowa	November 21, 2000 9 a.m.
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PROFESSIONAL LICENSURE DIVISION[645]

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Physician assistant examiners, 325.4(1), 325.5, 325.19, ch 328 IAB 11/15/00 ARC 0275B	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	December 6, 2000 9 to 11 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Trauma system—references, 134.2, 135.2(1) IAB 11/15/00 ARC 0274B (ICN Network)	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 5, 2000 1 to 2 p.m.
	National Guard Armory 1712 LaClark Rd. Carroll, Iowa	December 5, 2000 1 to 2 p.m.
	National Guard Armory 315 12th Ave. NW Hampton, Iowa	December 5, 2000 1 to 2 p.m.
	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	December 5, 2000 1 to 2 p.m.
	National Guard Armory 195 Radford Rd. Dubuque, Iowa	December 5, 2000 1 to 2 p.m.
	National Guard Armory 501 Hwy. 1 South Washington, Iowa	December 5, 2000 1 to 2 p.m.
Tobacco use prevention and control— community partnership initiative and funding process, chs 151, 152 IAB 11/1/00 ARC 0246B (See also ARC 0245B)	Conference Room—5th Floor East Lucas State Office Bldg. Des Moines, Iowa	November 21, 2000 1 to 2 p.m.

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

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

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

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

The following list will be updated as changes occur:

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ARC 0255B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 1, “Definitions,” Chapter 10, “General,” and Chapter 29, “Deep Sedation/General Anesthesia, Conscious Sedation and Nitrous Oxide Inhalation Analgesia,” Iowa Administrative Code.

Item 1 of the amendments updates the definition of “practice of dental hygiene” to include the administration of nitrous oxide inhalation analgesia by a dental hygienist if the administration has been delegated by a dentist in accordance with new subrules 29.6(4) and 29.6(5). In Item 2, subrule 10.3(1) is amended to require direct supervision of a dental hygienist during the administration of nitrous oxide inhalation analgesia. Item 3 of the amendments creates two new subrules. The first new subrule establishes minimum training standards for dental hygienists to meet prior to administering nitrous oxide inhalation analgesia. The second new subrule requires a dentist to provide direct supervision of a hygienist administering nitrous oxide and to establish a written office protocol concerning the delegation of nitrous oxide.

These amendments are not subject to waiver or variance as the rules establish minimum training standards and supervision requirements that must be followed in order to protect public health, safety, and welfare.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 5, 2000. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may also be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on December 5, 2000, from 3 to 4 p.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the October 19, 2000, regular meeting of the Board of Dental Examiners. The Board of Dental Examiners ratified a recommendation of the Dental Hygiene Committee of the Board regarding the training needed by a hygienist to administer nitrous oxide in subrule 29.6(4).

These amendments are intended to implement Iowa Code chapter 17A as amended by 2000 Iowa Acts, chapter 1176, and Iowa Code chapters 147 and 153.

The following amendments are proposed.

ITEM 1. 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 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: 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: 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) *administering nitrous oxide inhalation analgesia in accordance with subrules 29.6(4) and 29.6(5)*; (e f) applying or administering medicaments prescribed by a dentist, including chemotherapeutic agents and medications or therapies for the treatment of periodontal disease and caries.

3. Preventive: 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: 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.

ITEM 2. Amend subrule 10.3(1) as follows:

10.3(1) The administration of local anesthesia *or nitrous oxide inhalation analgesia* 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.

ITEM 3. Adopt **new** subrules 29.6(4) and 29.6(5) as follows:

29.6(4) A dental hygienist may administer nitrous oxide inhalation analgesia provided the administration of nitrous oxide inhalation analgesia has been delegated by a dentist and the hygienist meets the following qualifications:

a. Has completed a board-approved course of training; or

b. Has training equivalent to that required in 29.6(4)“a” while a student in an accredited school of dental hygiene.

29.6(5) A dentist who delegates the administration of nitrous oxide inhalation analgesia in accordance with 29.6(4) shall provide direct supervision pursuant to 650—10.3(153) and establish a written office protocol for taking vital signs, adjusting anesthetic concentrations, and addressing emergency situations that may arise.

ARC 0261B**DENTAL EXAMINERS BOARD[650]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 7, "Rules," Chapter 15, "Fees," Chapter 27, "Standards of Practice and Principles of Professional Ethics," and Chapter 30, "Discipline," Iowa Administrative Code.

Item 1 updates the implementation clause for rules in Chapter 7 to reflect other statutory provisions that the rules implement.

Item 2 implements Executive Order Number 11 executed and signed by the Governor on September 14, 1999. The Executive Order directs state rule-making authorities to adopt uniform rules regarding waivers from administrative rules. These proposed amendments are in response to that order. The amendments also implement 2000 Iowa Acts, chapter 1176, which establishes additional terms and conditions concerning the issuance of waivers.

Item 3 exempts from waiver or variance the Board's rules on fees. Iowa Code section 147.80 requires the Board to set fees based upon costs of sustaining the Board and the actual cost of licensing, and requires the Board to generate revenues to equal projected costs. The Board must be able to collect fees uniformly in order to meet this statutory provision.

Items 4 and 5 exempt from waiver or variance Board rules that establish principles of professional ethics and grounds for discipline. These rules establish standards for the profession that must be maintained in order to protect public health, safety, and welfare. The Board has determined that there are no circumstances in which professional ethics, incompetency, malpractice, fraud, or other grounds for discipline should be subject to waiver or variance.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 5, 2000. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may also be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on December 5, 2000, from 2 to 3 p.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the October 20, 2000, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 17A, 147, and 153 and 2000 Iowa Acts, chapter 1176.

The following amendments are proposed.

ITEM 1. Amend rules 650—7.1(153) and 650—7.2(153), parenthetical implementation, as follows: 650—7.1(17A,147,153) and 650—7.2(17A,147,153)

ITEM 2. Adopt the following new rules:

650—7.4(17A,147,153) Waivers.

7.4(1) Definition. For purposes of this rule, "a waiver or variance" means action by the board that suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

7.4(2) Scope of rule. This rule outlines generally applicable standards and a uniform process for the granting of an individual waiver from a rule adopted by the board in situations where no other more specifically applicable law provides for a waiver. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule.

7.4(3) Applicability of rule. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

7.4(4) Criteria for waiver. In response to a petition completed pursuant to subrule 7.4(6), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

a. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

7.4(5) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

a. Application for license, registration, certification, or permit. If the petition relates to an application for license, registration, certification, or permit, the petition shall be made in accordance with the filing requirements for the application in question.

b. Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

c. Other. If the petition does not relate to an application or a pending contested case, the petition may be submitted to the board's executive director.

d. A petition is deemed filed when it is received at the board's office. A petition should be sent to the Board of Dental Examiners, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687. The petition must be typewritten or legibly handwritten in ink and substantially conform to the form specified in 650—7.5(17A,147,153).

7.4(6) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

DENTAL EXAMINERS BOARD[650](cont'd)

a. The name, address, and telephone number of the person for whom a waiver is being requested and a reference to any related contested case. Also, the name, address, and telephone number of the petitioner's legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

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

c. The specific waiver requested, including the precise scope and duration.

d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 7.4(4). 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, license, registration, certification, or permit affected by the proposed waiver, including a description of each affected license, registration, certification, or permit held by the requester, any formal charges filed, any notices of violation, contested case hearings, or investigations relating to the regulated activity, license, registration, certification or permit.

f. Any information known to the requester regarding the board's action in similar circumstances.

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

h. The name, address, and telephone number of any person who would be adversely affected by the grant of the petition.

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

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

7.4(7) 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's executive director, a committee of the board, or a quorum of the board.

7.4(8) Notice. The board shall acknowledge a petition upon receipt. Except where otherwise provided by law, every petition shall be served by the petitioner upon each of the parties of record of the proceeding, and on all other persons identified in the petition for waiver as affected by the petition, simultaneously with the filing. The petitioner shall serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided. In addition, the board may give notice to other persons.

7.4(9) Hearing procedures. The provisions of Iowa Code Supplement sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case. A person who objects to a denial of a waiver in proceedings other than a contested case hearing may make an informal appearance before the board to request reconsideration.

7.4(10) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the partic-

ular 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 duration of the waiver if one is issued.

a. Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

b. Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

c. Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

d. Administrative deadlines. 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 similarly situated persons.

e. Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

f. Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

g. 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.

h. 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. However, the board shall remain responsible for issuing an order denying a waiver.

i. Service of order. Within seven days of its issuance, any order issued under this 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.

7.4(11) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code Supplement section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

7.4(12) Summary reports. Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semi-

DENTAL EXAMINERS BOARD[650](cont'd)

annually to the administrative rules coordinator and the administrative rules review committee.

7.4(13) Cancellation of a waiver. A waiver issued by the board pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

- a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
- b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been insufficient; or
- c. The subject of the waiver order has failed to comply with all conditions contained in the order.

7.4(14) Violations. A violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

7.4(15) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

7.4(16) Judicial review. Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

This rule is intended to implement Iowa Code chapters 17A, 147, and 153 and 2000 Iowa Acts, chapter 1176.

650—7.5(17A,147,153) Sample petition for waiver. A petition for waiver filed in accordance with 650—7.4(17A, 147,153) must meet the requirements specified therein and must substantially conform to the following form:

BEFORE THE BOARD OF DENTAL EXAMINERS	
Petition by (Name of Petitioner) for the waiver/ variance of (insert rule citation) relating to (insert the subject matter).	} PETITION FOR WAIVER/ VARIANCE

1. Petitioner's (person asking for a waiver or variance) name, address, and telephone number. Also, the name, address, and telephone number of the petitioner's legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. Describe and cite the specific rule from which a waiver is requested.

3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.

4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in your answer all of the following:

- a. Why applying the rule would result in undue hardship to the petitioner;
- b. Why waiving the rule would not prejudice the substantial legal rights of any person;
- c. Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and
- d. How substantially equal protection of public health, safety, and welfare will be afforded by a means other than

that prescribed in the particular rule for which the waiver is requested.

5. Provide a history of any prior contacts between the board and petitioner relating to the regulated activity, license, registration, certification or permit that would be affected by the waiver. Include a description of each affected license, registration, certification, or permit held by the petitioner, any formal charges filed, any notices of violation, any contested case hearings held, or any investigations related to the regulated activity, license, registration, certification, or permit.

6. Provide information known to the petitioner regarding the board's action in similar circumstances.

7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the grant of the petition.

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

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

10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

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

Petitioner's signature	Date
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ITEM 3. Adopt **new** rule 650—15.5(17A,147,153,272C) as follows:

650—15.5(17A,147,153,272C) Waiver prohibited. Rules in this chapter are not subject to waiver pursuant to 650—Chapter 7 or any other provision of law.

ITEM 4. Adopt **new** rule 650—27.12(17A,147,153, 272C) as follows:

650—27.12(17A,147,153,272C) Waiver prohibited. Rules in this chapter are not subject to waiver pursuant to 650—Chapter 7 or any other provision of law.

ITEM 5. Amend rule 650—30.4(153), introductory paragraph, as follows:

650—30.4(147,153,272C) Grounds for discipline. The following shall constitute grounds for the imposition by the board of one or more of the disciplinary sanctions set forth in rule 650—30.2(153) specifically including the imposition of civil penalties not to exceed \$10,000. *This rule is not subject to waiver pursuant to 650—Chapter 7 or any other provision of law.*

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DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended

DENTAL EXAMINERS BOARD[650](cont'd)

Action to amend Chapter 13, "Special Licenses," Iowa Administrative Code.

These amendments update the Board's rules on resident dentist licenses and faculty permits to clarify application requirements. The Board's Committee for Regulatory Review formed pursuant to Executive Order Number 8 recommended the proposed amendments.

These rules will be subject to waiver at the sole discretion of the board in accordance with the rules adopted governing the issuance of waivers or variances.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 5, 2000. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may also be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on December 5, 2000, from 2 to 3 p.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the October 19, 2000, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapter 153.

The following amendments are proposed.

Amend rules 650—13.1(153) and 650—13.2(153) as follows:

650—13.1(153) Resident dentist license.

~~13.1(1) All persons granted permission by the Iowa board of dentistry. A dentist seeking permission to practice as residents a resident, interns intern or graduate students student in a board-approved teaching or educational institutions institution offering specialty oriented courses shall be required to make application to the board on official board forms and furnish to the board the following:~~

a. A signed written statement from the ~~superintendent, director or head dean or designated administrative officer of the institution in which the applicant seeks to enroll.~~

b. A signed written statement of a ~~licensed Iowa dentist who holds an active Iowa license or faculty permit and who proposes to exercise supervision and direction over said applicant, specifying in general terms the time and manner thereof.~~

c. Satisfactory evidence of graduation from an accredited school of dentistry or other school approved by the board.

d. All applicants shall be required to furnish to the board such additional information as the board may deem necessary to enable it to determine the proficiency, *character, education or experience* of such applicant.

e. *Applications must be signed and verified as to the truth of the statements contained therein, and all questions must be completely answered.*

f. *The appropriate fee as specified in 650—Chapter 15 of these rules.*

13.1(2) If approved by the board, a resident dentist license shall allow the licensee to serve as a resident, intern, or graduate student dentist, under the supervision of a practitioner who holds an active Iowa license or faculty permit,

at the University of Iowa College of Dentistry or at an institution approved by the board.

~~13.1(2 3) If a resident dentist licensee leaves the service of such institution during the tenure of residency, internship or graduate study, the license shall be returned immediately to the board and the authority granted by the board to the licensee shall be automatically canceled.~~

~~13.1(3) Application for the resident dentist license shall be on official board forms and shall be filed with the board together with the appropriate fee as specified in 650—Chapter 15 of these rules.~~

~~13.1(4) The resident dentist license shall be valid for one year and may be renewed annually during such period of time as the dental resident is continuously enrolled in a graduate dental education program.~~

~~13.1(5) No examination or continuing education shall be required for this license.~~

~~13.1(6) The resident dentist licensee shall be subject to all applicable provisions of Iowa Code chapters 147 and 153 the law and the rules of the board. Any violations of these laws or rules or the failure of the licensee to perform and progress satisfactorily or receive effective supervision as determined by the board, shall be grounds for revocation of the license after proper notice and hearing.~~

This rule is intended to implement Iowa Code section 153.22.

650—13.2(153) Dental college and dental hygiene program faculty permits.

~~13.2(1) The board may issue to members of the faculty of the college of dentistry a faculty permit entitling the holder thereof to practice dentistry or dental hygiene as a faculty member within the University of Iowa college College of dentistry Dentistry or a dental hygiene program and affiliated teaching facilities as an adjunct to the faculty members' teaching positions and associated responsibilities and functions therein.~~

~~13.2(2) The dean of the college of dentistry or chairperson of a dental hygiene program shall certify to the board or the dental hygiene committee those bona fide members of the college's or a dental hygiene program's faculty who are not licensed and registered to practice dentistry or dental hygiene in Iowa. Any faculty member so certified shall, prior to commencing duties in the college of dentistry or a dental hygiene program, make written application to the board or the dental hygiene committee for such a permit on official board forms and shall provide the following:-~~

a. *Information regarding the professional qualifications and background of the applicant.*

b. *Such additional information as the board may deem necessary to enable it to determine the character, education or experience of such applicant.*

c. *Applications must be signed and verified as to the truth of the statements contained therein, and all questions must be completely answered.*

~~13.2(3) Such A faculty permit shall expire on the first day of July next following the date of issuance and may, at the sole discretion of the board, be renewed on a yearly basis.~~

~~13.2(4) The appropriate fee as specified in 650—Chapter 15 of these rules shall be paid by the applicant for issuance and renewal of the faculty permit.~~

~~13.2(5) The faculty permit shall be valid only so long as the holder thereof remains a member of the faculty of the college of dentistry or member of the faculty of a dental hygiene program in Iowa and shall subject the holder to all provisions~~

DENTAL EXAMINERS BOARD[650](cont'd)

of the law regulating the practice of dentistry and dental hygiene in this state.

~~13.2(6) Beginning with the renewal period July 1, 1996, through June 30, 1997, faculty Faculty permit holders will be are required to meet obtain 15 hours of continuing education requirements in accordance with the guidelines in 650—Chapter 25 for renewal of the faculty permits permit. The faculty permit holder will be required to submit with the application for renewal a A report of continuing education hours earned in the previous fiscal year and every year thereafter shall be submitted by the permit holder at the time of renewal. A minimum of 15 hours of continuing education will be required. The continuing education hours must meet the continuing education guidelines set forth in 650—Chapter 25.~~

13.2(7) Application for issuance of a dental hygiene program faculty permit shall be made to the dental hygiene committee for consideration and recommendation to the board pursuant to 650—Chapter 5.

This rule is intended to implement Iowa Code section 153.37.

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DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 16, "Prescribing, Administering, and Dispensing Drugs," Iowa Administrative Code.

These amendments update the Board's rules on prescribing, administering, and dispensing drugs by making the rules consistent with rules of the Board of Pharmacy Examiners. The amendments also allow dentists to electronically transmit prescriptions. In addition, Item 2 of the amendments waives the requirement for a dentist to conduct a dental examination of patients who receive fluoride dispensed under protocols of the Dental Health Bureau of the Department of Public Health. This amendment will facilitate the fluoride program of the Dental Health Bureau. The Board's Committee for Regulatory Review formed pursuant to Executive Order Number 8 recommended the proposed amendments.

These rules will be subject to waiver at the sole discretion of the Board in accordance with the rules adopted governing the issuance of waivers or variances.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 5, 2000. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may also be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on December 5, 2000, from 2 to 3 p.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to

confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the October 19, 2000, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapter 153.

The following amendments are proposed.

ITEM 1. Amend rule 650—16.1(153) as follows:

650—16.1(124,153,155A) Definitions.

~~"Controlled substance" means a drug, substance, or immediate precursor or other substance listed in Schedules I through V of division II, of Iowa Code chapter 124.~~

~~"Electronic signature" means a confidential personalized digital key, code, or number used for secure electronic data transmissions which identifies and authenticates the signatory.~~

~~"Electronic transmission" means the transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment. Electronic transmission includes but is not limited to transmission by facsimile machine and transmission by computer link, modem, or other computer communication device.~~

~~"Prescription drug" means (a) any drug or medicine the label of which is required by federal law to bear the statement: "Caution: federal law prohibits dispensing without a prescription," (b) any drug or medicine which, because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to prescribe, administer, or dispense such drug or medicine, or (c) a new drug or medicine which is limited under state law to use under the professional supervision of a practitioner licensed by law to prescribe, administer, or dispense such drug or medicine as defined in Iowa Code section 155.3(10) any of the following: (a) a substance for which federal or state law requires a prescription before it may be legally dispensed to the public; (b) a drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements: (1) Caution: Federal law prohibits dispensing without a prescription or (2) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or (c) a drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only, or is restricted to use by a practitioner only.~~

ITEM 2. Amend subrules 16.2(2) and 16.2(4) as follows:

16.2(2) A dental examination must be conducted and a medical history taken before a dentist initially prescribes, administers, or dispenses medication to a patient, *except for patients who receive fluoride dispensed under protocols approved by the dental health bureau of the department of public health*. The examination must focus on the patient's dental problems, and the resulting diagnosis must relate to the patient's specific complaint. The patient's dental record must contain written evidence of the examination and medical history.

16.2(4) A patient's dental record that contains an entry pertaining to the issuance of medications must be retained by the dentist for a minimum of five years following the date of the last entry in accordance with 650—27.11(153,272C).

DENTAL EXAMINERS BOARD[650](cont'd)

ITEM 3. Adopt **new** subrule 16.2(5) as follows:

16.2(5) The prescribing, administering, and dispensing of prescription drugs shall be done in accordance with all applicable state and federal laws.

ITEM 4. Amend subrules 16.3(2), 16.3(3), and 16.3(6) as follows:

16.3(2) When controlled substances are administered or dispensed, *including samples*, records *that are readily retrievable and* separate and apart from the patient records must be maintained showing date of dispensing, name and address of person to whom the drugs were administered or dispensed, and the name, ~~and~~ quantity, *and strength* of drugs administered or dispensed.

16.3(3) All *controlled substance* records must be retained for a period of two years from the date of the last entry. All records must be readily available for inspection by state or federal agents.

16.3(6) The dentist shall notify ~~state controlled substance authorities~~ *the board of pharmacy examiners* of the loss or theft of controlled substances ~~upon~~ *within two weeks* of the discovery of the loss or theft.

ITEM 5. Amend subrule 16.4(1) as follows:

16.4(1) Containers. A prescription drug shall be dispensed in a container which meets the requirements of the Poison Prevention Packaging Act of 1970, 15 U.S.C. §§ 1471-1476 (~~1976~~) which relates to childproof closure, unless otherwise required by the patient. Containers must also meet the requirements of Section 502G of the Federal Food Drug and Cosmetic Act, 21 U.S.C. §301 et seq. (~~1976~~) which pertains to light resistance and moisture-resistance needs of the drug being dispensed.

ITEM 6. Amend subrule **16.4(2)**, numbered paragraph "5," as follows:

5. Name, *quantity*, and strength of medication.

ITEM 7. Amend rule 650—16.5(153) as follows:

Amend subrule 16.5(2) as follows:

16.5(2) The dentist's signature on a prescription must be original *or an electronic signature*, not a copy or ~~facsimile stamp~~.

Re-number subrules **16.5(3)** and **16.5(4)** as **new** rule **650—16.7(153)** and subrule **16.7(1)** respectively.

Adopt **new** subrule 16.5(3) as follows:

16.5(3) On each occasion when medication is prescribed to a patient, the prescription issued to the patient shall contain the following information: the name of the patient for whom the prescription is intended; the name, quantity, and strength of the medication; the directions for its use; the date of issuance; and the name, address, and written or electronic signature of the dentist issuing the prescription.

ITEM 8. Adopt **new** rule 650—16.6(153) as follows:

650—16.6(153) Transmission of prescriptions. A prescription drug order may be transmitted to a pharmacy in written form, orally including telephone voice communication, or by electronic transmission in accordance with applicable federal and state laws and rules. A dentist shall take adequate measures to guard against the diversion of prescription drugs and controlled substances through prescription forgeries. The dentist may authorize an employee to transmit to the pharmacy a prescription drug order orally or by electronic transmission provided that the identity of the transmitting employee is included in the order.

16.6(1) Computer-to-computer transmission of a prescription. Prescription drug orders, excluding orders for

controlled substances, may be communicated directly from a dentist's computer to a pharmacy's computer by electronic transmission.

a. Orders shall be sent only to the pharmacy of the patient's choice with no unauthorized intervening person or other entity controlling, screening, or otherwise manipulating the prescription drug order or having access to it.

b. The electronically transmitted order shall identify the dentist's telephone number for verbal confirmation, the time and date of transmission, and the pharmacy intended to receive the transmission as well as any other information required by federal or state law or rules.

c. Orders shall be transmitted only by the dentist or the dentist's employee and shall include the dentist's electronic signature.

d. The electronic transmission shall be deemed the original prescription drug order provided it meets the requirements of this rule.

16.6(2) Facsimile transmission of a prescription. A dentist may request that a pharmacist dispense noncontrolled and controlled drugs, excluding Schedule II controlled substances, pursuant to a prescription transmitted to the pharmacy by the dentist or the dentist's employee. A dentist shall maintain the original prescription, if printed, in the patient's record.

ARC 0258B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 26, "Advertising," Iowa Administrative Code.

This amendment eliminates the requirement that if a communication is paid for by a dentist, this must be disclosed unless the nature, format, or medium makes it apparent. The Board's Committee for Regulatory Review formed pursuant to Executive Order Number 8 recommended the proposed amendment.

This amendment is not subject to waiver because it eliminates a requirement imposed on licensees.

Any interested person may make written comments or suggestions on the proposed amendment on or before December 5, 2000. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may also be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on December 5, 2000, from 2 to 3 p.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility im-

DENTAL EXAMINERS BOARD[650](cont'd)

pairments, should contact the Board and advise of specific needs.

This amendment was approved at the October 19, 2000, regular meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code chapter 153.

The following amendment is proposed.

Amend rule 650—26.1(153), introductory paragraph, as follows:

650—26.1(153) General. Communications by inclusion or omission to the public must be accurate. They must not convey false, untrue, deceptive, or misleading information through statements, testimonials, photographs, graphics or other means. Communications must not appeal to an individual's anxiety in an excessive or unfair way; and they must not create unjustified expectations of results. If communications refer to benefits or other attributes of dental procedures or products that involve significant risks, realistic assessments of the safety and efficacy of those procedures or products must also be included, as well as the availability of alternatives and, where necessary to avoid deception, descriptions or assessments of the benefits or other attributes of those alternatives. Communications must not misrepresent a dentist's credentials, training, experience or ability, and must not contain material claims of superiority that cannot be substantiated. ~~If a communication is paid for by a dentist, this must be disclosed unless the nature, format or medium makes it apparent.~~

ARC 0257B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 28, "Designation of Specialty," Iowa Administrative Code.

These amendments change the name of the specialty "oral pathology" to "oral and maxillofacial pathology," which is the currently accepted name recognized by the American Dental Association (ADA). The amendments also change the rules to reflect that programs are accredited rather than certified and that the accreditation body is the Commission on Dental Accreditation rather than the Council on Dental Education and Licensure of the ADA. The Board's Committee for Regulatory Review formed pursuant to Executive Order Number 8 recommended the proposed amendments.

These amendments are not subject to waiver because they make only grammatical corrections to the rules.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 5, 2000. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may also be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on December 5, 2000, from 2 to 3 p.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the October 19, 2000, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapter 153.

The following amendments are proposed.

ITEM 1. Amend rule 650—28.1(153) as follows:

650—28.1(153) General review. A dentist may represent that the dentist is a specialist in the specialties of dental public health, endodontics, oral *and maxillofacial* pathology, oral and maxillofacial surgery, orthodontics, pediatric dentistry, periodontics, or prosthodontics provided the requirements of that area of specialty have been met. The board recognizes there are overlapping responsibilities among the recognized areas of dental practice. However, as a matter of principle, a specialist shall not routinely provide procedures that are beyond the scope of the specialty as defined below.

ITEM 2. Amend paragraphs 28.2(2)"b," 28.3(2)"b," 28.5(2)"c," 28.6(2)"b," 28.7(2)"b," 28.8(2)"b," and 28.9(2)"b" by replacing the phrase "certified by the Council on Dental Education" with the phrase "accredited by the Commission on Dental Accreditation."

ITEM 3. Amend rule 650—28.4(153) as follows:

650—28.4(153) Oral and maxillofacial pathology.

28.4(1) Definition. Oral *and maxillofacial* pathology is the specialty of dentistry and discipline of pathology that deals with the nature, identification, and management of diseases affecting the oral and maxillofacial regions. It is a science that investigates the causes, processes, and effects of these diseases. The practice of oral *and maxillofacial* pathology includes research and diagnosis of diseases using clinical, radiographic, microscopic, biochemical, or other examinations.

28.4(2) Requirements.

- a. Be a diplomate of the American Board of Oral *and Maxillofacial* Pathology; or
- b. Be a fellow in the American Board of Oral *and Maxillofacial* Pathology; or
- c. Have successfully completed a formal graduate or residency training program in oral *and maxillofacial* pathology ~~certified accredited~~ by the ~~Council on Dental Education~~ *Commission on Dental Accreditation* of the American Dental Association; or
- d. Have limited practice to this area prior to January 1, 1965, and have been permitted to continue to do so pursuant to resolution of the ADA House of Delegates.

ARC 0256B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 29, "Deep Sedation/General Anesthesia, Conscious Sedation and Nitrous Oxide Inhalation Analgesia," Iowa Administrative Code.

These amendments change the renewal date of deep sedation/general anesthesia and conscious sedation permits to coincide with the license renewal date. The amendments also clarify that the Anesthesia Credentials Committee may perform other duties as delegated by the Board or Board chairperson. The Board's Committee for Regulatory Review formed pursuant to Executive Order Number 8 recommended the proposed amendments.

These amendments are not subject to waiver because they change the renewal date of permits and clarify the responsibilities of a Board committee.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 5, 2000. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may also be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on December 5, 2000, from 2 to 3 p.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the October 19, 2000, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapter 153.

The following amendments are proposed.

ITEM 1. Amend subrule 29.5(5) as follows:

29.5(5) Permits shall be renewed biennially *at the time of license renewal* following submission of proper application and may involve board reevaluation of credentials, facilities, equipment, personnel, and procedures of a previously qualified dentist to determine if the dentist is still qualified. The appropriate fee for renewal as specified in 650—Chapter 15 of these rules must accompany the application.

ITEM 2. Amend subrule 29.10(2) by adopting a **new** paragraph "d" as follows:

d. Other duties as delegated by the board or board chairperson.

ARC 0266B

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 24, "Emergency Shelter Grants Program," Iowa Administrative Code.

The proposed amendments establish minimum and maximum award amounts, clarify eligible program applicants, revise application procedures to include a two-year application cycle and clarify amendment procedures.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on December 5, 2000. Interested persons may submit written or oral comments by contacting Roselyn McKie Wazny, Division of Community and Rural Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed amendments will be held on December 5, 2000, at 1:30 p.m. at the above address in the second floor Northwest Conference Room. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on December 4, 2000, to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code section 15.108(1)"a" and P.L. 100-628.

The following amendments are proposed.

ITEM 1. Amend rule 261—24.2(PL100-628) by adopting the following definition in alphabetical order:

"CHIP" means counting homeless Iowans project.

ITEM 2. Amend rule 261—24.3(PL100-628) as follows:

261—24.3(PL100-628) Eligible applicants. City governments, county governments, and private nonprofit organizations are eligible applicants under the emergency shelter grants program. *City or county governments may apply on behalf of a service provider within their jurisdictions when the nonprofit organization serves homeless and near-homeless clients by providing overnight shelter, meals, clothing, transportation, counseling, child care, legal services, medical services, transitional housing services, and other services eligible under the emergency shelter grants program as determined by the U.S. Department of Housing and Urban Development.*

ITEM 3. Amend rule 261—24.4(PL100-628), paragraph "1," as follows:

1. Rehabilitation, renovation, or conversion of buildings for use as providers of services for the homeless. *Rehabilitation activities shall be allowed a maximum cost of \$10,000 per project.*

ITEM 4. Amend rule 261—24.6(PL100-628) as follows:

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

261—24.6(PL100-628) Application procedures. The Iowa department of economic development will request applications from eligible applicants as often as the state expects funding from the U.S. Department of Housing and Urban Development (HUD). Applicants will be given at least 30 days in which to reply to the state's request. The Iowa department of economic development will make funding decisions in conjunction with the time frame established by HUD. The application must be submitted on forms prescribed by IDED and must, at a minimum, include the amount of funds requested, the need for the funds, documentation of other available funding sources, source of required local match, and estimated number of persons to be served by the applicant (daily average). *No individual applicant organization may receive more than \$50,000 in a single application round. A minimum grant level of \$10,000 is required.*

ITEM 5. Amend rule 261—24.7(PL100-628) as follows:

261—24.7(PL100-628) Application review process. *The following procedures will be used in the review of applications received under the emergency shelter grants program.*

a. Applications will be reviewed by a panel of the staff of the Iowa department of economic development and coordinated with representatives of other homeless assistance programs. Applications will be reviewed to determine eligibility based on the following criteria:

1. (1) The identified community need for the funds, including the number of clients served, the unmet need in the community, geographic area of service, and common factors leading to the need for the service.

2. (2) The comprehensiveness and flexibility of the program, including how the applicant strives to meet the total and special needs of its clients and how homeless assistance is integrated with other programs.

3. (3) The accessibility of the applicant's services to its clients, including how well the applicant promotes its services within the community, any barriers to service, and any network networking with other service providers in the area.

4. (4) How well the applicant deals with cultural diversity within its community.

5. (5) Any partnerships or collaborations between the applicant and other programs within the organization or with other organizations performing similar or complementary services.

6. (6) The unique role of the applicant within the area of service, including any innovative parts of the organization's project that would make it stand out.

7. (7) A description of specific outcome measures for short- or long-term objectives for clients.

8. (8) The experience of the applicant in administering an ESGP contract.

9. (9) How well the applicant maximizes or leverages resources.

b. If an application contains an activity determined to be ineligible under the ESG program within the request for funds, the ineligible activity will be deleted from the application or referred to another funding source, if applicable.

c. Staff reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.

d. Staff may also review applications with the department of human rights, department of human services, or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources.

Based on the review process, IDED may revise the overall funding request by activity or funding level and recommend a final funding figure to the director of IDED for approval.

e. A city or county government may be determined, at the discretion of IDED, to administer a contract for multiple applicants within a prescribed geographic area.

f. IDED reserves the right to negotiate all aspects of a funding request prior to final approval.

g. *Applicants that receive awards will be eligible for funding for a two-year period. The amount of funding for the first year will be dependent upon eligible activities identified in the application. The amount available for funding in the second year will be dependent upon the needs identified in the annual report and other data submitted to IDED and the receipt of funds for the emergency shelter grants program from the U.S. Department of Housing and Urban Development.*

ITEM 6. Amend rule 261—24.10(PL100-628) by adopting the following new subrule:

24.10(6) CHIP. Recipients shall participate in CHIP by reporting data to IDED as required in the executed contract. Recipients receiving funds only for prevention activities shall participate in a modified method of reporting under CHIP.

ITEM 7. Amend subrule 24.12(4) as follows:

24.12(4) Amendments to contracts. *Contracts will be amended on an individual basis in emergency situations. Any request to amend a contract must be submitted in writing by the chief elected official to IDED. IDED will determine if the request to amend is justified based on the material presented in the letter of request. IDED allows the transfer of funds between line items in the budget up to 20 percent of the total grant amount without a formal request for amendment. Any substantive change to a funded emergency shelter operation grants program will be considered a contract amendment. Substantive changes include: contract time extensions, budget revisions, and significant alterations of the existing activities that will change the scope, location, objectives, or scale of the approved activities of beneficiaries. An amendment must be requested in writing by the chief elected or appointed official of the grantee. No amendment will be valid until approved in writing by IDED.*

ARC 0265B

**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 29, "Homeless Shelter Operation Grants Program," Iowa Administrative Code.

The proposed amendments establish minimum and maximum award amounts, establish a set-aside for innovative

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

projects, revise application procedures to include a two-year application cycle and clarify amendment procedures.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on December 5, 2000. Interested persons may submit written or oral comments by contacting Roselyn McKie Wazny, Division of Community and Rural Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed amendments will be held on December 5, 2000, at 2 p.m. at the above address in the second floor Northwest Conference Room. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on December 4, 2000, to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code section 15.108(11).

The following amendments are proposed.

ITEM 1. Amend the parenthetical implementation in rules **261—29.1(77GA,ch1225)** through **261—29.11(77GA,ch1225)** as follows:

~~77GA,ch1225~~ 78GA,ch1230

ITEM 2. Amend rule **261—29.2(78GA,ch1230)** by adopting the following new definition in alphabetical order:

“CHIP” means counting homeless Iowans project.

ITEM 3. Amend rule **261—29.4(78GA,ch1230)**, numbered paragraph “1,” as follows:

1. Rehabilitation, renovation, or conversion of buildings for use as providers of services for the homeless. *Rehabilitation activities shall be allowed a maximum cost of \$10,000 per project.*

ITEM 4. Amend rule **261—29.6(78GA,ch1230)** as follows:

261—29.6(78GA,ch1230) Application procedures.

29.6(1) The Iowa department of economic development will request applications from eligible applicants as often as the state expects funding from the HSOG program. Applicants will be given at least 30 days in which to reply to the state's request for applications. ~~The Iowa department of economic development will make funding decisions in the U.S. Department of Housing and Urban Development's Emergency Shelter Grants Program (ESGP) which is a federal program utilizing the same application procedure as the HSOG program.~~ The application must be submitted on forms prescribed by IDED and must, at a minimum, include the amount of funds requested, the need for funds, documentation ~~on~~ of other available funding sources, *source of required local match*, and estimated number of persons to be served by the applicant (daily average).

29.6(2) *No individual program may receive more than \$50,000 in a single application round.*

29.6(3) *Applicants shall apply for a minimum of \$10,000 per funding round.*

ITEM 5. Amend rule **261—29.7(78GA,ch1230)** as follows:

261—29.7(78GA,ch1230) Application review process. *The following procedures will be used in the review of applications received under the homeless shelter operation grants program.*

29.7(1) Applications will be reviewed by a panel of the staff of established by the Iowa department of economic de-

velopment and coordinated with representatives of other homeless assistance programs. Applications will be reviewed to determine eligibility based on the following criteria:

1 a. The identified community need for the funds, including the number of clients served, the unmet need in the community, geographic area of service, and common factors leading to the need for service.

2 b. The comprehensiveness and flexibility of the program, including how the applicant strives to meet the total *and special* needs of its clients, and how homeless assistance is integrated with other programs.

3 c. ~~The accessibility of the program to the community applicant's services to its clients,~~ including how well the applicant promotes its services within the community, any barriers to service, and any ~~network~~ *networking* with other service providers in the area.

4 d. How well the applicant deals with cultural diversity within its community.

5 e. ~~Partnerships~~ *Any partnerships* or collaborations between the applicant and other programs within the organization or with other organizations performing similar or complementary services.

6 f. ~~Description of the~~ *The* unique role of the applicant within the area of service, including any innovative parts of the organization's project that would make it stand out.

7 g. A description of specific outcome measures for short- or long-term objectives for clients.

8 h. The experience of the applicant in administering an HSOG program contract.

9 i. How well the applicant maximizes or leverages resources.

29.7(2) If an application contains an activity determined to be ineligible under the HSOG program within the request for funds, the ineligible activity will be deleted from the application or referred to another funding source, if applicable.

29.7(3) Staff reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.

29.7(4) Staff may also review applications with the department of human rights, department of human services, or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources. Based on the review process, IDED may revise the overall funding request by activity or funding level and recommend a final funding figure to the director of IDED for approval.

29.7(5) A city or county government may be determined, at the discretion of IDED, to administer a contract for multiple applicants within a prescribed geographic area.

29.7(6) IDED reserves the right to negotiate all aspects of a funding request prior to final approval.

29.7(7) *Applicants that receive awards will be eligible for funding for a two-year period. The amount of funding for the first year will be dependent upon the needs identified in the application that are eligible activities. The amount eligible for funding in the second year will be dependent upon the needs identified in the annual report and other data submitted to IDED and the receipt of funds for the homeless shelter operation grants program as funded by the state of Iowa.*

ITEM 6. Amend rule **261—29.10(78GA,ch1230)** by adopting the following new numbered paragraph “5”:

5. CHIP. Recipients shall participate in CHIP by reporting data to IDED as required in the executed contract. Recip-

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

ipients receiving funds only for prevention activities shall participate in a modified method of reporting under CHIP.

ITEM 7. Amend subrule 29.11(4) as follows:

29.11(4) Amendments to contracts. *Contracts will be amended on an individual basis in emergency situations. Any request to amend a contract must be submitted in writing to IDEED by the chief elected official. IDEED will determine if the request to amend is justified based on the material presented in the letter of request. IDEED allows the transfer of funds between line items in the budget up to 20 percent of the total grant amount without a formal request for amendment. Any substantive change to a funded homeless shelter operation grants program will be considered a contract amendment. Substantive changes include contract time extensions, budget revisions, and significant alterations of existing activities that will change the scope, location, objectives, or scale of the activities or beneficiaries. An amendment must be requested in writing by the chief elected or appointed official of the grantee. No amendment will be valid until approved in writing by IDEED.*

ITEM 8. Amend 261—Chapter 29 by adopting the following **new** rule:

261—29.12(78GA,ch1230) Innovation fund.

29.12(1) Purpose. The innovation fund is created to advance projects that serve the needs of homeless individuals and families in a new and innovative manner. The primary goal of the innovation fund is to strengthen the network of service providers by supplying funds to serve as a catalyst for addressing emerging issues and improving homeless assistance programming across the state. Projects funded under this rule should provide an additional service to the community that cannot otherwise be undertaken. The fund may also address new programs where no other provider exists within the community and a demonstrated need for services exists.

29.12(2) Project guidelines. The following guidelines apply to all project proposals:

a. Eligibility. Applicants shall meet the criteria established in 29.3(78GA,ch1230). In addition, projects shall be planned in direct response to an identified community priority that is recommended by a formal planning body with responsibilities for housing and homeless issues. These planning bodies include local homeless coordinating board; council of government or regional planning commission; empowerment board approved by the state of Iowa; local government written comprehensive plan; or housing needs assessment.

b. Funding. Up to \$250,000 shall be reserved from state allocations in FY2001 to establish the innovation fund. An individual applicant may receive up to \$75,000 that may be distributed in a period no longer than 24 months.

c. Eligible activities. Activities assisted under this rule include those listed in 29.4(78GA,ch1230). In addition, programs proposed must set forth an approach to service provision not commonly implemented in the state.

d. A preapplication must be submitted to IDEED prior to submitting a full application. Preapplication forms are available at any time by contacting IDEED at (515)242-4825 or accessing the IDEED Web site. IDEED staff will review the proposal to determine if the proposal meets minimum eligibility requirements. If the proposal meets threshold eligibility requirements, IDEED staff will request that a full application be submitted.

e. Invited full applications shall be submitted quarterly by the fifteenth of the month (January, March, June, and September) as long as funding remains available. The first date for submitting a full application under the innovation fund is January 15, 2001.

f. Applications shall be submitted on forms prescribed by IDEED. Application materials may be requested at any time by contacting IDEED at (515)242-4825 or accessing the IDEED Web site.

29.12(3) Review criteria. All applications will be reviewed using the following criteria. A detailed explanation of each review criterion is included in the application materials.

a. Context (up to 14 points): community priorities; continuum of services.

b. Inputs (up to 10 points): program quality; leveraged resources and sustainability.

c. Process (up to 9 points): project accessibility; diversity; collaboration and partnerships.

d. Outcomes (up to 10 points): definition of projected outcomes; success in meeting outcomes; use of outcomes by agency in evaluation.

ITEM 9. Amend 261—Chapter 29, implementation sentence, as follows:

These rules are intended to implement 1998 Iowa Acts, chapter 1225, section (3)“f.” 2000 Iowa Acts, chapter 1230, section 1(3)“e.”

ARC 0291B

**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, “Waivers or Variances from Administrative Rules,” Iowa Administrative Code.

This proposed chapter allows for waivers or variances in compliance with 2000 Iowa Acts, chapter 1176.

There will be a public hearing on the proposed rules at 1 p.m. on December 5, 2000, in Room 3 South, 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. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules. 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. Fax communication may be sent to (515)281-7669.

Any interested person may make written comments or suggestions on the proposed rules before 4:30 p.m. December 5, 2000. Written comments and suggestions should be

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

This amendment is intended to implement 2000 Iowa Acts, chapter 1176, and Iowa Code chapter 17A.

The following new chapter is proposed.

CHAPTER 6
WAIVERS OR VARIANCES
FROM ADMINISTRATIVE RULES

282—6.1(17A) Definition. For purposes of this chapter, a “waiver or variance” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

282—6.2(17A) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

282—6.3(17A) Applicability of chapter. The board may only grant a waiver from a rule if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

282—6.4(17A) Criteria for waiver or variance. In response to a petition completed pursuant to rule 6.6(17A), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

282—6.5(17A) Filing of petition. A petition for a waiver must be submitted in writing to the board, as follows:

6.5(1) License or authorization application. If the petition relates to a license or authorization application, the petition shall be made in accordance with the filing requirements for the license or authorization in question.

6.5(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

6.5(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—6.6(17A) Content of petition. A petition for waiver 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 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 is requested.

3. The specific waiver requested, including the precise scope and duration.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 6.4(17A). 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. A history of any prior contacts between the board and the petitioner relating to the regulated activity, license, or authorization affected by the proposed waiver, including a description of each affected license or authorization 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.

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.

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

282—6.7(17A) 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’s executive director, a committee of the board, or a quorum of the board.

282—6.8(17A) 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 board attesting that notice has been provided.

282—6.9(17A) 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 filed within a contested case, and shall otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

282—6.10(17A) 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 reasons

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

6.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

6.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

6.10(3) Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

6.10(4) Administrative deadlines. 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 similarly situated persons.

6.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

6.10(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

6.10(7) 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.

6.10(8) 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. However, the board shall remain responsible for issuing an order denying a waiver.

6.10(9) 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.

282—6.11(17A) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

282—6.12(17A) Summary reports. Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semi-

annually to the administrative rules coordinator and the administrative rules review committee.

282—6.13(17A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

3. The subject of the waiver order has failed to comply with all conditions contained in the order.

282—6.14(17A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

282—6.15(17A) 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.

282—6.16(17A) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement 2000 Iowa Acts, chapter 1176, and Iowa Code chapter 17A.

ARC 0289B

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 clarifies the methods and student teaching requirements for the addition of a secondary endorsement. This amendment also provides an option for presenting verification of competence in lieu of a traditional practicum. Finally, the amendment clarifies the appeal process in the current rules.

There will be a public hearing on the proposed amendment at 2 p.m. on December 5, 2000, in Room 3 South, 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. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing. Fax communication may be sent to (515)281-7669.

Any interested person may make written comments or suggestions on the proposed amendment through 4:30 p.m. on December 5, 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 rule 282—14.6(272) as follows:

282—14.6(272) Adding endorsements to licenses. After the issuance of a teaching or administrative license, an individual may add other endorsements to that license upon proper application provided current requirements for that endorsement, *as listed in 282—14.20(272) and 14.21(272)*, have been met. An updated license with expiration date unchanged from the original or renewed license will be prepared.

In addition to the requirements listed in 282—14.20(272) and 14.21(272), applicants for endorsements shall have completed a methods class appropriate for teaching the general subject area of the endorsement added.

Practitioners who are adding a secondary teaching endorsement and have not student taught at the secondary level shall complete a teaching practicum appropriate for teaching at the level of the new endorsement.

Practitioners holding the K-6 endorsement in the content area of the 7-12 endorsement being added may satisfy the requirement for a teaching practicum by completing all required coursework and presenting verification of competence. This verification of competence shall be signed by a licensed evaluator who has observed and formally evaluated the performance of the applicant at the secondary level.

To add an endorsement, the applicant must follow one of these options:

Option 1. Identify with a recognized Iowa teacher preparing institution and meet that institution's current requirements for the endorsement desired and receive that institution's recommendation.

Option 2. Identify with a recognized Iowa teacher education institution and receive a statement that the applicant has completed the equivalent of the institution's approved program for the endorsement sought.

Option 3. Identify with a recognized teacher education institution and receive a statement that based on the institution's evaluation of the individual's preparation the applicant has completed all of the Iowa requirements for the endorsement sought.

~~Appeal:~~ *Option 4. If an applicant cannot obtain an equivalent statement a recommendation for an endorsement from an institution, and if the applicant believes can document that all the Iowa requirements have been met, the applicant may file the apply for the endorsement by filing transcripts and supporting documentation for review. The application must be accompanied by a letter of rejection from the an institution must be in writing that offers the endorsement. In this situation, Upon receipt of all materials, the staff in of the board of educational examiners will review the preparation in terms of the documents to determine if all Iowa requirements have been met.*

ARC 0290B

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 modifies the teaching experience requirement for the administrative license from five years to three years.

There will be a public hearing on the proposed amendment at 2:30 p.m. on December 5, 2000, in Conference Room 3 South, 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 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 amendment through 4:30 p.m. on December 5, 2000. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address. Fax communications may be sent to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend rule 282—14.14(272) as follows:

282—14.14(272) Requirements for a professional administrator's license.

1. Holder of or eligible for an educational license.
2. ~~Five~~ Three years of teaching experience.
3. Completion of an area of endorsement as listed in 282—14.23(272).
4. Meet the requirements for the evaluator approval.

The professional administrator's license is valid for five years and may be renewed by meeting requirements listed in 282—17.7(272).

ARC 0287B**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 21, "Behind-the-Wheel Driving Instructor Authorization," Iowa Administrative Code.

The proposed amendments remove the requirement for a current Iowa teacher or administrator license authorizing service at the elementary or secondary level and substitute in lieu thereof new qualifications.

There will be a public hearing on the proposed amendments at 1:30 p.m. on December 5, 2000, in Conference Room 3 South, 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. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. 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. Fax communication may be sent to (515)281-7669.

Any interested person may make written comments or suggestions on the proposed amendments through 4:30 p.m. on December 5, 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 were also Adopted and Filed Emergency and are published herein as **ARC 0288B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 272 and Iowa Code Supplement section 321.178.

ARC 0278B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 455B.200, the Environmental Protection Commission hereby gives Notice of Intended Action to consider amendments to Chapter

65, "Animal Feeding Operations," Iowa Administrative Code.

This Notice of Intended Action is in response to a Petition for Rule Making requesting that the Commission adopt rules that require the submission of a manure management plan (MMP) prior to the initiation of construction for any confinement feeding operation that is statutorily required to have an MMP. The Petition further requested that the Department of Natural Resources review the information for each facility to determine if the legal requirements concerning "adjacency" and animal weight capacity are met. On June 19, 2000, the Environmental Protection Commission considered the Petition as required by law.

Currently, Chapter 65 requires that certain "large" confinement feeding operations obtain a permit prior to construction of facilities. In order to obtain a permit, these operations have to submit an MMP and have it approved by the Department. Confinement feeding operations categorized as "medium" operations are not required to obtain a permit, but are required to submit an MMP. Submittal is not required until well after construction has already occurred. The practical impact of the requested rule changes would be to require this category of confinement feeding operations to give prior public notice of proposed construction, allow the public to comment, and require some preconstruction review and approval by the Department.

Department staff indicated to the Commission that it is generally supportive of the concepts of early registration of such facilities and of review for potential compliance problems. However, these proposals would add substantial workload which the Department could not meaningfully perform with existing resources. The staff therefore recommended that the Petition be denied, but that the issues be referred to the Animal Agriculture Consulting Organization (AACO) for review and public input.

The Commission voted to deny the Petition as stated, but to commence a rule-making process to address these issues after the matter was considered by the AACO for input and development of specific, proposed rule language. The issues were presented and discussed at an AACO meeting in August, and no specific rule language resulted. The Commission has therefore decided to proceed with a general, "subject matter" Notice of Intended Action to seek public input and suggestions for specific rule language relating to the Department's requiring:

- (1) Any confinement feeding operation that is required to submit a manure management plan to notify both the Department and the County Board of Supervisors prior to construction.
- (2) Review and approval of all manure management plans prior to construction.
- (3) That the manure management plan application contain information about ownership and management of the facility and any nearby facilities.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 5, 2001. Written comments should be directed to Amy Rossow, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895. Comments may also be E-mailed to Amy.Rossow@dnr.state.ia.us.

Also, there will be public hearings on the following dates at which time persons may present their views either orally or in writing:

December 12, 2000, at 7 p.m. in the lower conference room of the Sioux Center Public Library, 327 1st Avenue N.E., Sioux Center

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

December 13, 2000, at 7 p.m. in the large room of the First National Bank Building, 211 1st Avenue N.W., Hampton

December 18, 2000, at 6:30 p.m. in Room 101 of Iowa Western Community College, 906 Sunnyside Lane, Atlantic

December 19, 2000, at 1 p.m. in the second floor conference room of the Wallace State Office Building, 502 East 9th Street, Des Moines

December 20, 2000, at 1:30 p.m. in the Marland Room (second floor of Iowa Hall) of Kirkwood Community College, 6301 Kirkwood Boulevard S.W., Cedar Rapids

At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

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

These amendments are intended to implement Iowa Code sections 455B.161 to 455B.165 and 455B.200 to 455B.206.

ARC 0279B**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 Iowa Code sections 455B.304, 455B.306 and 455D.7, the Environmental Protection Commission hereby gives Notice of Intended Action to rescind Chapter 101, "General Requirements Relating to Solid Waste Management and Disposal," and Chapter 109, "Fees for Disposal of Solid Waste at Sanitary Landfills," and adopt new Chapter 101, "Solid Waste Comprehensive Planning Requirements," Iowa Administrative Code.

These proposed amendments revise the rules pertaining to solid waste comprehensive planning. The rules have been updated and streamlined to the benefit of the public. The content of Chapter 109 has been incorporated into new Chapter 101. The guidance document, "Guidelines for Solid Waste Comprehensive Planning: Integrated Solid Waste Management Systems," which provides additional assistance to those filing comprehensive plans and is adopted by reference herein, has also been updated. This document was developed in 1990 and revised in 1994. Changes have been made to the guidance document to update and clarify planning requirements and to streamline the plan submittal process. Draft copies of the proposed rules and the guidance document are available either online from the Waste Management Assistance Division Web site at <http://www.state.ia.us/dnr/organiza/wmad> or in hard copy by contacting Jane Mild at (515)281-5105 or Laura Juliano at (515)281-8946, Waste Management Assistance Division, Department of Natural Resources.

Any interested party may make written suggestions or comments about the proposed rules or guidance document prior to December 8, 2000. Such written comments should be directed to Jane Mild or Laura Juliano, Waste Management Assistance Division, Department of Natural Resources,

Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons who wish to convey their views orally should contact Jane Mild or Laura Juliano, Waste Management Assistance Division, by telephone or at the Division offices on the fifth floor of the Wallace State Office Building, Des Moines, Iowa.

A public hearing will be held on Friday, December 8, 2000, from 1:30 p.m. to 4:30 p.m. over the Iowa Communications Network (ICN) and will originate from the Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Sites to participate in the public hearing via ICN are:

Northern Trails Area Education Agency 2
9184B 265th Street
Clear Lake, Iowa

Carnegie-Stout Public Library
360 West 11th Street
Dubuque, Iowa

Spencer High School
800 East 3rd Street
Spencer, Iowa

Fort Dodge High School
819 N 25th Street
Fort Dodge, Iowa

Iowa City Public Library
123 South Linn Street
Iowa City, Iowa

Indian Hills Community College
651 Indian Hills Drive
Ottumwa, Iowa

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

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

These amendments are intended to implement Iowa Code sections 455B.304 and 455B.306 and Iowa Code chapter 455D.

The following amendments are proposed.

ITEM 1. Rescind 567—Chapter 101 and adopt in lieu thereof the following new chapter:

CHAPTER 101
SOLID WASTE COMPREHENSIVE PLANNING
REQUIREMENTS

567—101.1(455B,455D) Purpose, applicability and authority.

101.1(1) Purpose. The purpose of these rules is to provide general definitions and direction for comprehensive integrated solid waste management planning for every city and county of this state and to provide an orderly and efficient process for the assessment and collection of fees for the disposal of solid waste at a sanitary landfill.

101.1(2) Applicability. This chapter is intended to implement Iowa Code section 455B.306, subsection 1 through subsection 5, and subsection 6, paragraph "c," and Iowa Code section 455D.3. All other parts and subsections of

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Code section 455B.306 shall be addressed in permitting rules.

101.1(3) Authority. The commission has the authority to adopt rules regarding comprehensive planning pursuant to Iowa Code sections 455B.304 and 455D.7.

567—101.2(455B,455D) Variances. The director may issue, modify, or deny variances from the rules in this chapter. The applicant may appeal the decision of the director to the commission.

567—101.3(455B,455D) Definitions. For the purpose of this chapter, the following definitions shall apply:

“Comprehensive plan” means a course of action developed and established cooperatively between cities, counties and sanitary disposal projects regarding their chosen integrated solid waste management system, its participants, waste reduction strategies, and disposal methods.

“Comprehensive plan submittal—amendments” means a notification, filed between plan updates, that the planning area seeks to change the participation or change the designated disposal projects as set out in the most recent approved plan submittal.

“Comprehensive plan submittal—initial” means a first or new comprehensive plan filed with the department of natural resources pursuant to the provisions of Iowa Code section 455B.306.

“Comprehensive plan submittal—updates” means a planning document that provides status reports on the integrated solid waste management system and describes revision to the information and evaluation of the integrated solid waste management system and the proposed course of action for the next six years.

“Infectious waste” means waste which is infectious, including but not limited to contaminated sharps, cultures and stocks of infectious agents, blood and blood products, pathological waste, and contaminated animal carcasses from hospital or research laboratories.

“Integrated solid waste management” means any solid waste management system which is focused on planned development of programs and facilities that reduce waste volume and toxicity, recycle marketable materials and provide for safe disposal of any residuals.

“Monogenerator facilities” means any permitted facility that accepts waste(s) from a sole generator that is also the owner/operator of the facility.

“Monowaste facilities” means any permitted facility with special permit provisions which limit the site to a single solid waste including, but not limited to, coal combustion residue or foundry sand.

“Plan participants” means any individual, group, government or private entity that has direct involvement in an integrated solid waste management system.

“Private agency” means an individual or any form of business organization authorized under the laws of this or any other state.

“Public agency” means any political subdivision of this state, including Iowa Code chapter 28E agencies.

“Sanitary disposal project” means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.

“Solid waste” means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials including, but not limited to, such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles as defined by Iowa Code section 321.1, subsection 90. However, division IV of Iowa Code chapter 455B does not prohibit the use of dirt, stone, brick, or similar inorganic material for fill, landscaping, excavation or grading at places other than a sanitary disposal project. Solid waste does not include hazardous waste as defined in Iowa Code section 455B.411 or source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979, or petroleum contaminated soil which has been remediated to acceptable state or federal standards.

567—101.4(455B,455D) Waste management hierarchy. The state’s waste management hierarchy is listed in descending order of preference:

1. Volume reduction at the source;
2. Recycling and reuse, including composting;
3. Other approved techniques of solid waste management including, but not limited to, combustion with energy recovery, combustion for waste disposal, and disposal in sanitary landfills.

567—101.5(455B,455D) Duties of cities and counties. Every city and county of this state shall, for the solid waste generated within the jurisdiction of its political subdivision, provide for the establishment and operation of an integrated solid waste management system consistent with the waste management hierarchy under rule 101.4(455B,455D) and designed to meet the state’s waste reduction and recycling goals. Integrated systems and sanitary disposal projects may be established separately or through cooperative efforts, including Iowa Code chapter 28E agreements as provided by law.

To meet these responsibilities, cities and counties may execute, with public and private agencies, contracts, leases, or other necessary instruments, purchase land and do all things necessary not prohibited by law for the implementation of waste management programs, collection of solid waste, establishment and operation of sanitary disposal projects, and general administration of the same.

If the integrated solid waste management system of a city, county, or Iowa Code chapter 28E agency cannot accept or refuses to accept any particular type of solid waste, it must arrange for an alternative management method within its planning area.

All cities and counties or Iowa Code chapter 28E agencies representing cities and counties shall demonstrate compliance with the provisions of this chapter by their participation in a comprehensive solid waste management plan approved by the department of natural resources.

567—101.6(455B,455D) Contracts with permitted agencies.

101.6(1) Every city, county, and other public agency which complies with the requirements of Iowa Code chapter 455B for the disposal of solid waste by means of a contract with an agency holding a sanitary disposal project permit or by means of a contract with a hauler who has a contract with an agency holding a sanitary disposal project permit shall submit to the department a copy of that executed contract. All such agencies shall have on file at the department at all times a valid contract. Any renewal of the contract or any new or amended contract shall be submitted.

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101.6(2) All public agencies which contract with a hauler to comply with the requirements of part 1 of division IV of Iowa Code chapter 455B shall include, as terms of that contract, a requirement that all solid waste collected by the hauler for that agency shall be disposed of or deposited at a sanitary disposal project designated within said agency's comprehensive plan in accordance with the rules of the department.

567—101.7(455B,455D) State volume reduction and recycling goals. The goal of the state is to reduce the amount of materials in the waste stream existing as of July 1, 1988, 25 percent by July 1, 1994, and 50 percent by July 1, 2000, through the practice of waste volume reduction at the source and through recycling. The updated waste abatement calculations submitted by each comprehensive planning area shall be used by the department in reporting to the general assembly on the state's progress toward meeting the 25 and 50 percent goals. If at any time the department determines that a planning area has failed to meet the 25 percent waste volume reduction and recycling goal, the planning area shall, at a minimum, implement the solid waste management techniques listed in Iowa Code section 455D.3(4) and subrule 101.8(5).

567—101.8(455B,455D) Types of comprehensive plan submittals to be filed. Public or private entities operating or planning to operate a sanitary disposal project in Iowa shall, in conjunction with all local governments using the sanitary disposal project, meet all comprehensive plan submittal requirements described in this rule. There are three types of comprehensive plan submittals: initial, updates, and amendments. The purpose of these plans is the development of a specific plan and schedule for implementing technically and economically feasible solid waste management methods that will prevent or minimize any adverse environmental impact and meet the state's volume reduction and recycling goals pursuant to rule 101.7(455B,455D).

Cities and counties planning to use a sanitary disposal project in Iowa must participate in a comprehensive plan with all other cities and counties using that sanitary disposal project. Cities and counties planning to use an out-of-state disposal facility or facilities must file a comprehensive plan that identifies the out-of-state facility or facilities used. Cities or counties not using a sanitary disposal project located in Iowa are still required to meet all comprehensive plan submittal requirements. The department shall act to coordinate and expedite planning activities for multicounty areas where feasible. The general requirements and schedule for updating comprehensive plans shall be submitted according to subrule 101.8(2).

A guidance document describing in more detail the content of a comprehensive plan is available from the records center of the department of natural resources at (515) 281-8860. The guidance document is adopted by reference. The document title is "Guidelines for Solid Waste Comprehensive Plans: Integrated Solid Waste Management Systems" (September 1990) as revised October 15, 2000. "Guidelines for Solid Waste Comprehensive Plans: Integrated Solid Waste Management Systems" provides the comprehensive planning requirements that apply to composting, recycling, processing, and medical waste incineration facilities. Because these operations are specialized, some requirements contained in these rules may not apply to these operations.

101.8(1) Content of an initial comprehensive plan. In fulfillment of the requirements of Iowa Code section

455B.301A and Iowa Code chapter 455D, an initial comprehensive plan shall include the following information:

a. A description of the planning area and the public and private agencies involved in the integrated solid waste management system, including a description of each agency's role in managing solid waste generated in the area. An amendment to the plan is required prior to receiving or otherwise managing waste from outside the delineated planning area.

b. A letter or letters from all local governments and private sanitary disposal projects participating in the plan. The letter shall include a statement that the plan participants have reviewed the plan and will adopt the implementation plan and schedule contained in the plan. The letter shall briefly summarize the implementation plan and schedule. If a local government included in the planning area refuses to provide a letter, then that local government must prepare its own plan and is no longer considered to be in the original planning area. In such cases, the original plan may still be approved, but it must include a brief addendum as outlined in "Guidelines for Solid Waste Comprehensive Plans: Integrated Solid Waste Management Systems" stating the effect of the change on the waste stream. Private sanitary disposal projects failing to provide letters will be unable to receive a permit or permit renewal. If a city, county, or other public agency complies with comprehensive planning requirements by means of a contract with an agency holding a sanitary disposal project permit or with a hauler who has a contract with an agency holding a sanitary disposal project permit, a copy of that contract shall be submitted as provided in rule 101.6(455B, 455D) in addition to the letters of cooperation.

c. A description of past local and regional planning activities.

d. A report of the baseline waste stream in total tons per year. Progress toward meeting the state's volume reduction and recycling goals pursuant to rule 101.7(455B,455D) will be demonstrated through methods as described in "Guidelines for Solid Waste Comprehensive Plans: Integrated Solid Waste Management Systems."

e. A description of population, employment, and industrial production as of July 1, 1988.

f. A description of the current waste composition and waste generation rates and a projection of waste composition and generation spanning two plan cycles.

g. A description of the existing integrated waste management system, its capacity, disposal costs per ton, and projected disposal costs spanning two plan cycles.

h. A complete analysis of alternative waste management systems according to the state's waste management hierarchy shall include at a minimum:

(1) A detailed description of public participation and education programs for source reduction and recycling by both urban and rural residences, farms, businesses, and industries. Public education programs must address, at a minimum, household hazardous materials, tires, motor oil, lead-acid batteries, backyard composting, and methods of materials separation and recycling. The description of each public education program must include, but is not limited to:

1. Strategies, costs, and materials;
2. Public meetings during the planning and implementation stages and other forms of information dissemination, such as workshops and advertisements;
3. Time lines and a budget for public education activities.

(2) Details of local recycling programs containing a specific methodology for meeting the state waste volume reduc-

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tion and recycling goals pursuant to rule 101.7(455B,455D) and a methodology for implementing waste separation programs including, but not limited to, glass, plastic, paper, and metal. The methodology must include, but not be limited to:

1. Public education strategies;
2. Public education materials;
3. A specific description of recycling activities already in place, including the names of groups conducting the activities;
4. The names of any local groups that will be involved in any recycling programs in the planning area.

(3) An examination of the following waste items for their existing and potential recyclability: motor oil, waste tires, lead-acid batteries, household batteries, plastics, newspapers, corrugated cardboard, textiles, office paper, construction materials, aluminum and steel cans, colored and clear glass, yard waste, animal wastes and other organic wastes, and white goods as described in "Guidelines for Solid Waste Comprehensive Plans: Integrated Solid Waste Management Systems."

(4) Detailed descriptions of programs developed to encourage backyard composting of yard waste and to investigate the feasibility of central composting facilities that will, at a minimum, include yard waste. These programs must include public education elements as detailed in 101.8(1)"h"(2) and identification of current and potential markets or outlets for any compost generated at a central composting facility. In addition, any compost generated at a centralized facility must be produced in accordance with standards established in Iowa Code section 455D.9 and 567—Chapter 105.

(5) If incineration for energy recovery or volume reduction is an alternative considered by one or more plan participants, then the plan must include the methodologies to remove recyclables or materials which may be toxic or hazardous when burned.

(6) Description of expected environmental impacts from the alternative waste management systems including any negative impacts on water, groundwater, air quality, plant life, animal life, and human health.

(7) All new sanitary landfills or expansions that require a new permit or a permit amendment shall include:

1. A comprehensive listing of plant and animal species. In preparing the listing, the permit applicant shall contact the department's preserves and ecological services bureau with a request to search its records to determine the presence of or habitat for any threatened or endangered species or communities and any forests, prairies or wetlands. In the event that the department's preserves and ecological services bureau does not contain records of rare species or communities but their presence is suspected, the permit applicant may be required to conduct an approved site survey.

2. A determination of the presence of and assessment of the impact on any archaeological, historical, or architecturally significant properties on the proposed site. To assess the impact, the permit applicant must consult with the historic preservation bureau of the Iowa state historical society.

(8) Inclusion of established and anticipated regulatory requirements regarding the future siting, operation, closure and postclosure of solid waste facilities.

(9) Completion of the cost analysis worksheets contained in "Guidelines for Solid Waste Comprehensive Plans: Integrated Solid Waste Management Systems." This document is available upon request from the department.

(10) A financial plan detailing the actual cost of the sanitary disposal project, including the funding sources of the

project and a description of the methods of financing to be used.

(11) The most recent completed fiscal year financial statement and current fiscal year budget for each sanitary landfill, provided by its operator.

- i. An evaluation of the current integrated solid waste management system according to the state's waste management hierarchy.

- j. A specific plan and schedule spanning two planning cycles for implementing the comprehensive plan.

101.8(2) Comprehensive plan updates. After the initial plan has been approved, plan updates submitted by cities, counties or sanitary disposal projects are to be submitted on the schedule as detailed in "Guidelines for Solid Waste Comprehensive Plans: Integrated Solid Waste Management Systems." In fulfillment of the requirements of Iowa Code section 455B.301A and Iowa Code chapter 455D, a plan update shall include the following information:

- a. A description of the planning area and the public and private agencies involved in the integrated solid waste management system, including a description of each agency's role in managing solid waste generated in the area. An amendment to the plan is required prior to receiving or otherwise managing waste from outside the delineated planning area.

- b. A letter or letters from all local governments and private sanitary disposal projects participating in the plan. The letter shall include a statement that the plan participants have reviewed the plan and will adopt the implementation plan and schedule contained in the plan. The letter shall briefly summarize the implementation plan and schedule. If a local government included in the planning area refuses to provide a letter, then that local government must prepare its own plan and is no longer considered to be in the original planning area. In such cases, the original plan may still be approved, but it must include a brief addendum as outlined in "Guidelines for Solid Waste Comprehensive Plans: Integrated Solid Waste Management Systems" stating the effect of the change on the waste stream. Private sanitary disposal projects unable to provide letters will be unable to receive a permit or permit renewal. If a city, county, or other public agency complies with comprehensive planning requirements by means of a contract with an agency holding a sanitary disposal project permit or with a hauler who has a contract with an agency holding a sanitary disposal project permit, a copy of that contract shall be submitted in addition to the letters of cooperation.

- c. A description of past local and regional planning activities.

- d. A report of the baseline waste stream in total tons per year. This baseline data will be used to demonstrate progress toward meeting the state's volume reduction and recycling goals pursuant to rule 101.7(455B,455D) through methods as described in "Guidelines for Solid Waste Comprehensive Plans: Integrated Solid Waste Management Systems."

- e. A description of changes in population, employment, and industrial production since the last approved plan.

- f. A description of changes in waste composition and waste generation rates since the last approved plan.

- g. A description of the existing integrated waste management system, its capacity, disposal costs per ton, and projected disposal costs per ton spanning two plan cycles.

- h. An analysis of the existing waste management system according to the state's waste management hierarchy, as detailed in 101.8(1)"h," excluding the completion of cost analysis worksheets. A complete analysis shall include a thor-

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ough evaluation of progress toward meeting the state's volume reduction and recycling goals. Plans shall use the base-year adjustment method for their waste abatement table to measure progress since 1988. The base-year adjustment method controls for population, employment, and taxable sales so that related changes in a planning area's waste disposal are more accurately calculated.

i. A description of potential changes to the waste management system for the planning area based upon the results of the alternatives analysis.

j. An evaluation of the current integrated solid waste management system according to the state's waste management hierarchy.

k. A specific plan and schedule spanning two planning cycles for implementing the comprehensive plan.

l. The most recent completed fiscal year financial statement and current fiscal year budget for each sanitary landfill, provided by its operator.

101.8(3) Comprehensive plan amendments. If a sanitary disposal project or city or county requests to be included in a planning area after completion of a plan but before a plan update is due, and the planning area agrees to include the entity, the following procedure is required:

a. A letter must be submitted to the department by the facility operator describing the facility's operation and the amount of waste to be managed, or by the city or county describing that entity's intention to participate in the specified comprehensive plan.

b. A letter must be submitted to the department by the planning area's responsible agency agreeing to accept the entity in its planning area and stating how the change will affect the planning area's waste stream, including an explanation of the change in the planning area, the amount of waste involved and details of waste reduction and recycling efforts that will be implemented in new communities.

c. The next plan update submitted by the planning area shall include the entity.

d. If the plan amendment seeks to modify the planning area's population or disposal tonnage at a disposal facility within the planning area by greater than 30 percent or seeks to change the disposal method of the planning area, an initial plan must be filed.

101.8(4) Plan review. Any planning document submitted in accordance with rule 101.8(455B,455D) shall be reviewed by the department for its accuracy, completeness, and appropriateness of baseline data and alternatives analysis, for the environmental and economic feasibility of selected waste management systems, for the plan's adherence to the state's waste management hierarchy, for compliance with statutory deadlines, and for the agency's commitment to public education and adequate financing. The director may reject, suggest modification of, or approve a plan based upon these criteria.

No initial, updated or amended submittal will be approved if the planning area, including all participating permitted sanitary disposal projects, is not in compliance with all applicable solid waste regulations.

101.8(5) Failure to meet the 25 percent waste volume reduction and recycling goal. If at any time the department determines a planning area has failed to meet the 25 percent waste volume reduction and recycling goal, the planning area shall, at a minimum, implement the following solid waste management techniques as required by Iowa Code section 455D.3(4). Evidence of implementation of these solid waste management techniques shall be documented in updated comprehensive plans submitted to the department.

a. Develop draft ordinances that shall be enacted and implemented no later than six months after the date of the goal progress approval letter issued by the department. Local governments are charged with the responsibility for establishing collection fees that are based on volume or on the number of containers used for disposal by residents.

b. Conduct an educational and promotional program to inform citizens of the manner and benefits of reducing, reusing, and recycling materials and the procurement of products made with recycled content. The program shall include the following:

(1) Targeted waste reduction and recycling education for residents, including multifamily dwelling complexes having five or more units.

(2) An intensive one-day seminar for the commercial sector regarding the benefits of and opportunities for waste reduction and recycling.

(3) Promotion of recycling through targeted community and media events.

(4) Recycling notification and education packets to all new residential, commercial, and institutional collection service customers that include, at a minimum, the manner of preparation of materials for collection and the reasons for separation of materials for recycling.

c. Notify the public of the planning area's failure to meet the waste volume reduction goals of this chapter.

(1) The planning area shall notify the public using the following standard language:

PUBLIC NOTIFICATION

(insert NAME OF SOLID WASTE PLANNING AREA)

The Iowa General Assembly mandated that the amount of waste landfilled as of July 1, 1988, be reduced 25 percent by July 1, 1994, and 50 percent by July 1, 2000, through source reduction and recycling activities.

The (insert name of the solid waste planning area) did not meet the state's 25 percent waste reduction and recycling goal and is now required to implement a number of waste management techniques.

Because the (insert name of solid waste planning area) did not meet the 25 percent goal, landfill users will pay 50 cents per ton in addition to the state solid waste fee of \$4.25 per ton of material landfilled. This additional fee will be applied until the (insert name of solid waste planning area) demonstrates it has attained the goal. In contrast, those planning areas meeting the goal may subtract 50 cents per ton from the state solid waste fee.

The (insert name of solid waste planning area) must also do the following:

1. Develop draft ordinances to be used by local governments for establishing fees that are based on volume or on the number of containers used for disposal by residents;

2. Conduct an educational and promotional program to inform citizens of the manner and benefits of reducing, reusing, and recycling materials and the procurement of products made with recycled content. The program will include:

- Targeted waste reduction and recycling education for residents, including multifamily dwelling complexes having five or more units;

- An intensive one-day seminar for the commercial sector regarding the benefits of and opportunities for waste reduction and recycling;

- Promotion of recycling through targeted community and media events;

- Recycling notification and education packets to all new residential, commercial, and institutional collection ser-

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vice customers that include, at a minimum, the manner of preparation of materials for collection and the reasons for separation of materials for recycling.

Everyone - businesses, industries, schools, governments, and citizens - must work together to reduce the amount of valuable resources being landfilled.

To find out how you can help reduce waste and participate in the activities listed above, please contact (insert name of contact person) at (insert number of contact person).

The (insert name of solid waste planning area) includes (insert names of participating local governments - cities and counties).

(2) The planning area shall notify the public using the following procedures:

1. Publication of the notice in not less than a one-quarter page format in a daily newspaper(s) of general circulation in each county within the planning area as soon as possible, or within 60 days from the date the department notifies the planning area that it has failed to meet the 25 percent waste volume reduction and recycling goal.

2. If counties served by the planning area are not served by a daily newspaper(s) of general circulation, notice shall instead be given by publication in a weekly newspaper(s) of general circulation in each county within the planning area.

3. Copies of the public notice shall also be mailed with a news release to all television and radio stations with coverage in the planning area as soon as possible, but in no case later than 60 days after formal adoption of this rule, or within 60 days from the date the department notifies the planning area that it has failed to meet the 25 percent waste volume reduction and recycling goal.

(3) The planning area shall submit to the department, within 30 days from the date of publication of the public notice, proof of publication from the newspaper(s) used to satisfy this requirement.

The planning area shall also submit to the department, within 30 days from the date of mailing, the public notice and news release, a copy of the news release and a list of the television and radio stations that were mailed the public notice and news release.

d. Remit 50 cents per ton to the department as outlined in subrule 101.9(3).

567—101.9(455B,455D) Fees for disposal of solid waste at sanitary landfills.

101.9(1) Authority, purpose and applicability.

a. Authority. Pursuant to Iowa Code section 455B.310, the department has authority to collect fees for the disposal of solid waste at sanitary landfills. All tonnage fees received by the department under this rule shall be deposited in the solid waste account of the groundwater protection fund created under Iowa Code section 455E.11(1).

b. Purpose. The purpose of this rule is to provide an orderly and efficient process for the assessment and collection of fees for the disposal of solid waste at a sanitary landfill. This rule clarifies the applicability of the fees and sets forth a fee schedule, means of filing, and record-keeping requirements.

c. Applicability. Except as provided in subrule 101.9(2), operators of all sanitary landfills located within Iowa and subject to the permitting requirements of the department shall pay a fee for each ton of solid waste disposed of in the landfill.

101.9(2) Exclusions.

a. The fees specified in subrule 101.9(3) do not apply to construction and demolition waste disposed of in an area of a

sanitary landfill that has been designated exclusively for the disposal of construction and demolition waste on plans and specifications approved by the department or to solid waste disposal facilities with special permit provisions which limit the site to the disposal of landscape waste, coal combustion waste, cement kiln dust, construction and demolition waste, foundry sand or solid waste materials approved by the department for lining or capping or constructing berms, dikes or roads in the project.

b. Fees do not apply to wastes which will not be buried at a sanitary landfill if such material is salvaged or recycled in accordance with the provisions of the landfill permit.

101.9(3) Fee schedule.

a. The tonnage fee is \$4.25 per ton of solid waste.

b. If at any time the department determines that a planning area has met or exceeded the 25 percent goal, a planning area shall subtract 50 cents from the total amount of the tonnage fee imposed.

c. If at any time the department determines that a planning area has met or exceeded the 50 percent goal, the planning area shall subtract \$1 from the total amount of the tonnage fee imposed.

d. If at any time the department determines that a planning area has failed to meet the 25 percent goal, a planning area shall remit 50 cents per ton to the department. Moneys under this paragraph shall be remitted until such time as evidence of attainment of the 25 percent goal is documented in comprehensive plan updates submitted to the department.

e. Fifty cents of the tonnage fee shall be retained by the sanitary landfill operator and shall be used to meet comprehensive planning requirements, the development of a closure or postclosure plan, the development of a plan for the control and treatment of leachate including the preparation of facility plans and detailed plans and specifications and the preparation of a financial plan.

f. Forty-five cents of the tonnage fee shall be retained by the sanitary landfill operator. Any tonnage fees retained pursuant to this paragraph shall be used for implementation of programs and services designed to satisfy the waste reduction and recycling requirements of comprehensive plans for cities, counties, or public agencies served by the sanitary disposal project.

(1) In addition to the 45 cents retained as described in 101.9(3)"f," 25 cents shall be retained if the sanitary landfill required to pay the tonnage fee under this paragraph has an approved updated comprehensive plan on file with the department. Any tonnage fees retained pursuant to this subparagraph shall be used as described in 101.9(3)"f."

(2) In addition to the 45 cents retained as described in 101.9(3)"f," 10 cents shall be retained if the sanitary landfill's planning area meets the statewide goal progress average, as determined by the department on July 1, 1999. The sanitary landfill operator shall retain the additional 10 cents of the tonnage fee regardless of whether the planning area subsequently fails to meet the statewide average. Any tonnage fees retained pursuant to this subparagraph shall be used as described in 101.9(3)"f."

g. For purposes of assessing this fee, sanitary landfills shall utilize scales and base the fee assessment on the net scale weight of solid wastes disposed of at the landfill during the reporting period.

h. If special conditions existing at a sanitary landfill make it impractical to use the landfill's scales to determine waste tonnages, the landfill may propose for department review and approval an alternate method for determining the weight of disposed solid waste.

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101.9(4) Form, manner, time and place of filing.

a. Form. Any person to whom this rule applies shall file a completed Form 98, Quarterly Solid Waste Fee Schedule and Retained Fees Report, supplied by the department as specified in subrule 101.9(3).

b. Manner, time and place. Fees are to be paid on a quarterly basis. The fees and report on retained fees will be due January 1, April 1, July 1, and October 1 for the previous quarter. The person shall present or mail the completed form with the appropriate fees to Accounting, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319.

101.9(5) Reporting and record keeping.

a. Operating records. Those sanitary landfill operators who are subject to the fee assessment requirements of this rule shall maintain adequate records to determine and document the weight of solid waste received at and disposed of in the sanitary landfill during the calendar year.

b. All records used in determining the solid waste fee assessment must be kept for a period of at least three years from the end of the calendar year which the records represent.

c. All records required under this rule must be furnished upon request, and made available at all reasonable times for inspection, to any officer, employee, or representative of the department who is duly designated by the director.

101.9(6) Failure to pay fees. If it is found that a person has failed to pay the fees assessed by this rule, the director shall enforce the collection of the delinquent fees. A person required to pay fees as required by Iowa Code section 455B.310 who fails or refuses to pay the fees by the due date shall be assessed a penalty of 2 percent of the quarterly fee due to be assessed on January 2, April 2, July 2, and October 2, and on the first day of each month thereafter, on a monthly basis until paid. A person required to retain fees as required by Iowa Code section 455B.310 who fails or refuses to report the use of the retained fees by the due date shall be assessed a penalty of 2 percent of the retained fees due to be assessed on January 2, April 2, July 2, and October 2, and on the first day of each month thereafter, on a monthly basis until paid. The penalty shall be paid in addition to the fee due.

These rules are intended to implement Iowa Code sections 455B.303 and 455B.306 and Iowa Code chapter 455D.

ITEM 2. Rescind and reserve **567—Chapter 109.**

ARC 0273B**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 sections 234.6 and 237.5A, the Department of Human Services proposes to amend Chapter 156, “Payments for Foster Care and Foster Parent Training,” appearing in the Iowa Administrative Code.

These amendments increase the rates paid for emergency foster care and provide flexibility in the rate paid to qualified

trainers of foster care preservice. The rate paid for children up to 12 years of age is increased from \$14 per day to \$20.09 per day. The rate paid for children 12 years of age and over is increased from \$21.63 per day to \$21.84 per day.

The current rate paid for emergency care has not been increased for several years and the basic maintenance rate currently paid to foster parents has exceeded the amount for children up to 12 years of age. In order to recruit and retain foster parents willing to care for children needing this service, the rates need to be increased for all ages of children.

Foster parents and social workers who serve as trainers for approved preservice training programs shall each be paid a contract fee per class hour appropriate to community standards based on the education and experience of each trainer. These rates shall be negotiated between the entity that contracts with the Department and the trainer.

The Department is in need of trainers who are able to provide the preservice training for persons desiring to be basic level foster parents and for those desiring to be certified to provide treatment. The pool of trainers is inadequate to meet the demand. The current payment rate does not meet community standards. This change will allow the contractor to pay a rate that is competitive.

These amendments do not provide for waivers in specific situations because they confer a benefit on foster parents and children in foster care by increasing the rate foster parents are paid to care for children on an emergency basis and trainers are paid to conduct preservice training, thereby increasing the number of homes available and increasing the pool of trainers across the state to meet the demand for foster care preservice training.

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 December 6, 2000.

These amendments are intended to implement Iowa Code sections 234.35 and 237.5A.

The following amendments are proposed.

ITEM 1. Amend rule 441—156.11(234) as follows:

Amend subrule 156.11(2) as follows:

156.11(2) Foster family home payment. Foster family homes may be designated to provide emergency care and may be paid on a daily rate per child when a child is placed. Rates for children shall be:

Age of child	Rate
Age 0-11	\$14.00 \$20.09 per day
Age 12 and over	\$21.63 \$21.84 per day

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section ~~234.38~~ 234.35.

ITEM 2. Amend subrule 156.18(3) as follows:

156.18(3) Foster parent *and social worker* trainers. Foster parents *and social workers* who serve as trainers for approved ~~12-hour~~ preservice training programs shall each be paid a contract fee of ~~\$14.00~~ per class hour *appropriate to community standards based on the education and experience of each trainer. These rates shall be negotiated between the entity that contracts with the department and the trainer.*

INSURANCE DIVISION[191]

Notice of Public Hearing

Pursuant to Executive Order Number 8, the Insurance Division is in the process of reviewing all administrative rules within its jurisdiction. As part of the review process, the Division shall conduct a series of public hearings to receive comments of interested individuals or parties. The hearings are for the sole purpose of receiving comments on existing administrative rules.

The Division has scheduled the following hearing:

Rates, Forms and Special Lines—Chapters 20, 21, 22, 28, 30, 31, 33 and 58.

Monday, December 11, 2000, 1 p.m. in the Lobby Conference Room of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa.

Contact Person: Angela Burke Boston, Assistant Commissioner.

For further information on this hearing, please telephone the named contact person at (515)281-5705.

ARC 0286B

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(17), the Executive Director of the Iowa Finance Authority (Authority) proposes to amend Chapter 8, "Private Activity Bond Allocation," Iowa Administrative Code.

The proposed amendments provide a process for receiving applications for the state ceiling of private activity bonds. The process will permit applicants to apply for an allocation of the state ceiling for a given calendar year by submitting applications prior to the first business day of the year. Applications so received will be treated as having been received on the first business day of the calendar year. This procedure will allow the Authority to treat all applications submitted before the first business day of the calendar year as though they were received simultaneously, so that applicants will not be forced to line up outside the Authority's office the night before the first business day of the year in order to file their applications with the Authority. The proposed amendments set forth a procedure for determining the order of preference for allocation of the state ceiling that the simultaneously received applications will receive in the event applicants seek more bond allocation than is available under the state ceiling.

The Authority does not intend to grant waivers under the provisions of any of these rules. Waivers could result in non-compliance with the provisions of Iowa Code chapter 7C.

Consistent with Executive Order Number 9, the Authority has considered the regulatory principles identified in the Order and finds that the proposed amendments will serve an important public need in providing a fair and equitable pro-

cedure for receiving applications for allocations of the private activity bond state ceiling and determining the order of allocating the state ceiling among simultaneously received applications.

The Authority will receive written comments on the proposed amendments until the close of business on December 12, 2000. Comments may be addressed to Loyd Ogle, Iowa Finance Authority, 100 East Grand, Suite 250, Des Moines, Iowa 50309. Comments may be faxed to Loyd Ogle at (515) 242-5650. Comments may be E-mailed to Loyd Ogle at loyd.ogle@ifa.state.ia.us.

The Authority will hold a public hearing on December 5, 2000, to receive public comments on these amendments. The public hearing will be held at 9 a.m. in the Conference Room, Iowa Finance Authority, 100 East Grand, Suite 250, Des Moines, Iowa 50309.

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

These amendments are intended to implement Iowa Code chapter 7C and Internal Revenue Code Section 146.

The following amendments are proposed.

ITEM 1. Amend rule 265—8.1(7C) as follows:

265—8.1(7C) General. The governor has appointed the executive director of the Iowa finance authority as the governor's designee responsible for administration of the law which establishes procedures for allocation of private activity bonds as defined in Section ~~103(n)~~ 141 of the Internal Revenue Code of 1954. Procedures set out in the law and in these rules shall be followed in allocating the private activity bond state ceiling ("state ceiling") between cities, counties and the state of Iowa. *For each calendar year, the state ceiling shall be allocated among bonds issued for various purposes in the percentages set forth in Iowa Code section 7C.4A. The state ceiling shall be allocated among all issuers for those various purposes annually in accordance with Iowa Code chapter 7C and these rules. All applications received in any calendar year shall expire as of December 31 of that year.*

ITEM 2. Amend rule 265—8.3(7C) as follows:

265—8.3(7C) Formula for allocation.

8.3(1) The state ceiling shall be allocated among all issuers on the basis of chronological order of receipt of applications. Chronological order of receipt shall be determined by the date, hour and minute indicated by the time stamp as affixed to the application at the offices of the governor's designee.

8.3(2) *All applications that are submitted for receipt pursuant to the provisions of subrule 8.4(2) shall be considered simultaneously received at the opening of business on the first business day of the calendar year and the same date, hour and minute shall be stamped on each application so received.*

a. If the total amount of allocations requested in all of the applications received pursuant to subrule 8.4(2) that seek allocations of bonds for industries pursuant to Iowa Code subsection 7C.4A(5) exceed the amount of the state ceiling available for that purpose, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in paragraph 8.3(3) "a."

b. If the total amount of allocations requested in all of the applications received pursuant to subrule 8.4(2) that seek allocations of private activity bonds issued by public subdivisions, the proceeds of which are used by the issuing subdivision pursuant to Iowa Code section 7C.4A(6), exceed

IOWA FINANCE AUTHORITY[265](cont'd)

the amount of the state ceiling available for that purpose, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in paragraph 8.3(3) "b."

8.3(3) Allocation process.

a. In order to determine the order of allocation of the state ceiling to each of the applications for industrial purposes that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4), each application shall be assigned a preference number determined by a random drawing conducted at 10 a.m. on the first day of business of the calendar year at the Iowa finance authority offices. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Each application shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority's staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allocation of the state ceiling. The application corresponding with the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

b. In order to determine the order of allocation of the state ceiling to each of the applications for state ceiling for political subdivisions that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4), each application shall be assigned a preference number determined by a random drawing conducted at 10 a.m. on the first day of business of the calendar year at the Iowa finance authority offices. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Applications shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority's staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allocation of the state ceiling. The application corresponding with the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

8.3(4) The governor's designee shall maintain one list of applications for private activity bonds for the purpose of industries and a separate list for applications for private activity bonds for the use of political subdivisions. The applications that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4) shall be listed in the order of preference as established pursuant to paragraphs 8.3(3) "a" and 8.3(3) "b." Applications received after the opening of the first day of business of a calendar year shall be added to the appropriate list depending upon the subject of the application in the chronological order received.

8.3(5) Formula for allocations following June 30 of each year. As permitted by Iowa Code section 7C.5, following June 30 of each year issuers which initially applied for state ceiling allocated under Iowa Code section 7C.4A(6) for

bonds, the proceeds of which are to be used by the issuing political subdivision, shall be given priority over any applications received for state ceiling for bonds otherwise requiring an allocation under Section 146 of the Internal Revenue Code.

This rule is intended to implement Iowa Code sections 7C.5 and 7C.4A(7) "a."

ITEM 3. Amend rule 265—8.4(7C) as follows:

265—8.4(7C) Application for allocation.

8.4(1) An issuer or beneficiary, or the duly authorized agent of an issuer or beneficiary, must make an application, by filing the form available from the governor's designee entitled, "Application and Response," for the allocation of a portion of the private activity bonds state ceiling.

8.4(2) Applications for any given calendar year may be submitted to the Iowa finance authority offices during the month of December of the previous year with a request that the application be treated as received when the authority opens for business on the first business day of the calendar year for which the application is made. Applications submitted in this manner must be contained in a sealed envelope that is clearly marked with words such as: "This application for private activity bond allocation for year 2001 is to be held for constructive delivery and receipt, and stamped "received" by the Iowa Finance Authority upon the opening of business on the first business day of calendar year 2001." Applicants should also indicate the type of bond for which application is made and the amount requested on the outside of the sealed envelope. There may be only one application for each separate project. All applications so received will be deemed received simultaneously as of the date, hour and minute of the opening of business of the Iowa finance authority on the first business day of the calendar year for which application is made. Expired applications made in previous years may be resubmitted to the authority pursuant to this procedure.

8.4(3) Applications for any given calendar year may be submitted to the Iowa finance authority offices at any time during the calendar year. Applications must be contained in a sealed envelope that is clearly marked with the year for which the application is made, the type of bond sought, and the amount of the state ceiling requested. Applications received during the calendar year will be immediately stamped with the day, hour and minute they are received by the authority.

8.4(4) All applications received pursuant to the provisions of subrule 8.4(2) will be deemed to have been received simultaneously on the date, hour and minute that the authority opens for business on the first business day of the year for which the applications are made.

This rule is intended to implement Iowa Code sections 7C.4A and 7C.5.

ITEM 4. Amend rule 265—8.5(7C) as follows:

265—8.5(7C) Certification of allocation. This rule implements 2000 Iowa Acts, chapter 1166, section 8, providing that "for the calendar year beginning January 1, 2001, applications for the state ceiling allocation under [Iowa Code] section 7C.4A, subsection 5, shall not be approved prior to March 1." For the calendar year beginning January 1, 2001, unless Iowa Code chapter 7C has been otherwise amended, upon receipt of a completed application, the governor's designee shall promptly, commencing March 1, 2001, certify to the issuer the amount of the state ceiling allocated to the bonds for the purpose of the project for which the application

IOWA FINANCE AUTHORITY[265](cont'd)

was submitted, in the order as determined by Iowa Code chapter 7C and rules 8.3(7C) and 8.4(7C). The governor's designee shall continue to allocate the state ceiling for each purpose separately until all the available state ceiling for that purpose is fully allocated. If there is not sufficient available state ceiling to fully fund an application which is next in order for allocation, the governor's designee shall notify the applicant of the amount that is available and the applicant shall have the option to take what is available within five calendar days of receiving notice of availability. If the applicant does not notify the governor's designee of its decision to take the available allocation within five calendar days of receiving notice of that option, the available state ceiling shall be offered to the next application on the list under the same conditions, and the initial offeree will maintain its position on the list. If the partial allocation is accepted, the applicant shall submit a new application for additional state ceiling and that application will be added to the bottom of the list in the chronological order of its receipt.

If the bonds are issued and delivered prior to the expiration date of the allocation, then the issuer or the issuer's attorney shall within ten days following the issuance and delivery of the bonds notify the governor's designee by filing the form captioned "Notice of Issuance and Delivery of Bonds." Upon receipt of the form the governor's designee shall return a time-stamped copy of the form to the issuer or issuer's attorney.

ITEM 5. Rescind rule 265—8.9(7C) and adopt the following **new** rule in lieu thereof:

265—8.9(7C) Use by political subdivisions. With respect to the amount of the state ceiling allocated for the purpose of private activity bonds issued by political subdivisions, the proceeds of which are used by the issuing political subdivisions, the political subdivision must use the proceeds to finance a project owned or utilized directly by the political subdivision, or finance a program of the political subdivision which the legislature by statute has authorized or directed the political subdivision to implement.

This rule is intended to implement Iowa Code section 7C.4A(6).

ITEM 6. Adopt **new** rule 265—8.10(7C) as follows:

265—8.10(7C) Application and allocation fees. The Iowa finance authority may charge reasonable fees for providing administrative assistance with regard to the filing of applications and the allocation of the private activity bond state ceiling in accordance with these rules. A fee of 1 basis point (.01%) of the amount of state ceiling for which application is made shall be paid by the applicant upon filing the application with the governor's designee. An additional fee of 1 basis point shall be paid by the applicant upon receipt of the certification by the governor's designee of the state ceiling allocated.

ARC 0276B

LAW ENFORCEMENT ACADEMY[501]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code Supplement section 80B.11, subsection 7, and section 80B.13, subsection 8, the Iowa Law Enforcement Academy gives Notice of Intended Action to amend Chapter 1, "Organization and Administration," Chapter 5, "Approved Regional Law Enforcement Training Facility," and Chapter 6, "Decertification," Iowa Administrative Code.

In accordance with 1999 Iowa Acts, chapter 70, the proposed amendments permit the Iowa Law Enforcement Academy Council to initiate decertification or suspension actions against a law enforcement officer's certification on its own motion. Item 3 lists the grounds on the bases of which decertification or suspension action can be brought. Items 1, 2 and 4 are primarily correctional, to bring the rules into harmony with the new statute, and Items 1 and 5 eliminate references to a publication and an agency that are no longer in existence.

Any interested person may make written comments or suggestions on these proposed amendments on or before December 5, 2000. Such written materials should be sent to Gene W. Shepard, Director, Iowa Law Enforcement Academy, P.O. Box 130, Johnston, Iowa 50131-0130, or faxed to (515)242-5471.

There will be a public hearing on these proposed amendments on December 5, 2000, at 9 a.m. in the conference room at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

These amendments were approved by the Iowa Law Enforcement Academy Council on October 5, 2000.

These amendments are intended to implement Iowa Code Supplement sections 80B.11(7) and 80B.13(8).

The following amendments are proposed.

ITEM 1. Amend rule **501—1.1(80B)** by striking the definition of "B.C.I. bulletin" and amending the introductory paragraph of "good cause" as follows:

~~"B.C.I. bulletin" means the Iowa bureau of criminal investigation weekly bulletin.~~

"Good cause" means employer-initiated termination of employment for any of the following reasons:

ITEM 2. Amend subrules 5.1(5) and 5.1(9) as follows:

5.1(5) Approval or disapproval furnished in writing. Approval, or disapproval, of the regional training facility will be furnished in writing by the academy council to the regional facility director within ~~30~~ 60 days of receipt of the request by the academy council. ~~Such approval will be published in the B.C.I. bulletin.~~

5.1(9) Revocation of approval. Approval of a regional training facility may be revoked by action of the academy council whenever a facility is deemed inadequate. Such revocation shall be furnished in writing by the academy council.

LAW ENFORCEMENT ACADEMY[501](cont'd)

cil to the regional facility director specifically stating why approval is being revoked. ~~Notice of such revocation will be published in the B.C.I. bulletin.~~ The facility may be reapproved by the academy council when it deems the deficiencies have been corrected. ~~Such reapproval will be published in the B.C.I. bulletin.~~

ITEM 3. Amend subrule 6.2(2), introductory paragraph and paragraph "a," as follows:

6.2(2) Discretionary revocation. The council, at its discretion, ~~upon receiving a recommendation from an employing agency,~~ may revoke *or suspend* a law enforcement officer's certification under any of the following circumstances:

a. ~~A law enforcement officer has been convicted of a crime involving moral turpitude as defined in 501—1.1(80B).~~

ITEM 4. Amend subrule **6.2(2)** by adopting the following new paragraph "e":

e. The law enforcement officer:

(1) Makes, tenders, or certifies to a material false statement in a document prescribed by the academy or otherwise provided for or authorized by these rules, or in any other document intended to induce the academy or the Iowa law enforcement academy council to take or withhold action.

(2) Falsifies or makes misrepresentations on an employment application submitted to any Iowa law enforcement agency.

(3) Testifies falsely in any court of law or administrative hearing.

(4) Fails to comply with the requirements of 501—Chapter 8 relative to in-service training.

(5) Pleads guilty to, or is found guilty of, a felony or a crime involving moral turpitude as defined in 501—subrule 2.1(5).

(6) Uses or possesses an illegal controlled substance other than in connection with official duties.

(7) Is decertified in any other state where the officer may be certified.

ITEM 5. Amend subrule 6.3(2) as follows:

6.3(2) Commencement of contested case proceedings. Contested case proceedings shall be commenced by the filing of a notice by the council or its designee requiring the affected law enforcement officer to appear and show cause why certification to be a law enforcement officer in the state of Iowa should not be revoked, *or suspended*. ~~Notice shall may be given in the same manner as the service of original notice or may be by certified mail, return receipt requested, and which shall be sent no fewer than 30 days before the date set for the hearing.~~ The petition shall include:

1. A statement of the time, place and nature of the hearing.

2. A statement of the legal authority and jurisdiction under which the hearing is held.

3. A reference to the particular sections of the statutes and rules involved.

4. A short and plain statement of the grounds for revocation *or suspension* and all other relevant facts.

Notice ~~shall may~~ also be sent in the manner aforementioned *or by ordinary mail* to any other interested party. After the delivery of the notice commencing the contested case proceedings, the presiding officer may allow further response of pleadings by the party as in the presiding officer's discretion is deemed necessary and appropriate.

ARC 0275B

PROFESSIONAL LICENSURE
DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners hereby gives Notice of Intended Action to amend Chapter 325, "Physician Assistants," and to adopt a new Chapter 328, "Continuing Education for Physician Assistants," Iowa Administrative Code.

The proposed amendments change cross references to rules, rescind the current continuing education rule, and adopt a new chapter for continuing education.

Any interested person may make written comments on the proposed amendments no later than December 6, 2000, addressed to Rosalie Steele, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The Division revised these rules according to Executive Order Number 8. The Division sent letters to the public for comment and two letters were received in return. Division staff also had input on these rules. The comments received were discussed by the Board and decisions were based on need, clarity, intent and statutory authority, cost and fairness.

A public hearing will be held on December 6, 2000, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code section 147.76 and chapters 148C and 272C.

The following amendments are proposed.

ITEM 1. Amend subparagraph **325.4(1)"a"(2)** as follows:

(2) Present proof of compliance with the continuing education provisions as set forth in ~~rule 325.19(148C)~~ *these rules*.

ITEM 2. Amend paragraph **325.5(1)"d"** as follows:

d. If the license and registration renewal form and non-refundable \$100 fee (\$5 for registration alone) are not received by the board within ~~60~~ 30 days after the expiration date, the license and registration are lapsed and a new application and nonrefundable fee of \$150 (\$50 for registration alone) must be submitted.

ITEM 3. Amend subrule **325.5(3)** by adopting new paragraphs "c," "d" and "e" as follows:

c. License renewal fee is \$100.

d. Registration renewal fee is \$5.

e. Lapsed license late fee for registration only is \$45.

ITEM 4. Rescind and reserve rule **645—325.19(148C)**.

ITEM 5. Adopt new 645—Chapter 328 as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

CHAPTER 328
CONTINUING EDUCATION FOR
PHYSICIAN ASSISTANTS

645—328.1(148C) Definitions. For the purpose of these rules, the following definitions shall apply:

“Active license” means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements.

“Administrator” means the administrator of the board of physician assistant examiners.

“Approved program/activity” means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

“Audit” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.

“Board” means the board of physician assistant examiners.

“Continuing education” means planned, organized learning acts designed to maintain, improve, or expand a licensee’s knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

“Hour of continuing education” means a clock hour spent by a licensee in actual attendance at and completion of approved continuing education activity.

“Lapsed license” means a license that a person has failed to renew as required, or the license of a person who failed to meet stated obligations within a stated time.

“License” means license to practice.

“Licensee” means any person licensed to practice as a physician assistant in the state of Iowa.

645—328.2(148C) Continuing education requirements.

328.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on October 1 of each year and ending on September 30 two years later. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 100 hours of continuing education approved by the board. The 2001 renewal cycle will extend from July 1, 2001, to September 30, 2003.

328.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 100 hours of continuing education per biennium for each subsequent license renewal.

328.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein pursuant to statutory provisions and the rules that implement them.

328.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal.

328.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—328.3(148C) Standards for approval.

328.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. The board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

- (1) Date(s), location, course title, presenter(s);
- (2) Numbers of program contact hours (One contact hour equals one hour of continuing education credit.); and
- (3) Official signature or verification by program sponsor.

328.3(2) Specific criteria. Continuing education hours of credit may be obtained by:

a. Category I continuing education that shall relate to the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy, and has been approved by the American Academy of Physician Assistants, American Academy of Family Physicians, American Osteopathic Association, or those organizations accredited by the Accreditation Council on Continuing Medical Education (ACCME), which includes the American Medical Association. The program’s publicity will specify the accrediting organization(s) and the number of approved Category I hours.

b. Category II continuing education that is acquired on an hour-for-hour basis by participating in professional or medical educational activities that have not been approved for a specific number of Category I hours. Category II continuing education is approved for Category II credit by the American Academy of Physician Assistants.

c. Completing a minimum requirement of 40 hours which shall be earned in Category I and Category II.

d. Continuing education that is in lieu of Category I and Category II. The board shall accept a current certificate of continuing education from the American Academy of Physician Assistants, the National Commission on the Certification of Physician Assistants or a successor agency and will consider approval of other programs as they are developed.

645—328.4(148C) Reporting continuing education by licensee. At the time of license renewal, each licensee shall be required to submit to the board a current certificate from the National Commission on the Certification of Physician Assistants which requires 100 hours of continuing education to maintain certification, documentation of 100 hours of continuing education from the American Academy of Physician Assistants or a report on continuing education on a board-approved form.

328.4(1) The information on the form shall include:

a. Title of continuing education activity;

b. Date(s);

c. Sponsor of the activity; and

d. Number and category of continuing education hours earned.

328.4(2) Audit of continuing education report. After each educational biennium, the board may audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- a. The board will select licensees to be audited.
- b. The licensee shall make available to the board for auditing purposes a certificate of attendance or verification for all reported activities that includes the following information:
- (1) Date(s), location, course title, schedule (brochure, pamphlet, program, presenter(s));
 - (2) Number of contact hours for program attended; and
 - (3) Certificate of attendance or verification indicating successful completion of the course.
- c. For auditing purposes, the licensee must retain the above information for four years.
- d. Submission of a false report of continuing education or failure to meet continuing education requirements may cause the license to lapse and may result in formal disciplinary action.
- e. All renewal license applications that are submitted late (after the end of the compliance period) may be subject to audit of continuing education report.
- f. Failure to receive the renewal application shall not relieve the licensee of responsibility of meeting continuing education requirements and submitting the renewal fee by the end of the compliance period.

645—328.5(148C) Reinstatement of lapsed license or registration. Failure of the licensee to renew within 30 days after expiration date shall cause the license to lapse. A person who allows the license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse must apply to the board for reinstatement of the license. Reinstatement of the lapsed license may be granted by the board if the applicant:

1. Submits a written application for reinstatement to the board;
2. Submits the license and registration renewal form;
3. Submits the license/registration renewal fee or registration renewal fee only;
4. Submits the late fee for a license/registration or late fee for registration only; and
5. Provides evidence of satisfactory completion of continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 100 by the number of bienniums since the license lapsed to a maximum of two bienniums or 200 hours of continuing education credit of which at least 40 percent of the hours completed shall be in Category I.

645—328.6(148C) Continuing education waiver for active practitioners. A physician assistant licensed to practice shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services or as a government employee outside the United States as a practicing physician assistant.

645—328.7(148C) Continuing education waiver for disability or illness. The board may, in individual cases involving disability or illness, grant waivers of the minimum educational requirements or extension of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor is made on forms provided by the board and signed by the licensee and appropriate licensed health care practitioners. The board may grant a waiver of the minimum educational requirements for any period of time not to exceed one calendar year from the onset of disability or illness. In the

event that the disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

645—328.8(272C) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant or licensee shall have the right within 20 days after the sending of the notification of denial by ordinary mail to request a hearing which shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board or an administrative law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 645—11.9(17A).

These rules are intended to implement Iowa Code section 272C.2 and chapter 148C.

ARC 0274B

**PUBLIC HEALTH
DEPARTMENT[641]**

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 134, "Trauma Care Facility Categorization and Verification," and Chapter 135, "Trauma Triage and Transfer Protocols," Iowa Administrative Code.

The proposed amendments update the cross references to documents adopted by reference in each chapter and replace outdated language in preparation for implementation of Iowa's trauma system in January 2001.

The Department has not provided specific provisions for a waiver or variance from rules in Chapters 134 and 135. A party seeking a waiver or variance from the rules should do so pursuant to the Department's variance and waiver provisions contained in 641—Chapter 178.

The Department's Trauma System Advisory Council unanimously adopted the proposed amendments at the October 18, 2000, meeting.

The Department of Public Health will hold a public hearing over the Iowa Communications Network (ICN) on Tuesday, December 5, 2000, from 1 to 2 p.m. Sites participating in the ICN broadcast include the following:

National Guard Armory, 11 East 23rd Street, Spencer
National Guard Armory, 1712 LaClark Road, Carroll
National Guard Armory, 315 12th Avenue NW, Hampton
Department of Education, ICN Room, Second Floor,
Grimes State Office Building, 400 East 14th Street, Des Moines

National Guard Armory, 195 Radford Road, Dubuque
National Guard Armory, 501 Highway 1 South, Washington

PUBLIC HEALTH DEPARTMENT[641](cont'd)

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Department of Public Health and advise of specific needs.

Any oral or written comments must be received on or before December 5, 2000. Comments should be addressed to Gary Ireland, EMS Bureau Chief, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309.

These amendments are intended to implement Iowa Code chapter 147A.

The following amendments are proposed.

ITEM 1. Amend subrules 134.2(3) and 134.2(5) as follows:

134.2(3) Adoption by reference.

a. "Iowa Trauma System Level I & II Hospital and Emergency Care Facility Categorization Criteria" (~~June 1996~~) (*October 1999*) is incorporated and adopted by reference for Level I and II hospital and emergency care facility categorization criteria, and the "Iowa Trauma System Level III & IV Hospital and Emergency Care Facility Categorization Criteria" (~~June 1996~~) (*May 1999*) is incorporated by reference and adopted for Level III and IV hospital and emergency care facility categorization criteria. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

b. ~~"The Iowa Trauma System Level I & II Hospital and Emergency Care Facility Categorization Criteria" (June 1996) (October 1999) and the "Iowa Trauma System Level III & IV Hospital and Emergency Care Facility Categorization Criteria" (June 1996) (May 1999) is~~ available through the Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

134.2(5) A hospital, emergency care facility, or trauma care facility may apply to the department for a change in level of categorization through submission of a self-assessment categorization application.

~~Hospitals and emergency care facilities seeking categorization at Levels I or II shall submit the categorization application to the department prior to January 1, 1998. Hospitals and emergency care facilities seeking categorization at Level III or IV shall submit the categorization application to the department prior to January 1, 1999.~~

ITEM 2. Amend paragraph **135.2(1)"a"** as follows:

a. Adoption by reference. The "Out-of-Hospital Trauma Triage Destination Decision Protocol" (~~September 1996~~) (*October 1999*) and the "Inter-Trauma Care Facility Triage and Transfer Protocol" (August 1996) are incorporated by reference and adopted as the out-of-hospital trauma triage destination decision and the intertrauma care facility triage and transfer protocols. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

ARC 0280B

REVENUE AND FINANCE
DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Iowa Administrative Code.

Iowa Code section 421.7 requires the Director of Revenue and Finance to determine the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes arising under Iowa Code title XVI shall be 11 percent for the calendar year 2001 (0.9 percent per month). The Department will also pay interest at the 11 percent rate on refunds.

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code Supplement section 17A.4A [1998 Iowa Acts, chapter 1202, section 10]. The Department will issue a regulatory analysis as provided in Iowa Code Supplement section 17A.4A [1998 Iowa Acts, chapter 1202, section 10] if a written request is filed by delivery or by mailing postmarked no later than December 18, 2000, to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 15, 2000. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 8, 2000.

This amendment is intended to implement Iowa Code section 421.7.

The following amendment is proposed.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

Amend rule 701—10.2(421) by adopting the following **new** subrule:

10.2(20) Calendar year 2001. The interest rate upon all unpaid taxes which are due as of January 1, 2001, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2001. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2001. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2001.

ARC 0281B**REVENUE AND FINANCE
DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," Iowa Administrative Code.

In a recent decision, the Iowa Supreme Court refused to adopt a longstanding Department interpretation of the statute exempting "casual sales" from Iowa tax. The Court rejected the Department's position that Iowa Code section 422.42(3)"b" is the only casual sale exemption applicable to the liquidation of a trade or business. The Court stated that the casual sale exemption set out in Iowa Code section 422.42(3)"a" would also apply if the sale in question were nonrecurring and outside the regular course of a seller's business. The Department rule explaining the casual sales exemption is amended to incorporate this conclusion.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code Supplement section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code Supplement section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 18, 2000, to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before De-

ember 15, 2000. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who wish to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 8, 2000.

These amendments are intended to implement Iowa Code sections 422.45(6) and 422.42(3).

The following amendments are proposed.

ITEM 1. Amend subrule 18.28(1) as follows:

18.28(1) Casual sales by persons not retailers or by retailers outside the regular course of business ~~and not involving a liquidation of the business~~. Casual sales are exempt from the Iowa sales and use taxes except for the casual sale of vehicles subject to registration, and vehicles subject only to the issuance of a certificate of title. On and after July 1, 1988, the casual sale of aircraft is also taxable. In order for a casual sale to qualify for exemption *under this subrule*, two conditions must be present: (1) the sale of tangible personal property or taxable services must be of a nonrecurring nature, and (2) the seller, at the time of the sale, must not be engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 422.43 or, if so engaged, the sale must be outside the regular course of the seller's business (Order of State Board of Tax Review, Martin Development Corporation, Docket No. 136, December 1, 1976, incorporating by reference Order of Department of Revenue Hearing Officer in Docket No. 75-28-6A-A, July 9, 1976). See subrule 18.28(2) for an explanation of the casual sale exemption applicable to the liquidation of a trade or business.

If either of the conditions above are lacking, no casual sale occurs. Moreover, prior to July 1, 1985, the casual sale exemption was limited to sales of tangible personal property, and casual enumerated taxable services did not qualify for the exemption. *KTVO, Inc. v. Bair*, Equity No. 385 Linn County District Court, September 5, 1975.

For the purposes of this subrule, the word "aircraft" refers to any contrivance now known or hereafter invented, which is designed or used for navigation of or flight in the air, for the purpose of transporting persons, property, or both or for crop dusting, aerial surveillance, recreational flying, or for providing some other service. By way of nonexclusive example, balloons, gliders, helicopters, and "ultra lights" are aircraft. Also included within the meaning of the word "aircraft" is any craft registered under Iowa Code section 328.20 or any successor statute thereto.

Sales of capital assets such as equipment, machinery, and furnishings which are not sold as inventory shall be deemed outside the regular course of business (*including sales of capital assets during a retailer's liquidation*) and the casual sales exemption shall apply as long as such sales are nonrecurring. This will include transactions exempted from state and federal income tax under Section 351 of the Internal Revenue Code.

Two separate selling events outside the regular course of business within a 12-month period shall be considered nonrecurring. Three such separate selling events within a 12-month period shall be considered as recurring. Tax shall only apply commencing with the third separate selling event. However, in the event that a sale event occurs consistently

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

over a span of years, such sale is recurring and not casual, even though only one sales event occurs each year. *Des Moines Police Department v. Bair*, Equity No. CE3-1591, Polk County District Court, November 1, 1976.

EXAMPLE: Corporation A sells the company copy machine at retail to B. At the time of this sale, Corporation A is engaged in the business for profit of selling clothes at retail. Assuming that the sale of the copy machine constitutes a sale of a nonrecurring nature, there is a casual sale because the sale is outside the regular course of Corporation A's business.

EXAMPLE: Corporation C is engaged in the business of lending money secured by collateral. In the course of such business, Corporation C must repossess some collateral and sell it at retail for purposes of payment of loans. Such sales recur from time to time. Notwithstanding that Corporation C is presumably not engaged in the business of selling tangible goods or services for a profit, since the sales are recurring, there is no casual sale. *S & M Finance Co., Fort Dodge v. Iowa State Tax Commission*, 1968, Iowa 162 N.W.2d 505.

EXAMPLE: F, a farmer, does not sell tangible personal property at retail or engage in *the performance of* any taxable services. F liquidates the farming business and hires a professional auctioneer to auction off many items of tangible personal property. Assuming this liquidation event is casual, all items sold by the auctioneer at retail are casual sales notwithstanding that many different sales to numerous different buyers may occur. See rule 18.8(422).

EXAMPLE: H, an insurance agency, holds a semiannual event to sell its used office furniture. Even though H does not regularly sell tangible personal property at retail, the casual sale exemption does not apply because the selling events are recurring. *Des Moines Police Department v. Bair*, Equity No. CE3-1591, Polk County District Court, November 1, 1976.

EXAMPLE: I, a corporation, has one sales event every year whereby it auctions off capital assets which it has no use for or desires to replace. This event has been a planned function of I and is conducted regularly and consistently over a span of years. Even though this sale event occurs only once a year, it is of a recurring nature because of the pattern of repetitiveness present and, therefore, the casual sale exemption would not apply, regardless of the number of items sold at such sale event each year.

EXAMPLE: J, a corporation engaged in the sale for resale of tangible personal property, sells three capital assets used in J's trade or business consisting of a copy machine, a desk, and a computer. Each sale is made to different buyers and is unrelated to the other sales. The three sales occur in January, June, and October of the same year. The sale made in October consists of a desk. J has not established a pattern of recurring sales of capital assets prior to aforementioned sales of capital assets. Under these circumstances, the sale of the desk is not a casual sale, but the sales of the copy machine and the computer are casual and exempt.

EXAMPLE: K, a corporation, is primarily engaged in the business of road construction. From time to time, it sells used capital assets and scrap materials reclaimed from its road construction work to individuals and businesses. It does not advertise itself as a retailer of these assets and materials but sells them as a matter of courtesy to persons who cannot purchase them elsewhere. After 42 years of operation, it decides to liquidate. Pursuant to that decision, K employs two auctioneers to sell its capital assets and ceases operation after its assets are sold. K had only one capital asset sale during the 12 months immediately preceding each liqui-

ation auction sale. The auction sales are exempt casual sales under this subrule (1) because they are nonrecurring, and (2) because K is not a retailer of the capital assets sold during its liquidation. See Holland Bros. Construction Co., Inc. v. Iowa State Board of Tax Review, 611 N.W.2d 495 (Iowa 2000).

EXAMPLE: ~~K~~ L, a sole proprietorship, engaged in selling automobile parts at retail, incorporated. The assets of ~~K~~ L are sold to the new corporation in exchange for stock and the new corporation now engages in selling automobile parts at retail. The casual sale exemption would apply, *but only because of the exemption set out in subrule 18.28(2) infra, since the transfer involves a liquidation of L's business and the sale of L's inventory to another person (the corporation) which will continue to engage in a similar trade or business.*

~~Above~~ The above examples are not the only ones pertaining to the questions of whether a casual sale did or did not occur. However, because of the myriad of factual situations which can and do exist, it is not possible to formulate more detailed rules on this subject matter.

ITEM 2. Amend subrule 18.28(2) as follows:

18.28(2) Special rules for casual sales involving the liquidation of a trade or business. When retailers sell all or substantially all of the tangible personal property held or used in the course of the trade or business for which retailers are required to hold a sales tax permit, the casual sale exemption will apply to exempt those sales only when the following circumstances exist: (1) the trade or business must be transferred to another person, and (2) the transferee must engage in a similar trade or business. The trade or business transferred refers to the place where the business is located since each taxable retail business must have a sales tax permit at each location. For purposes of this casual sale circumstance, it is irrelevant whether the retailer actually has a sales tax permit or not; rather, the relevant circumstance is that the retailer was required to have a sales tax permit. ~~The exemption contained in this subrule is the only casual sale exemption applicable to the liquidation of a trade or business. See 1986 OAG 86-6-1 and In Re Hubs Repair Shop, Inc. 28 B.R. 858 (1983) Holland Bros. Construction Co., Inc. v. Iowa State Board of Tax Review, 611 N.W.2d 495 (Iowa 2000).~~ One effect of this is that a retailer who is closing as opposed to transferring a business *and is selling inventory in the process of this closing* is not entitled to claim the casual sale exemption under this subrule, *but see subrule 18.28(1), and the resale exemption is always potentially applicable to sales of inventory.* See the examples below for further explanation.

EXAMPLE: L, a hardware store, desires to liquidate the business. L had been selling tangible personal property at retail and was required to have an Iowa retail sales tax permit. L hires a professional auctioneer and all items of inventory, equipment, and fixtures are sold to various purchasers. These items consist of all or substantially all of the tangible personal property held or used by L in the course of the business for which a sales tax permit was required to be held. L, however, does not transfer the trade or business to anyone else. Under these circumstances, the casual sales exemption does not apply to the sale of the inventory, *but see subrule 18.28(1) for criteria which determine whether the casual sales exemption applies to the equipment and fixtures.*

EXAMPLE: *The facts are the same as those in the previous example, except that L is liquidating its business because it attempted to build a new store and its entire inventory was destroyed by fire while in storage. An auctioneer sells L's equipment and trade fixtures to various purchasers. The auctioneer's sale of the equipment and trade fixtures is an ex-*

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

empt casual sale of the type described in subrule 18.28(1) because (1) it is nonrecurring, and (2) it is outside the usual course of L's business. See Holland Bros. Construction Co., Inc., supra.

EXAMPLE: M, a sole proprietorship, incorporated. The assets of M are sold to the new corporation for stock. The new corporation engaged in a similar business. The casual sale exemption would apply.

EXAMPLE: N, an oil company, sells all or substantially all of the tangible personal property of ten company-owned service stations which were held or used in the course of its business, for which N was required to hold a sales tax permit, by bulk sales or otherwise. The sales were made to O, P, and Q and occurred at different times during the same year, each sale being unrelated. N was required to have a sales tax permit for each service station. N transferred its trade or business (each service station) to O, P, and Q, each of whom will engage in the same business N did, i.e., operation of service stations. Even though under these circumstances, the sales by N are recurring, the casual sales exemption would apply since each trade or business was transferred to another person who did engage in a similar trade or business.

EXAMPLE: R, an operator of a restaurant, auctions off to various purchasers who are not engaged in the restaurant

business all or substantially all of the tangible personal property held or used in the business for which R was required to hold a retail sales tax permit. R transfers the trade or business to S who then operates a restaurant at the same location R did. Even if S did not purchase any of the tangible personal property, under these circumstances, the casual sales exemption applies. The tangible personal property held or used in the trade or business need not be sold to the same person to whom the trade or business is sold for the exemption to apply.

EXAMPLE: T, a restaurant, sells all of its tangible personal property held or used in the course of its business for which it was required to hold a sales tax permit to U. T also sells its trade or business to U. U engages in the business of operation of a dance hall and does not continue to operate the restaurant. ~~The~~ *This subrule's casual sales exemption will not apply, but see subrule 18.28(1) for the criteria of a casual sale exemption which could apply.*

The above examples are not the only ones pertaining to the questions of whether a casual sale did or did not occur. However, because of the myriad of factual situations which can and do exist, it is not possible to formulate more detailed rules on this subject matter.

ARC 0262B**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 16, "Prescribing, Administering, and Dispensing Drugs," Iowa Administrative Code.

The amendment waives the requirement for a dentist to conduct a dental examination of patients who receive fluoride dispensed under protocols of the Dental Health Bureau of the Iowa Department of Public Health.

In compliance with Iowa Code subsection 17A.4(2), the Board finds that notice and public participation are unnecessary in that the amendment is noncontroversial and has been supported unanimously by interested parties. The amendment is necessary in order to facilitate the fluoride dispensing program of the Dental Health Bureau.

The Board also finds, pursuant to Iowa Code subparagraph 17A.5(2)"b"(2), that the normal effective date of this amendment should be waived and the amendment should become effective immediately upon filing on October 23, 2000. This amendment confers a benefit to the public and to persons regulated by the Board by enabling children to receive fluoride dispensed under protocols of the Dental Health Bureau.

This amendment is also published herein under Notice of Intended Action as Item 2 in **ARC 0259B** to allow for public comment.

This amendment was approved at the October 19, 2000, regular meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code section 153.20.

This amendment became effective October 23, 2000.

The following amendment is adopted.

Amend subrule 16.2(2) as follows:

16.2(2) A dental examination must be conducted and a medical history taken before a dentist initially prescribes, administers, or dispenses medication to a patient, *except for patients who receive fluoride dispensed under protocols approved by the dental health bureau of the department of public health.* The examination must focus on the patient's dental problems, and the resulting diagnosis must relate to the patient's specific complaint. The patient's dental record must contain written evidence of the examination and medical history.

[Filed Emergency 10/23/00, effective 10/23/00]

[Published 11/15/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.

ARC 0269B**ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Develop-

ment hereby rescinds Chapter 20, "Accelerated Career Education (ACE) Program," and adopts a new Chapter 20, "Accelerated Career Education (ACE) Program," Iowa Administrative Code.

The new rules implement the Accelerated Career Education (ACE) Program as authorized by Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, chapter 1196, and 2000 Iowa Acts, chapter 1225. The rules establish guidelines, application procedures, and evaluation criteria for the capital costs and program job credits components of the ACE program.

These rules were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on September 6, 2000, as **ARC 0122B**. Notice of Intended Action to solicit comments on that submission was published in the September 6, 2000, Iowa Administrative Bulletin as **ARC 0121B**.

A public hearing to receive comments about the proposed amendments was held on September 26, 2000. No comments were offered at the public hearing, but written comments were submitted by the Department of Revenue and Finance (DRF) and the community colleges.

DRF expressed concern about the retroactive allocation of job credits. It was not IDED's or the community colleges' intent that there be any allocation of credits that would result in an allocation prior to the date of an executed agreement. The references to retroactive allocation in the rules were an attempt to address the issue which is expected to arise from time to time when a program must begin for a semester of the academic year but credits have yet to be allocated by IDED even though the program agreement has been approved by the college and IDED. In that situation, the allocation when made would be retroactive, but it would not be retroactive to a date prior to the execution of the program agreement. In order to clarify the rules on this issue, one change was made to the proposed rules based on DRF's comments:

- In paragraph 20.15(1)"a," the following sentence was added: "No costs incurred prior to the date of a program agreement between a college and an employer may be reimbursed or eligible for program job credits."

As a result of the colleges' comments, the following changes were made to the proposed rules:

- In subrule 20.3(3), the following sentence was removed: "The department will review the ACE program designation to ensure compliance with Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439."

- New subrule 20.3(4) was added and reads as follows: "20.3(4) The department will review ACE programs for issues of quality in accordance with rule 20.16(260G)."

- In rule 261—20.7(260G), the following sentence was added: "The department may deny the allocation of program job credits to any program which fails to comply with Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, chapter 1196, and 2000 Iowa Acts, chapter 1225."

- In subrule 20.14(1), the following paragraph was removed: "Agreements for the first \$80,000 in job credits will be reviewed by the department to determine if the project meets eligibility requirements for the program prior to allocation of the job credit. For any job credits awarded above the \$80,000 base allocation, a review of the quality of the project will be performed as described in rule 20.16(260G). Job credits will not be considered allocated until eligibility and quality criteria have been met."

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

• Rule 261—20.16(260G) was not adopted as proposed. It was revised entirely and new subrules 20.16(1) and 20.16(2) were adopted as follows:

20.16(1) Agreements submitted for funding shall be in draft form and shall include an evaluation summary to assist the department in gathering information for making study recommendations required by 2000 Iowa Acts, chapter 1196, section 5, and to provide program quality within each merged area program. Quality issues shall be reviewed and rated by the department based upon the following evaluation criteria within each merged area:

- a. Wage level assessment (1 to 5 points).
 - 1 point Statutory minimum wage level (see rule 261—20.13(260G), numbered paragraph “1”).
 - 2 points Statutory minimum plus additional \$2,500 per annum.
 - 3 points Above plus additional \$2,500 per annum.
 - 4 points Above plus additional \$2,500 per annum.
 - 5 points Above plus additional \$2,500 per annum.
- b. Skill profile (3 or 6 points).
 - 3 points Meets statutory definition of “highly skilled job” (see rule 261—20.2(260G)).
 - 6 points Above plus serves targeted industries as designated by the department (see subrule 20.3(2)).
- c. Educational profile (1 or 2 points).
 - 2 points Credit career, vocational or technical educational program (see paragraph 20.3(1)“a”).
 - 1 point Credit-equivalent career, vocational or technical educational program consisting of not less than 540 contact hours (see paragraph 20.3(1)“b”).
- d. Program job demand (0 or 3 points).
 - 3 points Program jobs are in demand within the merged area, region or company.
- e. Availability of program services (0 or 3 points).
 - 3 points Adequate resources and curriculum necessary to implement the program.
- f. Marketing plan (0 or 3 points).
 - 3 points Adequate marketing plan to recruit students for program jobs involving entities including but not limited to business, labor, and community college.
- g. Merged area stakeholders support (0 or 1 point).
 - 1 point Agreement demonstrates substantial area stakeholder support for the program via letters or other supporting information.
- h. Level of employer contributions (3 to 5 points).
 - 3 points Not less than 20 percent of program costs.
 - 4 points Not less than 22 percent of program costs.
 - 5 points Not less than 24 percent of program costs.

Agreements must receive a rating by the college and by the department of at least 18 points out of 28 total possible points to receive tax credits.

20.16(2) Each agreement will be submitted to the department in draft form at least 20 days before it is presented to the community college board for final approval. Within 20 days the department may approve without comment or append its

statement of disapproval if it does not agree that the agreement merits at least 18 points out of 28 points.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective on October 23, 2000. These rules confer a benefit on the public by ensuring that eligible applicants have access to ACE Program resources for the 2000 school year and clarifying the terms of program administration as agreed to by the Department and community colleges.

The IDED Board adopted these rules on October 19, 2000.

These rules are intended to implement Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, chapter 1196, and 2000 Iowa Acts, chapter 1225.

These rules became effective on October 23, 2000, at which time the Adopted and Filed Emergency rules are hereby rescinded.

The following chapter is adopted.

Rescind 261—Chapter 20 and adopt in lieu thereof the following **new** chapter:

CHAPTER 20
ACCELERATED CAREER EDUCATION (ACE)
PROGRAM

DIVISION I
GENERAL PROVISIONS

261—20.1(260G) Purpose. The ACE program has three parts: the capital costs component, the program job credits component, and the accelerated career education grants program. The Iowa department of economic development administers the first two components. The college student aid commission administers the career education grants portion of the ACE program as described in the commission’s administrative rules. The goal of the ACE program is to provide an enhanced skilled workforce in Iowa.

261—20.2(260G) Definitions.

“Accelerated career education program” or “ACE” means the program established pursuant to Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, chapter 1196.

“Agreement” means a program agreement referred to in Iowa Code Supplement section 260G.3 as amended by 2000 Iowa Acts, chapter 1196, between an employer and a community college.

“Allotment” means the distribution of job credits based upon need as determined by the community colleges.

“Community college” means a community college established under Iowa Code chapter 260C or a consortium of two or more community colleges.

“Employee” means a person employed in a program job.

“Employer” means a business or consortium of businesses engaged in interstate or intrastate commerce for the purposes of manufacturing, processing or assembling products; construction; conducting research and development; or providing services in interstate or intrastate commerce, but excluding retail services.

“Highly skilled job” means a job with a broadly based, high-performance skill profile including advanced computation and communication skills, technology skills and workplace behavior skills, and for which an applied technical education is required.

“IDED” or “department” means the Iowa department of economic development.

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"IDED board" means the Iowa economic development board authorized under Iowa Code section 15.103.

"Participant" means an individual who is enrolled in an accelerated career education program at a community college.

"Participant position" means the individual student enrollment position available in an accelerated career education program.

"Program capital cost" means classroom and laboratory renovation, new classroom and laboratory construction, site acquisition or preparation.

"Program job" means a highly skilled job available from an employer pursuant to a program agreement.

"Program job credit" means a credit that an employer may claim against all withholding taxes due in an amount up to 10 percent of the gross program job wage of a program job position as authorized in an agreement between a community college and an employer.

"Program job position" means a job position which is planned or available for an employee by the employer pursuant to a program agreement.

"Program operating costs" means all necessary and incidental costs of providing program services.

"Program services" means services that include all of the following provided they are pursuant to a program agreement: program needs assessment and development, job task analysis, curriculum development and revision, instruction, instructional materials and supplies, computer software and upgrades, instructional support, administrative and student services, related school to career training programs, skill or career interest assessment services and testing and contracted services.

"Vertical infrastructure" means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development and recreation trails. Vertical infrastructure does not include equipment; routine, recurring maintenance or operational expenses; or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

261—20.3(260G) ACE program eligibility and designation.

20.3(1) In order to receive financial assistance under the capital projects program, tax credits from withholding under the program job credits component or financial assistance through the college student aid commission's accelerated career education grants program, a program must be designated by a community college as an eligible ACE program. All programs must demonstrate increased capacity to enroll additional students. To be eligible, a program must be either:

a. A credit career, vocational, or technical education program resulting in the conferring of a certificate, diploma, associate of science degree, or associate of applied science degree; or

b. A credit-equivalent career, vocational, or technical education program consisting of not less than 540 contact hours of classroom and laboratory instruction and resulting in the conferring of a certificate or other recognized, competency-based credential.

20.3(2) By resolution of a community college board of directors, an eligible program may be approved and designated as an ACE program. The respective community college board(s) of directors shall ensure compliance with Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, chapter 1196, and 2000 Iowa Acts, chapter 1225. In designating ACE programs, the respective community col-

lege board(s) shall give priority to targeted industries as designated by the department.

20.3(3) A copy of the designated ACE program shall be submitted to the department. The department will maintain a record of all approved ACE programs.

20.3(4) The department will review ACE programs for issues of quality in accordance with rule 261—20.16(260G).

261—20.4(260G) Funding allocation.

20.4(1) Base allocation.

a. Funds for ACE program job credits and capital costs projects shall be allocated among the community colleges in the state for the fiscal years and in the amounts specified in 2000 Iowa Acts, chapters 1196 and 1225, and these rules.

b. Community colleges shall submit program agreements to access allotted funds. The program agreement shall document the findings of the community college that all ACE eligibility requirements have been met.

20.4(2) Alternate allotment. If a community college fails to commit any of its allotment by April 1 of the fiscal year, the funds for that community college will be allocated to other community colleges based upon need as described in these rules. Program job credits are considered to be committed if there is a signed program agreement in place or if there is a statement of intent in place that states that a signed program agreement will be in place by May 1 of the fiscal year.

261—20.5(260G) Eligible and ineligible business.

20.5(1) Eligible business. An eligible business is a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products; construction; conducting research and development; or providing services in interstate or intrastate commerce.

20.5(2) Ineligible business. A business engaged in retail services is ineligible to receive ACE program assistance.

261—20.6(260G) Program agreements.

20.6(1) Program agreements will be developed by an employer, a community college and any employee of an employer representing a program job. The development of the agreements may be facilitated by an entity representing a group of employers. Any community college that has an employer from its merged area involved in an ACE project must enter into the agreement. If a bargaining unit is in place with the employer pledging the jobs, a representative of the bargaining unit shall take part in the development of the program agreement. All participating parties must sign the program agreement. The agreement must include employer certification of contributions that are made toward the program costs.

20.6(2) A program agreement shall include, at a minimum, the following terms: match provided by the employer; tuition, student fees, or special charges fixed by the community college board of directors; guarantee of employer payments; type and amount of funding sources that will be used to pay for program costs; description of program services and implementation schedule; the term of the agreement, not to exceed five years; the employer's agreement to interview graduates for full-time positions and provide hiring preference; for employers with more than four sponsored participants, certification that a job offer will be made to at least 25 percent of those participants that complete the program; an agreement by the employer to provide a wage level of no less than 200 percent of the federal poverty guideline for a family of two; a provision that the employer does not have to fulfill the job offer requirement if the employer experiences an economic downturn; a provision that the participants will agree

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to interview with the employer following completion of the program; and default procedures.

20.6(3) Projects that cross community college boundaries, or projects that involve employers from multiple community college areas, must be conducted pursuant to an agreement or agreements with each college.

261—20.7(260G) Administration. The department will administer the statewide allocations and will consult with representatives of the community colleges to promulgate necessary forms and collect necessary information. The department will monitor program agreements for the purposes of preparing a study of the needs and performance of approved programs for submission to the general assembly by the department by December 31, 2002. The department may deny the allocation of program job credits to any program which fails to comply with Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, chapter 1196, and 2000 Iowa Acts, chapter 1225.

261—20.8(260G) Customer tracking system. Participants in the ACE program shall be included in the customer tracking system implemented by Iowa workforce development. In order to achieve this, social security numbers of all ACE program trainees will be required.

261—20.9(260G) Program costs recalculation. Program costs shall be calculated or recalculated on an annual basis based on the required program services for a specific number of participants. Agreement updates reflecting this recalculation must be submitted to IDED annually to review compliance with program parameters.

DIVISION II

CAPITAL COSTS COMPONENT

261—20.10(260G) Threshold requirements. To be considered for funding, the following threshold requirements shall be met:

1. The agreement must provide for pledged program positions paying at least 200 percent of the poverty level for a family of two. If the wage designated is to become effective after a training or probationary period, the employer must document that there is a plan in place regarding time frames for transition to the permanent full-time wage, and the employer must provide documentation that these time frames are reasonable and that the employer has previously adhered to the time schedule.

2. The agreement must demonstrate that the program meets the definition of an eligible ACE program.

3. The agreement must demonstrate that the project builds the capacity of the community college to train additional students for available jobs.

4. The agreement must establish a 20 percent employer cash or in-kind match for program operating funds.

5. The agreement shall describe how the project enhances geographic diversity of project offerings across the state.

6. The agreement must document that other private or public sources of funds are maximized prior to ACE program capital cost funding.

7. ACE program capital cost projects must enhance the geographic diversity of state investment in Iowa. The IDED board will continuously review projects to ensure that there is statewide impact. The IDED board will prioritize projects to ensure geographic diversity.

8. Funds shall be used only for ACE program capital costs for projects that meet the definition of vertical infras-

tructure. Building repair, renovation and construction for purposes of ACE program equipment installation shall be allowed.

261—20.11(260G) Application procedures.

20.11(1) Final application. Applicants shall submit a final agreement to IDED to request capital funds.

20.11(2) Staff review and recommendation. A committee of IDED staff will review and rate applications based upon the rating criteria stated in 261—20.12(260G). Based upon this review, a decision will be made regarding submittal of the application to the IDED board for action.

20.11(3) IDED board action. The IDED board will review ACE program capital costs projects meeting the requirements prescribed in these rules. A program agreement, which is approved by the community college board of directors, serves as the final application. Approval or denial of submitted applications that are complete and in final form shall be made no later than 60 days following receipt of the application by the department. Subsequent to board approval, an award letter will be sent. The award letter will be followed by a contract. After a signed contract is in place, funding for a project may be requested.

261—20.12(260G) Evaluation criteria for competitive awards—capital costs projects. Applications and accompanying program agreements meeting all ACE eligibility requirements will be prioritized and rated using the following point criteria:

1. The degree to which the applicant adequately demonstrates a lack of existing public or private infrastructure for development of the partnership. There must be a demonstration that the project will build capacity in order for the project to be considered. Capacity will be measured in terms of jobs that are pledged, students that are interested in the program area and the capacity that is built at the community college to undertake the programming. Up to 33 points will be awarded.

2. Demonstration that the jobs that would result from the partnership would include wages, benefits and other attributes that would improve the quality of employment within the region. Projects where the average wage for the pledged jobs exceeds the regional or county average wage, whichever is lower for the location where the training is to be provided, will be awarded points based upon the percentage that the average wage of the pledged jobs exceeds the applicable average wage. Up to 33 points will be awarded.

3. Evidence of local, public or private contributions that meet the requirements of Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, chapter 1196. Projects will be rated based upon the percentage of match that is pledged to the ACE program capital cost for the project. Up to 34 points will be awarded.

Applications that do not receive at least 66 out of 100 points will not be forwarded to the IDED board for review. Projects will be competing against each other for IDED board approval, and the number of points that a project receives will be considered in the award process.

DIVISION III

PROGRAM JOB CREDITS

261—20.13(260G) Threshold requirements—program job credits. To be eligible to receive program job credits, the following threshold requirements shall be met:

1. The agreement must provide for pledged program positions paying at least 200 percent of the poverty level for a family of two. If the wage designated is to become effec-

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tive after a training or probationary period, the employer must document that there is a plan in place regarding time frames for transition to the permanent full-time wage, and the employer must provide documentation that these time frames are reasonable and that the employer has previously adhered to the time schedule.

2. The agreement must provide that the program meets the definition of an eligible ACE program.

3. The agreement must establish a 20 percent employer cash or in-kind match for program operating funds.

4. The agreement shall describe how the project enhances geographic diversity of project offerings across the state.

5. The executed agreement or a statement of intent must be submitted within the time periods described in these rules in order to establish a commitment of program job credits by the community college.

261—20.14(260G) Job credits allocation.

20.14(1) The department shall allot the total amount of program job credits authorized and available for the fiscal year to each community college based upon need ratios as follows:

Merged Area	Need Based Proportionate Allotment Minimum \$80,000 to Each Community College
I. Northeast Iowa Community College	4.63%
II. North Iowa Area Community College	4.63%
III. Iowa Lakes Community College	2.67%
IV. Northwest Iowa Community College	2.67%
V. Iowa Central Community College	4.64%
VI. Iowa Valley Community College District	4.38%
VII. Hawkeye Community College	6.62%
IX. Eastern Iowa Community College District	8.68%
X. Kirkwood Community College	17.00%
XI. Des Moines Area Community College	19.00%
XII. Western Iowa Tech Community College	5.13%
XIII. Iowa Western Community College	6.51%
XIV. Southwestern Community College	2.67%
XV. Indian Hills Community College	7.13%
XVI. Southeastern Community College	3.64%
	<u>100.00%</u>

20.14(2) For purposes of allotment, the foregoing ratios shall be applied to commitments made by community colleges pursuant to three cycle periods during the fiscal year, beginning on the following cycle dates: August 1, December 1, and May 1.

20.14(3) A commitment for a cycle period is established by filing a copy of an executed agreement or a statement of intent with the department not later than ten days prior to the next cycle date. Each community college may commit all or a portion of its proportionate allotment during each cycle period. Any amount uncommitted as of the cycle date shall be reported in the statement of intent and will carry over to the next cycle period and be reallocated by the department to the other community colleges based upon the same proportionate allotment ratios set out in subrule 20.14(1).

20.14(4) Notwithstanding subrule 20.14(3), it is recognized that 2000 Iowa Acts, chapter 1196, section 5, requires that any portion of an allocation to a community college uncommitted on April 1 of a fiscal year may be available for use by other community colleges. As of April 1, each college shall have either an agreement or a statement of intent indicating that the college will enter into an agreement by May 1 to retain the college's current fiscal year allotment. Any job credit allotments that do not have accompanying agreements as of the May 1 cycle date will be available for proportional reallocation to other community colleges with signed agreements that have not received all of the tax credits that are needed under the agreement.

20.14(5) Beginning with the May 1 cycle, the department will accept program agreements or statements of intent for the first cycle of the following fiscal year's tax credit allotment. For the fiscal year beginning July 1, 2002, proportionate allocation ratios as described in subrule 20.14(1) will be reviewed and examined for possible modification based upon need in the respective merged areas throughout the state. Such review shall take place immediately following the August 1, 2001, cycle period allocation of credits.

20.14(6) The department shall calculate and report to each community college the number of job credits available for distribution each cycle period during the fiscal year based upon the proportionate allocation ratios set out in subrule 20.14(1) and subrule 20.14(4). Ratios in subrule 20.14(1) will be updated every two years beginning July 1, 2002.

20.14(7) So long as job credits are available for a cycle period, if an agreement provides for a two-year student program, the commitment shall be deemed to include the full amount of credits necessary to fund the entire two-year program and the duration of the agreement even though allocations for more than one fiscal year may be required.

20.14(8) Allocation credits, once received, may be retroactively applied to eligible programs during the fiscal year so long as the amount to be received does not exceed the proportionate allocation for each cycle period.

261—20.15(260G) Determination of job credits, notice, and certification.

20.15(1) Determination of job credit amounts. If a program provides that part of the program costs are to be met by receipt of program job credits, the method to be used shall be as follows:

a. Program job credits shall be based upon the program job positions identified and agreed to in the agreement. No costs incurred prior to the date of a program agreement between a college and an employer may be reimbursed or eligible for program job credits.

b. Eligibility for program job credits shall be based on certification of program job positions and program job wages by the employer at the time established in the agreement.

c. An amount up to 10 percent of the gross program job wages as certified by the employer in the agreement shall be

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credited from the total payment made by an employer pursuant to Iowa Code section 422.16.

d. The employer shall remit the amount of the credit quarterly, in the same manner as withholding payments are reported to the department of revenue and finance, to the community college to be allocated to and, when collected, paid into a special fund of the community college to pay, in part, the program costs.

e. When the program costs have been paid, the employer credits shall cease and any moneys received after the program costs have been paid shall be remitted to the treasurer of state to be deposited in the general fund of the state.

20.15(2) Notice to revenue and finance department. The employer shall certify to the department of revenue and finance that the program job credit is in accordance with the agreement and shall provide other information the department may require.

20.15(3) Certification of amount of job credits. A community college shall certify to the department of revenue and finance that the amount of the program job credits is in accordance with an agreement and shall provide other information the department may require.

261—20.16(260G) Evaluation criteria for quality assurance—program job credits.

20.16(1) Agreements submitted for funding shall be in draft form and shall include an evaluation summary to assist the department in gathering information for making study recommendations required by 2000 Iowa Acts, chapter 1196, section 5, and to provide program quality within each merged area program. Quality issues shall be reviewed and rated by the department based upon the following evaluation criteria within each merged area:

- a. Wage level assessment (1 to 5 points).
 - 1 point Statutory minimum wage level (see rule 261—20.13(260G), numbered paragraph “1”).
 - 2 points Statutory minimum plus additional \$2,500 per annum.
 - 3 points Above plus additional \$2,500 per annum.
 - 4 points Above plus additional \$2,500 per annum.
 - 5 points Above plus additional \$2,500 per annum.
- b. Skill profile (3 or 6 points).
 - 3 points Meets statutory definition of “highly skilled job” (see rule 261—20.2(260G)).
 - 6 points Above plus serves targeted industries as designated by the department (see subrule 20.3(2)).
- c. Educational profile (1 or 2 points).
 - 2 points Credit career, vocational or technical educational program (see paragraph 20.3(1)“a”).
 - 1 point Credit-equivalent career, vocational or technical educational program consisting of not less than 540 contact hours (see paragraph 20.3(1)“b”).
- d. Program job demand (0 or 3 points).
 - 3 points Program jobs are in demand within the merged area, region or company.
- e. Availability of program services (0 or 3 points).
 - 3 points Adequate resources and curriculum necessary to implement the program.
- f. Marketing plan (0 or 3 points).

3 points Adequate marketing plan to recruit students for program jobs involving entities including but not limited to business, labor, and community college.

- g. Merged area stakeholders support (0 or 1 point).
 - 1 point Agreement demonstrates substantial area stakeholder support for the program via letters or other supporting information.
- h. Level of employer contributions (3 to 5 points).
 - 3 points Not less than 20 percent of program costs.
 - 4 points Not less than 22 percent of program costs.
 - 5 points Not less than 24 percent of program costs.

Agreements must receive a rating by the college and by the department of at least 18 points out of 28 total possible points to receive tax credits.

20.16(2) Each agreement will be submitted to the department in draft form at least 20 days before it is presented to the community college board for final approval. Within 20 days the department may approve without comment or append its statement of disapproval if it does not agree that the agreement merits at least 18 points out of 28 points.

261—20.17(260G) Committed funds. The department shall maintain an annual record of the proposed program job credits under each agreement for each cycle of each fiscal year. When the total available program job credits have been allocated for a fiscal year, the department shall inform all community colleges that the maximum amount has been allocated and that further program job credits will not be available for the remainder of the fiscal year. If any committed credits become uncommitted after the above-mentioned notice has been issued, the department will inform all community colleges that some job credits are again available and applications will be accepted for those job credits until they are again committed.

These rules are intended to implement Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, chapter 1196, and 2000 Iowa Acts, chapter 1225.

[Filed Emergency After Notice 10/23/00, effective 10/23/00]
[Published 11/15/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.

ARC 0288B

**EDUCATIONAL EXAMINERS
BOARD[282]**

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 21, “Behind-the-Wheel Driving Instructor Authorization,” Iowa Administrative Code.

These amendments remove the requirement for a current Iowa teacher or administrator license authorizing service at the elementary or secondary levels and substitute in lieu thereof new qualifications.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary and contrary to the public interest. The amendments remove the requirement for the applicant to hold a teacher or

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administrative license and thus provide greater options for individuals to secure the authorization and provide services in local school districts.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Board finds that these amendments confer a benefit and remove a restriction on the public, such that the normal effective date of the amendments should be waived and the amendments should be made effective upon publication on November 15, 2000.

These amendments are also published herein under Notice of Intended Action as **ARC 0287B** to allow for public comment. This emergency filing permits the Board to implement the new provisions of the law.

These amendments are intended to implement Iowa Code chapter 272 and Iowa Code Supplement section 321.178.

These amendments became effective November 15, 2000. The following amendments are adopted.

Amend 282—Chapter 21 as follows:

CHAPTER 21
BEHIND-THE-WHEEL DRIVING INSTRUCTOR
AUTHORIZATION

282—21.1(78GA,SF203 272,321) Requirements. Applicants for the behind-the-wheel driving instructor authorization shall meet the following requirements.

~~21.1(1) Hold a current Iowa teacher or administrator license which authorizes service at the elementary or secondary level.~~

21.1(1) Qualifications. To qualify for the behind-the-wheel driving instructor authorization, the applicant must:

a. Be at least 25 years of age.
b. Hold a valid Iowa driver's license that permits unaccompanied driving, other than a motorized bicycle license or a temporary restricted license.

c. Have a clear driving record for the previous four years. A clear driving record means that the individual has:

(1) Not been identified as a candidate for driver's license suspension under the habitual violator provisions of rule 761—615.13(321) or serious violation provisions of rule 761—615.17(321).

(2) No driver's license suspensions, revocations, denials, cancellations, disqualifications, or bars.

(3) Not committed an offense which results in driver's license suspension, revocation, denial, cancellation, disqualification, or bar.

(4) No record of an accident for which the individual was convicted of a motion traffic violation.

21.1(2) Successfully Approved coursework. The applicant must successfully complete a behind-the-wheel driving instructor course approved by the department of transportation. At a minimum, classroom instruction shall include at least 12 clock hours of observed behind-the-wheel instruction and 24 clock hours of classroom instruction to include psychology of the young driver, behind-the-wheel teaching techniques, ethical teaching practices, and route selection.

282—21.2(78GA,SF203 272,321) Validity. The behind-the-wheel driving instructor authorization shall be valid for one calendar year, and it shall expire one year after issue date. The fee for the issuance of the behind-the-wheel driving instructor authorization shall be \$10.

282—21.3(78GA,SF203 272,321) Approval of courses. Each institution of higher education, private college or university, community college or area education agency wishing to offer the behind-the-wheel driving instructor authorization

must submit course descriptions to the department of transportation for approval. After initial approval, any changes by agencies or institutions in course offerings shall be filed with the department of transportation and the board of educational examiners.

282—21.4(78GA,SF203 272,321) Application process. Any person interested in the behind-the-wheel driving instructor authorization shall submit records of completion of a department of transportation-approved program to the board of educational examiners for an evaluation of completion of coursework, ~~validity of teacher or administrator license,~~ and all other requirements.

Application materials are available from the board of educational examiners, the department of transportation or from institutions or agencies offering department of transportation-approved courses.

282—21.5(78GA,SF203 272,321) Renewal. The behind-the-wheel driving instructor authorization may be renewed upon application, \$10 renewal fee and verification of successful completion of:

21.5(1) Providing behind-the-wheel instruction for a minimum of 12 clock hours during the previous school year; and

21.5(2) Successful participation in at least one department of transportation-sponsored or department of transportation-approved behind-the-wheel instructor refresher course.

282—21.6(78GA,SF203 272,321) Revocation and suspension. Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the behind-the-wheel driving instructor authorization.

These rules are intended to implement Iowa Code chapter 272 and Iowa Code Supplement section 321.178 as amended by 1999 Iowa Acts, Senate File 203, section 11.

[Filed Emergency 10/27/00, effective 11/15/00]

[Published 11/15/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.

ARC 0254B

EDUCATION DEPARTMENT[281]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby adopts a new Chapter 100, "Vision Iowa School Infrastructure Program," Iowa Administrative Code.

These rules establish the procedures for school districts to apply for the Vision Iowa School Infrastructure Program grants and the criteria that will be used to select grantees. These rules establish a uniform format for applications and dates certain and ensure to the extent possible an unbiased selection of grantees.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 23, 2000, as **ARC 0076B**.

Two public hearings were scheduled on September 12, 2000. No persons attended the second hearing. Most comments supported the rules as written or requested clarification. One individual provided comments related to financing

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and to completion date variability. All public comments were considered.

The following changes have been made to the Notice of Intended Action. The definition of "innovative collaboration" in rule 281—100.2(78GA,ch1174) was changed to conform to the legislation. The definition of "initiated" was clarified by adding the word "unobligated"; the phrase now reads "to use accumulated, unobligated funds." Subrule 100.3(2)"g" was clarified on advice of members of the task force to exclude early school starting date waivers granted pursuant to Iowa Code section 279.10, subsection 4. The final sentence in subrule 100.4(2), dealing with grant reader confidentiality, was not adopted.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective upon filing on October 20, 2000. School districts must implement the rules for applications for school infrastructure grants whose application period begins on November 1, 2000.

These rules are intended to implement 2000 Iowa Acts, chapter 1174, sections 26 to 28.

These rules became effective on October 20, 2000.

The following new chapter is adopted.

CHAPTER 100

VISION IOWA

SCHOOL INFRASTRUCTURE PROGRAM

281—100.1(78GA,ch1174) Purpose. The purpose of the vision Iowa school infrastructure program is to provide financing assistance in the form of competitive grants to Iowa school districts with school infrastructure needs.

281—100.2(78GA,ch1174) Definitions. For the purpose of this chapter, the following definitions apply.

"Capacity per pupil" means the sum of a school district's property tax infrastructure capacity per pupil and the sales tax capacity per pupil.

"Conditional approval" means the awarding of a grant contingent upon the school district's obtaining its local match if the local match has not been obtained at the time of the application.

"Department" means the department of education.

"Initiated" means that the board has taken formal action by board resolution on or after July 1, 2000, to submit a referendum to the voters; to use accumulated, unobligated funds; or to pursue other funding sources for the project that is the subject of the application.

"Innovative collaboration" means an activity jointly undertaken by the school district with one or more other school districts which is new to the school district and which has been implemented by no other or few other school districts.

"Local match percentage" means a percentage equivalent to either of the following, whichever is less:

1. Fifty percent.

2. The quotient of a school district's capacity per pupil divided by the capacity per pupil of the school district at the fortieth percentile, multiplied by 50 percent, except that the percentage in this paragraph shall not be less than 20 percent. The school district with the lowest capacity per pupil in the state shall be the school district with the lowest percentile rank.

"Local match requirement" means the total investment of a project multiplied by the school district's local match percentage. The source of the local match must be one or more of the following:

1. The issuance of bonds pursuant to Iowa Code section 298.18.

2. Local option sales and services tax for school infrastructure received pursuant to Iowa Code section 422E.3.

3. A physical plant and equipment levy pursuant to Iowa Code chapter 298.

4. Other moneys locally obtained by the school district for school infrastructure excluding other state or federal moneys.

"Program" means the school infrastructure program established in 2000 Iowa Acts, chapter 1174, section 27.

"Project" means a school infrastructure activity of one school district, or the school district's portion of a school infrastructure activity in collaboration with one or more other public or private entities, that is one of the following:

1. Construction of a separate facility for an attendance center.

2. A grouping of school infrastructure activities at one or more attendance centers.

"Property tax infrastructure capacity per pupil" means the sum of a school district's levies under Iowa Code sections 298.2 and 298.18 when the levies are imposed to the maximum extent allowable under law in the budget year divided by the school district's basic enrollment for the budget year.

"Sales tax capacity per pupil" means the estimated amount of revenues that a school district receives or would receive if a local option sales and services tax for school infrastructure is imposed at 1 percent pursuant to Iowa Code section 422E.2, divided by the school district's basic enrollment for the budget year. For the budget year beginning July 1, 2000, the school district's actual enrollment shall be used in the calculation in place of the school district's basic enrollment for the budget year.

"School budget review committee" means the committee established under Iowa Code section 257.30.

"School infrastructure" means one or more of the following activities initiated on or after July 1, 2000: purchasing, building, furnishing, reconstructing, repairing, improving or remodeling a schoolhouse or schoolhouses and additions to schoolhouses, gymnasium, field house, procuring a site or sites therefor, or purchasing land to add to a site already owned. "School infrastructure" does not include those activities related to stadiums, bus barns, a home or homes of a teacher or superintendent, procuring and improving a site for an athletic field, or improving a site already owned for an athletic field.

"Statewide average sales and services tax capacity per pupil" means the estimated sum of revenues that all school districts receive or would receive if a local option sales and services tax for school infrastructure is imposed at 1 percent pursuant to Iowa Code section 422E.2, divided by the sum of the basic enrollments in all school districts for the budget year. For the budget year beginning July 1, 2000, the actual enrollment in all school districts shall be used in the calculation in place of the basic enrollment in all school districts for the budget year.

281—100.3(78GA,ch1174) Application process.

100.3(1) Application period. School districts may submit applications for approval for financial assistance under the program between 8 a.m. and 4:30 p.m. on working days during the following application periods.

a. For the fiscal year beginning July 1, 2000, applications may be submitted to the department on or after November 1, 2000, and hand-delivered or postmarked not later than March 1, 2001.

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b. For the fiscal year beginning July 1, 2001, and every fiscal year thereafter in which funding is appropriated, applications may be submitted to the department on or after July 1 and hand-delivered or postmarked not later than October 31.

100.3(2) Application form. The department shall provide an application form. The application form shall be made available to Iowa public school districts at least 15 days prior to the beginning of the application period. Each applicant school district shall use the form prepared for this purpose and in the manner prescribed by the department. A school district may submit only one application during an application period. The application form shall include, but shall not be limited to, the following information:

a. The total capital investment of the project. If the project is in collaboration with other public or private entities, the total capital investment for purposes of this program shall be limited to the school district's portion of the project. The school district shall include the following information:

(1) Identification of the collaborating public or private entities;

(2) Total cost of the collaborative project; and

(3) Total capital investment of the school district's portion of the project.

b. The amount, source, and percentage of money that the school district will be providing for the project, which shall not include any other state or federal funding. Only funds in the physical plant and equipment levy fund or capital project funds can be used toward the local match requirement. If the project is in collaboration with other public or private entities, the state, federal, or private funds received by the other entities cannot be used toward the local match requirement.

c. The infrastructure needs of the school district specific to the project, especially the fire and health safety needs, including the extent to which the project would allow the school district to meet its infrastructure needs on a long-term basis. If the school district's needs include fire and health safety needs, the school district shall attach to its application form a copy of the citation by the fire marshal for the safety deficiency or evidence of consultation with the fire marshal related to the safety deficiency.

d. The financial assistance needed by the school district based upon the capacity per pupil. The capacity per pupil for each school district will be calculated by the department, and this information will be made available to the applicants.

e. Any previous efforts within the past five years, successful or unsuccessful, by the school district to secure infrastructure funding from federal, state, and local resources. If the previous effort includes a bond issue or a voter-approved physical plant and equipment levy, the school district shall include a copy of the ballot with the application. If the previous effort includes a regular physical plant and equipment levy, the school district shall include a statement to that effect.

f. Evidence that the school district meets or will meet the local match requirement. The local match requirement for each school district will be calculated by the department, and this information will be made available to the applicants. The local match requirement shall be met not later than nine months from the date of notification of conditional approval from the department. The local match for any other grant program shall not be the same money used as the local match for this grant program.

g. A description of the nature of the project and its relationship to improving educational opportunities for students including the school district's ability to meet or exceed the

educational standards and a list of waivers applied for and granted to the school district excluding early school starting date waivers granted under Iowa Code section 279.10, subsection 4.

h. Evidence that the school district receives local option sales and services tax for school infrastructure under Iowa Code chapter 422E or local option sales and services tax under Iowa Code chapter 422B.

i. A statement identifying the final year of the bonded indebtedness or the final year of the levy or tax if the school district currently has bonded indebtedness, the voter-approved physical plant and equipment levy, or the local option sales and services tax for school infrastructure. The school district shall describe its expenditures from any bond issue, voter-approved physical plant and equipment levy, regular plant and equipment levy, or local option sales and services tax for school infrastructure which it has in place at the time of the application and list any obligations against those current balances and future revenues.

j. A comprehensive, districtwide infrastructure plan if the school district has an infrastructure plan. The school district shall include the date that the plan was adopted by the board, an executive summary of the plan, and a description of how the project fits within the infrastructure plan.

k. A five-year history of infrastructure maintenance and repair.

l. A budget and time line for the project. If the local match requirement has not been met at the time of the application, the school district shall include in the time line a schedule of the steps in its plan to obtain the local match.

m. Evidence that the school district has entered into an innovative collaboration with another school district or school districts, has reorganized pursuant to Iowa Code chapter 275 on or after July 1, 2000, or has initiated a resolution to reorganize by July 1, 2004.

n. A statement certifying the accuracy of the information contained in the application.

100.3(3) Board minutes. A school district shall submit with its application for financial assistance under the program a copy of the minutes of the board of director's meeting showing that the board has authorized the application and the project and has made a commitment to the source and amount for the local match. The section of the board minutes containing this information shall be marked in such a way as to make it easily identifiable.

100.3(4) Number of copies. A school district shall submit with its application for financial assistance under the program three complete sets of the application forms and board minutes with original signatures on all application forms.

100.3(5) Number of grant awards possible. A school district shall not receive more than one grant under the program.

100.3(6) Reapplication. An applicant that is not successful in obtaining financial assistance under the program may apply for financial assistance under the program in succeeding fiscal years.

100.3(7) Maximum request for financial assistance. The maximum amount of financial assistance under the program that can be requested by a school district is the lesser of:

a. One million dollars, or

b. The total capital investment of the project minus the local match requirement.

100.3(8) Project time line. The project shall be completed not later than three fiscal years from the date on which the grant is approved.

100.3(9) Project restrictions. Special restrictions apply to certain projects.

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a. If the project is in collaboration with other public or private entities, the school district is eligible to apply only for the school district's portion of the project. The school district must own or retain ownership of the infrastructure for which the application is submitted. This restriction does not preclude shared facility use. State, federal, or private funds received by the other entities cannot be used toward the local match requirement. The application for one school district shall not be contingent upon one or more other school districts receiving an award under this program.

b. A school district may submit an application for a project that includes activities at more than one attendance center. However, if the activities are related to new construction, the project shall only relate to one attendance center. New construction for purposes of this subrule means a separate, new attendance center.

c. A school district receiving financial assistance under the vision Iowa program pursuant to a joint application submitted under Iowa Code section 15F.302, subsection 3, shall not be eligible to receive financial assistance under the program.

d. A school district that has a local option sales and services tax for school infrastructure imposed at the maximum rate and has local option sales and services tax for school infrastructure revenue per pupil of more than the statewide average of local option sales and services tax capacity per pupil shall not be eligible for financial assistance under the program.

e. All projects must be consistent with the provisions of the Americans with Disabilities Act and the Rehabilitation Act of 1973, Section 504, and Iowa Code chapter 104A.

281—100.4(78GA,ch1174) Review process.

100.4(1) Task force. The department shall form a task force to review applications for financial assistance and to provide recommendations to the school budget review committee. The department shall invite participants from large, medium, and small school districts, the state fire marshal's office, education and professional organizations, and other individuals knowledgeable in school infrastructure and construction issues. The department, in consultation with the task force, shall establish the parameters and criteria for awarding grants based on the information listed in 2000 Iowa Acts, chapter 1174, sections 26 to 28, which includes greater priority to be given to the following:

a. A school district with a lower capacity per pupil.

b. A school district whose plans address specific occupant fire and health safety issues.

c. A school district collaborating or reorganizing as described in subrule 100.3(2)"m."

d. A school district for which a local option sales and services tax for school infrastructure has not been imposed or a school district that receives minimal revenues from a local option sales and services tax for school infrastructure when the total enrollment of the school district is considered.

100.4(2) Task force review. The task force, or a subcommittee of the task force and its designees, shall review each application and make recommendations to the school budget review committee regarding awards of financial assistance based on the evidence provided by the applicant pursuant to subrule 100.3(2) and the criteria listed in subrule 100.4(3). A reviewer shall not review any application in which the reviewer has an interest, direct or indirect.

100.4(3) Ranking of applicants. Applicants shall be ranked on a point system within each size category, and awards shall be recommended in rank order beginning with highest points. Applicants which do not receive funding

within the applicable size categories will be grouped and ranked on the same point system without regard to size category, and awards will be recommended in rank order beginning with highest points. In the event that two or more school districts tie for a grant award, the applications will be reviewed by one or more additional reviewers until the tie is broken.

The maximum points for an application shall be 505 points. The maximum points for each criterion shall be as follows:

a. The maximum number of points that can be awarded for the description of the infrastructure needs and the project proposed to alleviate those needs is 50 points with a maximum of 25 points for the description of infrastructure needs and 25 points for the project proposed to alleviate those needs.

b. The maximum number of points that can be awarded for evidence that the infrastructure need is related to fire or health safety issues and for the severity of the deficiency is 75 points.

c. The maximum number of points that can be awarded for need based on capacity per pupil is 75 points. The points will be calculated as follows: $[(1 - (\text{the school district's capacity per pupil} / \text{the capacity per pupil at the fortieth percentile})) \times \text{maximum points possible}] \times \text{adjustment factor}$. The minimum number of points that can be awarded for need based on capacity per pupil is 0 points. The points will be awarded in relationship to the rank order with the highest points awarded for the lowest capacity per pupil. For the purpose of this paragraph, the adjustment factor is 75 points divided by the result of the formula prior to multiplying by the adjustment factor for the lowest ranked district. The purpose of the adjustment factor is to allow 75 points to be awarded to the lowest capacity district.

d. The maximum number of points that can be awarded for previous efforts to secure funding within the past five years is 50 points awarded as follows:

(1) The maximum number of points that can be awarded for previous efforts to secure funding within the past five years using a bond issue referendum is 15 points for previously attempted and passed, 10 points for previously attempted and failed, and 0 points for not previously attempted.

(2) The maximum number of points that can be awarded for previous efforts to secure funding within the past five years using the voter-approved physical plant and equipment levy is 10 points for previously attempted and passed, 5 points for previously attempted and failed, and 0 points for not previously attempted.

(3) The maximum number of points that can be awarded for previous efforts to secure funding within the past five years using the regular physical plant and equipment levy is 5 points with 1 point for each year that the board has imposed the levy during the past five years, and 0 points for not previously imposed.

(4) The maximum number of points that can be awarded for efforts to utilize past, current, and future resources for school infrastructure activities is 20 points.

e. The maximum number of points that can be awarded for the description of the nature of the project, its relationship to improving educational opportunities for students, and its ability to meet or exceed educational standards is 60 points.

f. The maximum number of points that can be awarded for the comprehensive, districtwide infrastructure plan and the description of how this project fits within that plan is 40 points.

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g. The maximum number of points that can be awarded for the evidence that the school district has entered into an innovative collaboration with one or more other school districts, has reorganized, or has initiated a resolution to reorganize is 80 points.

h. The maximum number of points that can be awarded because the school district receives no revenues or minimal revenues from a local option sales and services tax for school infrastructure is 75 points. The points will be calculated as follows: $[(1 - (\text{school district local option sales and services tax per pupil} / \text{statewide average local option sales and services tax capacity per pupil})) \times \text{maximum points possible}] \times \text{adjustment factor}$. The minimum number of points that can be awarded because the school district receives no revenues or minimal revenues from a local option sales and services tax for school infrastructure is 0 points. The number of pupils for this calculation will be the same enrollment number used for the calculation of sales tax capacity per pupil. For the purpose of this paragraph, the adjustment factor is 75 points divided by the result of the formula prior to multiplying by the adjustment factor for the lowest ranked district. The purpose of the adjustment factor is to allow 75 points to be awarded to the lowest capacity district.

100.4(4) School budget review committee. The school budget review committee shall review the recommendations for awards from the task force. The committee shall make recommendations on awards to the department for final consideration.

281—100.5(78GA,ch1174) Grant award process.

100.5(1) Department determination. The department shall make the final determination on grant awards.

100.5(2) Total amount of awards.

a. For the fiscal year beginning July 1, 2000, the department shall provide grants in an amount of not more than \$10 million.

b. For the fiscal year beginning July 1, 2001, and for the fiscal year beginning July 1, 2002, the department shall provide grants in an amount of not more than \$20 million.

c. If the amount of the grants awarded in a fiscal year is less than the maximum amount provided for grants for that fiscal year, the amount of the difference shall be carried forward to subsequent fiscal years for purposes of providing grants under the program, and the maximum amount of the grants for each fiscal year shall be adjusted accordingly.

d. If a school district does not meet the local match requirement within nine months of notification of conditional approval from the department, then the department shall deny the financial assistance to the applicant; the financial assistance shall be carried forward to the next available grant cycle; and the maximum amount of the grants for the fiscal year to which the financial assistance is carried forward shall be adjusted accordingly.

100.5(3) Distribution of the awards. The grants shall be allocated in the following manner:

a. Twenty-five percent of the financial assistance each year shall be awarded to school districts with a certified enrollment of 1,199 or fewer students.

b. Twenty-five percent of the financial assistance each year shall be awarded to school districts with a certified enrollment of more than 1,199 students but not more than 4,750 students.

c. Twenty-five percent of the financial assistance each year shall be awarded to school districts with a certified enrollment of more than 4,750 students.

d. Twenty-five percent of the financial assistance each year plus the financial assistance not awarded in "a" through

"c" above and any financial assistance not awarded in previous fiscal years shall be awarded to school districts with any size certified enrollment.

100.5(4) Notification. The department shall notify applicants by the following dates.

a. For the fiscal year beginning July 1, 2000, the department shall notify all approved applicants by May 1, 2001, regarding the approval or conditional approval of the application.

b. For the fiscal years beginning July 1, 2001, and every year thereafter in which there is an application period, the department shall notify all approved applicants by December 15 regarding the approval or conditional approval of the application.

100.5(5) Payment. The grant award will be paid to the successful applicant school district following official notification from the school district that the local match requirement has been met.

281—100.6(78GA,ch1174) Grantee responsibilities.

100.6(1) Notification of local match. If the local match requirement is not met at the time of the application, the grantee shall notify the department that the local match requirement has been met within ten working days of meeting the requirement.

a. If the local match is a bond issue, the local match requirement is met when the bonds are sold.

b. If the local match is a voter-approved physical plant and equipment levy, the local match requirement is met on the date the votes are canvassed and the election is declared successful.

c. If the local match is a regular physical plant and equipment levy, the local match requirement is met when the total of unobligated resources on hand and certified by the board for the subsequent fiscal year equals the amount of the local match requirement.

d. If the local match is gifts, donations, or other resources, the local match requirement is met when the total of unobligated resources on hand equals the amount of the local match requirement.

100.6(2) Notification of change in local match source. If the source of the local match is not met at the time of the application and the school district changes the proposed source of the local match to other eligible sources of local match, the school district shall notify the department within ten working days of the change in sources.

100.6(3) Accounting for the grant. All revenues associated with the project, including interest revenue on fund balance, and all expenditures associated with the project shall be accounted for in a capital projects fund established for this grant program.

100.6(4) Progress report. A grantee shall submit a progress report to the department as requested by the department. The report shall include a description of the activities under the project, the status of the implementation of the projects, and any other information required by the department.

100.6(5) Actual project cost. If the total actual cost of the project is less than the estimated cost included in the application, the school district shall notify the department within 20 working days following the completion of the project. The allowable grant award and the local match shall be recalculated using the actual costs of the project and the award reduced accordingly. If the award payment to the school district exceeds the recalculated allowable grant award amount, the school district shall return the overpayment to the department with the notification.

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100.6(6) Withdrawal from the program. If a school district is granted an award and the school district elects not to continue with the project, the school district shall notify the department within ten working days following the board action to discontinue the project. If the award payment has been made to the school district, the school district shall return the award payment to the department with the notification.

100.6(7) Forfeiture of grant award. Failure to comply with any of the rules in this chapter or with the assurances and information included in the grant application can result in the forfeiture of the grant award.

281—100.7(78GA,ch1174) Appeal of grant denial. Any applicant may appeal the denial of a properly submitted grant application to the director of the department. Appeals must be in writing and received within ten working days of the date

of the notice of the decision to deny. Appeals must be based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members. The hearing and appeals procedures found in 281—Chapter 6 that govern the director's decisions shall be applicable to any appeal of denial.

These rules are intended to implement 2000 Iowa Acts, chapter 1174, sections 26 to 28.

[Filed Emergency After Notice 10/20/00, effective 10/20/00]

[Published 11/15/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.

ARC 0264B**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76 and 2000 Iowa Acts, chapter 1002, the Board of Dental Examiners hereby amends Chapter 1, "Definitions"; Chapter 6, "Public Records and Fair Information Practices"; Chapter 10, "General"; Chapter 14, "Renewal"; Chapter 15, "Fees"; Chapter 21, "Dental Laboratory Technician"; Chapter 22, "Minimum Training Standards for Dental Assistants Engaging in Dental Radiography"; Chapter 25, "Continuing Education"; Chapter 27, "Standards of Practice and Principles of Professional Ethics"; Chapter 30, "Discipline"; Chapter 31, "Complaints and Investigations"; Chapter 32, "Mediation of Disputes"; Chapter 33, "Child Support Non-compliance"; and Chapter 34, "Student Loan Default/Noncompliance with Agreement for Payment of Obligation," Iowa Administrative Code.

These amendments implement 2000 Iowa Acts, chapter 1002, which requires the Board to establish procedures for the registration, renewal, and revocation or suspension of dental assistants. These amendments update Board rules to include references to dental assistant registration or registrants, add a new definition of "coronal polish," and establish fees for registration of dental assistants. Item 19 of the amendments also establishes two additional grounds for discipline for all licensees and registrants: practicing beyond training or delegating acts that are beyond the training and education of licensees or registrants.

The rules do not provide for waivers in specific circumstances as the amendments only update the rules to add the new category of dental assistant registrants to existing Board rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 9, 2000, as **ARC 0039B**. A public hearing on the amendments was held on August 29, 2000. Three people attended the hearing and one oral comment was received in support of the rules. No written comments on the amendments were received.

The following changes from the Notice have been made:

- In Item 1, there was a typographical correction in the definition of "coronal polish." The definition now reads as follows:

"'Coronal polish' means an adjunctive procedure that must also include removal of any calculus, if present, by a dentist or dental hygienist. Coronal polishing of teeth using only a rotary instrument and a rubber cup or brush for such purpose, when performed at the direction of and under the supervision of a licensed dentist, is deemed not to be the giving of prophylactic treatment."

- In Item 8, a new sentence was added to rule 650—15.3(153) and, as a result, the proposed amendments to the second sentence no longer apply. The rule now reads as follows:

650—15.3(153) Late renewal fees. All fees are nonrefundable. A licensee who fails to renew a license to practice following expiration shall be subject to late renewal fees pursuant to 650—Chapter 14. A registrant who fails to renew a registration to practice following expiration shall be subject to late renewal fees pursuant to 650—Chapter 20.

- In Item 10, the phrase "Beginning July 1, 2001" was added to delay the effective date of the change in this subrule in order to allow current registrants who had attended the dental radiography seminar within the previous four-year pe-

riod to renew their certification during the upcoming renewal period without delay.

These amendments were approved at the October 19, 2000, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 17A, 147, 153, and 272C and 2000 Iowa Acts, chapter 1002.

These amendments will become effective January 1, 2001.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 1, 6, 10, 14, 15, 21, 22, 25, 27, 30 to 34] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 0039B**, IAB 8/9/00.

[Filed 10/23/00, effective 1/1/01]

[Published 11/15/00]

[For replacement pages for IAC, see IAC Supplement 11/15/00.]

ARC 0263B**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76 and 2000 Iowa Acts, chapter 1002, the Board of Dental Examiners hereby rescinds Chapter 20, "Auxiliary Personnel," and adopts a new Chapter 20, "Dental Assistants," Iowa Administrative Code.

This amendment implements 2000 Iowa Acts, chapter 1002, which mandates that beginning July 1, 2001, a person shall not practice as a dental assistant unless the person has registered with the Board and received a certificate of registration. This amendment establishes a scope of practice for dental assistants, categories of dental assistants, registration requirements, procedures for the denial of registration and appeal of a denial, examination requirements, procedures for renewal, and continuing education requirements. The Board is required to adopt rules by January 1, 2001, to implement 2000 Iowa Acts, chapter 1002.

The rules do not provide for waivers in specific circumstances because the statute requires all dental assistants to be registered with the Board beginning July 1, 2001.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 9, 2000, as **ARC 0038B**. A public hearing on the amendment was held on August 29, 2000. Three people attended the hearing, and one oral comment was received in support of the rules. Five written comments on the amendment were received asking for clarification of the rules or suggesting some minor variations to the rules.

Changes from the Notice of Intended Action include the following:

- The definition of "dental assistant" was changed by adding the following sentence: "The term "dental assistant" does not include persons otherwise actively licensed in Iowa to practice dental hygiene or nursing who are engaged in the practice of said profession." This sentence was added to clarify that nurses or dental hygienists who provide services within their scope of practice are not also required to be registered as a dental assistant when assisting a dentist.

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- Paragraph "c" in subrule 20.3(3), which stated that duties of dental assistants should also be based on an agreement with the supervising dentist whose goal for the team is to promote the efficiency of dental services, was deleted in response to a written comment suggesting the deletion. The Board agreed that the requirement was ambiguous.

- Paragraph "b" in subrule 20.4(1) was changed by deleting the requirement that the dental assistant trainee complete six consecutive months of employment and by specifying that the dental assistant trainee must complete six months of work as a dental assistant within the previous 12-month period. This change was made in response to a written comment which pointed out that if a trainee failed the examination two times and had to stop working in a dental office until the examination was successfully completed, the assistant may not meet the requirement for six consecutive months of work. The change in this provision will also allow for extenuating circumstances in which a dental assistant trainee may need to be off work for a brief period of time.

- Subrule 20.4(3) was changed by adding a new sentence stating that an expanded function dental assistant may perform extraoral duties under general supervision. In addition, the Board has delayed the implementation of expanded function dental assistant registration until July 1, 2002, in order to give the Board time to review and approve appropriate expanded function education.

- The words "pass upon the applicant's qualifications" have been changed to "evaluate the applicant's qualifications" in subparagraphs 20.6(1)"b"(4), 20.6(2)"b"(7), and 20.6(3)"b"(8).

- Paragraphs 20.4(1)"a" and 20.6(1)"c" and subparagraph 20.6(2)"b"(3) have been changed to make the wording in the course requirements consistent. The wording has been changed to specify that the course of study must be approved by the Board and sponsored by a Board-approved postsecondary school. Wording in the proposed rules had required the school to be accredited by the Commission on Dental Accreditation of the American Dental Association. The intent of the Board, however, is to have the course available through any community college in the state that wishes to offer or sponsor the Board course, in order to make the course more accessible in all areas of the state. Language has also been added to clarify that the course of study may be taken at the postsecondary school or on the job using curriculum approved by the Board for such purpose. The statute allows dental assistants to meet the education requirements through either a formal series of classes or through job equivalency training, according to standards set by the Board.

- Subparagraph 20.6(3)"a"(2) has been changed by adding the word "current" to clarify that under the requirements of the Dental Assisting National Board, an assistant is not allowed to use the certified dental assistant credential unless the assistant's certification is current.

- Paragraph 20.6(3)"b" has been changed by adding new subparagraphs (3) and (4) and renumbering existing subparagraphs. The new subparagraphs specify that an expanded function dental assistant must also complete a Board-approved course and examination in the areas of infection control, hazardous materials, and jurisprudence, as mandated by statute.

- Paragraph 20.6(3)"c" has been changed by adding the phrase "that are delegated by and under the supervision of a licensed dentist and" to reiterate that all dental assistant duties must be performed under supervision and must be delegated by the dentist.

- Subrule 20.11(5) has been changed to specify that failure to comply with the continuing education requirements will result in a lapsed registration.

- Subrule 20.12(1) has been changed by deleting language related to continuing education in the area of jurisprudence and moving this language to new subrule 20.12(4). The new subrule limits the requirement to obtain continuing education in the subject area of jurisprudence to the renewal period of July 1, 2001, to June 30, 2003, only. This change was made in response to a written comment.

This amendment is intended to implement Iowa Code chapters 17A, 147, 153, and 272C and 2000 Iowa Acts, chapter 1002.

This amendment will become effective January 1, 2001. The following amendment is adopted.

Rescind **650—Chapter 20** and adopt the following **new** chapter in lieu thereof:

CHAPTER 20
DENTAL ASSISTANTS

650—20.1(153,78GA,ch1002) Registration required. A person shall not practice on or after July 1, 2001, as a dental assistant unless the person has registered with the board and received a certificate of registration pursuant to this chapter.

650—20.2(153,78GA,ch1002) Definitions. As used in this chapter:

"Dental assistant" means any person who, under the supervision of a dentist, performs any extraoral services including infection control, dental radiography, or the use of hazardous materials or performs any intraoral services on patients. The term "dental assistant" does not include persons otherwise actively licensed in Iowa to practice dental hygiene or nursing who are engaged in the practice of said profession.

"Direct supervision" means that the dentist is present in the treatment facility, but it is not required that the dentist be physically present in the treatment room while the dental assistant is performing acts assigned by the dentist.

"General supervision" means that a dentist has delegated the services to be provided by a dental assistant. The dentist need not be present in the facility while these services are being provided.

"Personal supervision" means the dentist is physically present in the treatment room to oversee and direct the services of the dental assistant.

650—20.3(153,78GA,ch1002) Scope of practice.

20.3(1) In all instances, a dentist assumes responsibility for determining, on the basis of diagnosis, the specific treatment patients will receive and which aspects of treatment may be delegated to qualified personnel as authorized in these rules.

20.3(2) A lawfully licensed dentist may delegate to a dental assistant those procedures for which the dental assistant has received training. This delegation shall be based on the best interests of the patient. The dentist shall exercise supervision and shall be fully responsible for all acts performed by a dental assistant. A dentist may not delegate to a dental assistant any of the following:

- Diagnosis, examination, treatment planning, or prescription, including prescription for drugs and medicaments or authorization for restorative, prosthodontic or orthodontic appliances.

- Surgical procedures on hard and soft tissues within the oral cavity and any other intraoral procedure that contrib-

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utes to or results in an irreversible alteration to the oral anatomy.

- c. Administration of local anesthesia.
- d. Placement of sealants.
- e. Removal of any plaque, stain, or hard natural or synthetic material except by toothbrush, floss, or rubber cup coronal polish, or removal of any calculus.
- f. Dental radiography, unless the assistant is qualified pursuant to 650—Chapter 22.
- g. Those procedures that require the professional judgment and skill of a dentist.

20.3(3) A dental assistant may perform duties consistent with these rules under the supervision of a licensed dentist. The specific duties dental assistants may perform are based upon:

- a. The education of the dental assistant.
- b. The experience of the dental assistant.

650—20.4(153,78GA,ch1002) Categories of dental assistants. There are three categories of dental assistants. Both the supervising dentist and dental assistant are responsible for maintaining documentation of training. Such documentation must be maintained in the office of practice and shall be provided to the board upon request.

20.4(1) Dental assistant trainee. Dental assistant trainees are all individuals who have received no prior training or experience in dental assisting, but who will learn the necessary skills under the personal supervision of a licensed dentist. The dental assistant trainee shall meet the following requirements:

- a. Within 60 days of employment, the dental assistant trainee shall successfully complete a course of study and examination in the areas of infection control, hazardous waste and jurisprudence. The course of study shall be prior approved by the board and sponsored by a board-approved postsecondary school.
- b. Immediately after satisfactorily completing six months of work as a dental assistant within the previous 12-month period, the trainee or dentist must apply to the board for the trainee to be reclassified as a registered dental assistant.

20.4(2) Registered dental assistant. A registered dental assistant may perform under general supervision all extraoral duties in the dental office or dental clinic that are assigned by the dentist that are consistent with these rules. During intraoral procedures, the registered dental assistant may, under direct supervision, assist the dentist in performing duties assigned by the dentist that are consistent with these rules. The registered dental assistant may take radiographs if certified pursuant to 650—Chapter 22.

20.4(3) Expanded function dental assistant. Beginning July 1, 2002, an expanded function dental assistant may perform under general supervision all extraoral duties in the dental office or dental clinic that are assigned by the dentist that are consistent with these rules. Beginning July 1, 2002, an expanded function dental assistant may perform, under direct supervision, intraoral procedures for which the dental assistant has successfully completed formal training sponsored by a board-approved program accredited by the Commission on Dental Accreditation of the American Dental Association or other program approved by the board. All expanded function duties must be assigned by the dentist and be consistent with these rules. Examples of expanded function dental assistant duties include, but are not limited to, the monitoring of nitrous oxide inhalation analgesia, temporization of crowns, placement and removal of temporary restora-

tions, placement of periodontal dressings, taking impressions for dental appliances, and bite registrations.

650—20.5(153,78GA,ch1002) Registration requirements prior to July 2, 2001.

20.5(1) A person employed as a dental assistant as of July 1, 2001, shall be registered with the board as a registered dental assistant without meeting the application requirements specified in 20.6(153,78GA,ch1002), provided the application is postmarked by July 1, 2001.

20.5(2) Applications for registration prior to July 2, 2001, must be filed on official board forms and include the following:

- a. The fee as specified in 650—Chapter 15.
- b. Evidence of current employment as a dental assistant as demonstrated by a signed statement from the applicant's employer.
- c. Evidence of current certification in dental radiography pursuant to 650—Chapter 22 if engaging in dental radiography.

20.5(3) Applications must be signed and verified by the applicant as to the truth of the documents and statements contained therein.

650—20.6(153,78GA,ch1002) Registration requirements after July 1, 2001. Effective July 2, 2001, dental assistants must meet the following requirements for registration:

- 20.6(1)** Dental assistant trainee.
 - a. The employer of a dental assistant trainee must notify the board in writing of such employment within seven days of the time the dental assistant begins work.
 - b. Applications for registration as a dental assistant trainee must be filed on official board forms and include the following:
 - (1) The fee as specified in 650—Chapter 15.
 - (2) Evidence of high school graduation.
 - (3) Evidence the applicant is 18 years of age or older.
 - (4) Any additional information required by the board relating to the character and experience of the applicant as may be necessary to evaluate the applicant's qualifications.
 - c. Within 60 days of employment, the dental assistant trainee is required to successfully complete a board-approved course of study and examination in the areas of infection control, hazardous materials and jurisprudence. The course of study may be taken at a board-approved postsecondary school or on the job using curriculum approved by the board for such purpose. Evidence of meeting this requirement shall be submitted within 60 days by the employer dentist.

20.6(2) Registered dental assistant.

- a. To meet this qualification, a person must:
 - (1) Work in a dental office for six months as a dental assistant trainee; or
 - (2) Have had at least six consecutive months of prior dental assisting experience under a licensed dentist within the past two years; or
 - (3) Be a graduate of a postsecondary dental assisting program.
- b. Applications for registration as a registered dental assistant must be filed on official board forms and include the following:
 - (1) The fee as specified in 650—Chapter 15.
 - (2) Evidence of meeting one of the requirements specified in 20.6(2)"a."
 - (3) Evidence of successful completion of a course of study approved by the board and sponsored by a board-approved postsecondary school in the areas of infection con-

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trol, hazardous materials, and jurisprudence. The course of study may be taken at a board-approved postsecondary school or on the job using curriculum approved by the board for such purpose.

(4) Evidence of successful completion of a board-approved examination in the areas of infection control, hazardous materials, and jurisprudence.

(5) Evidence of meeting the qualifications of 650—Chapter 22 if engaging in dental radiography.

(6) Evidence of current certification in cardiopulmonary resuscitation sponsored by a nationally recognized provider.

(7) Any additional information required by the board relating to the character, education and experience of the applicant as may be necessary to evaluate the applicant's qualifications.

20.6(3) Expanded function dental assistant.

a. To meet the qualification of expanded function dental assistant, applicants must:

(1) Have two years of experience as a registered dental assistant; or

(2) Be a current certified dental assistant as defined by the Dental Assisting National Board with six months of dental assisting experience; and

(3) Have successfully completed a formal program in one or more expanded functions within the previous two years of application as an expanded function dental assistant or documentation of equivalent out-of-state registration or education.

b. Beginning July 1, 2002, applications for registration as an expanded function dental assistant must be filed on official board forms and include the following:

(1) The fee as specified in 650—Chapter 15.

(2) Evidence of meeting the qualifications specified in 20.6(3)“a.”

(3) Evidence of successful completion of a course of study approved by the board and sponsored by a board-approved postsecondary school in the areas of infection control, hazardous materials, and jurisprudence. The course of study may be taken at a board-approved postsecondary school or on the job using curriculum approved by the board for such purpose.

(4) Evidence of successful completion of a board-approved examination in the areas of infection control, hazardous materials, and jurisprudence.

(5) Evidence of meeting the qualifications of 650—Chapter 22 if engaging in dental radiography.

(6) Evidence of current certification in cardiopulmonary resuscitation sponsored by a nationally recognized provider.

(7) Evidence of successful completion of a formal program in one or more expanded functions sponsored by a school accredited by the Commission on Dental Accreditation of the American Dental Association or a program approved by the board.

(8) Any additional information required by the board relating to the character, education and experience of the applicant as may be necessary to evaluate the applicant's qualifications.

c. An expanded function dental assistant is limited to performing only those expanded duties that are delegated by and under the supervision of a licensed dentist and for which the assistant has been trained within the limits of these rules.

20.6(4) All applications must be signed and verified by the applicant as to the truth of the documents and statements contained therein.

650—20.7(153,78GA,ch1002) Registration denial. The board may deny an application for registration as a dental assistant for any of the following reasons:

1. Failure to meet the requirements for registration as specified in these rules.

2. Pursuant to Iowa Code section 147.4, upon any of the grounds for which registration may be revoked or suspended as specified in 650—Chapter 30.

650—20.8(147,153,78GA,ch1002) Registration denied—appeal procedure. An applicant who has been denied registration by the board may appeal the denial and request a hearing on the issues related to the registration denial by serving a notice of the appeal and request for hearing upon the executive director not more than 30 days following the date of the mailing of the notification of registration denial to the applicant or not more than 30 days following the date upon which the applicant was served notice if notification was made in the manner of service of an original notice. The hearing and subsequent procedures shall be considered a contested case hearing and shall be governed by the procedures outlined in 650—Chapter 51.

This rule is intended to implement Iowa Code sections 147.3, 147.4 and 147.29.

650—20.9(153,78GA,ch1002) Examination requirements. Beginning July 2, 2001, applicants for registration must successfully pass an examination approved by the board on infection control, hazardous waste, and jurisprudence.

20.9(1) Examinations approved by the board are those administered by the board or board's approved testing centers or the Dental Assisting National Board Infection Control Examination, if taken after June 1, 1991, in conjunction with the board-approved jurisprudence examination.

20.9(2) Information on taking the examination may be obtained by contacting the board office at 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687.

20.9(3) An examinee must meet such other requirements as may be imposed by the board's approved dental assistant testing centers.

20.9(4) A dental assistant trainee must successfully pass the examination within 60 days of the first date of employment. A dental assistant trainee who does not successfully pass the examination within 60 days shall be prohibited from working in a dental office or clinic until the examination has been passed in accordance with these rules.

20.9(5) A score of 75 or better on the board infection control/hazardous material section and a score of 75 or better on the board jurisprudence section shall be considered successful completion of the examination. The board accepts the passing standard established by the Dental Assisting National Board for applicants who take the Dental Assisting National Board Infection Control Examination.

650—20.10(153,78GA,ch1002) System of retaking dental assistant examinations.

20.10(1) Second examination.

a. On the second examination attempt, a dental assistant shall be required to obtain a score of 75 percent or better on each section of the examination.

b. A dental assistant who fails the second examination will be required to complete the remedial education requirements set forth in subrule 20.10(2).

20.10(2) Third and subsequent examinations.

a. Prior to the third examination attempt, a dental assistant must submit proof of additional formal education in the area of the examination failure in a program approved by the board or sponsored by a school accredited by the Commis-

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sion on Dental Accreditation of the American Dental Association.

b. A dental assistant who fails the examination on the third attempt may not practice as a dental assistant in a dental office or clinic until additional remedial education approved by the board has been obtained.

c. For the purposes of additional study prior to retakes, the fourth or subsequent examination failure shall be considered the same as the third.

650—20.11(153,78GA,ch1002) Renewal of registration. A certificate of registration as a registered dental assistant or expanded function dental assistant must be renewed biennially.

20.11(1) The board will notify each registrant by mail of the expiration of the registration.

20.11(2) Application for renewal must be made in writing to the board at least 30 days before the current registration expires.

20.11(3) The appropriate fee as specified in 650—Chapter 15 shall accompany the application for renewal. A penalty shall be assessed by the board for late renewal.

20.11(4) Failure to renew the registration by June 30 shall result in assessment of a late fee of \$20 in addition to the renewal fee. Failure to renew by July 30 shall result in assessment of a late fee of \$40. Failure to renew by August 30 following expiration shall result in assessment of a late fee of \$60. Failure to renew a registration prior to September 30 following expiration shall cause the registration to lapse and become invalid. A registrant whose registration has lapsed and become invalid is prohibited from practicing as a dental assistant until the registration is reinstated in accordance with 650—14.5(153).

20.11(5) Completion of continuing education is required for renewal of an active registration. Failure to comply will automatically result in a lapsed registration.

20.11(6) In order to renew a registration, the registrant shall be required to furnish evidence of valid certification in a nationally recognized course in cardiopulmonary resuscitation.

20.11(7) The board may refuse to renew a registration in accordance with 650—14.3(153).

650—20.12(153,78GA,ch1002) Continuing education. Beginning July 1, 2001, each person registered as a dental assistant shall complete 20 hours of continuing education approved by the board during the biennium period as a condition of registration renewal.

20.12(1) At least two continuing education hours must be in the subject area of infection control.

20.12(2) A maximum of three hours may be in cardiopulmonary resuscitation.

20.12(3) For dental assistants who have a special endorsement in radiography, at least two hours of continuing education must be obtained in the subject area of radiography.

20.12(4) For the renewal period July 1, 2001, to June 30, 2003, at least one hour of continuing education must be obtained in the subject area of jurisprudence.

650—20.13(252J,261) Receipt of certificate of noncompliance. The board shall consider the receipt of a certificate of noncompliance from the college student aid commission pursuant to Iowa Code sections 261.121 to 261.127 and 650—Chapter 34 or receipt of a certificate of noncompliance of a support order from the child support recovery unit pursuant to Iowa Code chapter 252J and 650—Chapter 33. Registration denial or denial of renewal of registration shall fol-

low the procedures in the statutes and board rules as set forth in this rule.

This rule is intended to implement Iowa Code chapter 252J and sections 261.121 to 261.127.

650—20.14(153) Unlawful practice. A dental assistant who assists a dentist in practicing dentistry in any capacity other than as a person supervised by a dentist in a dental office, or who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor or director of a dental office as a guise or subterfuge to enable such dental assistant to engage directly or indirectly in the practice of dentistry, or who performs dental service directly or indirectly on or for members of the public other than as a person working for a dentist shall be deemed to be practicing dentistry without a license.

650—20.15(153) Advertising and soliciting of dental services prohibited. Dental assistants shall not advertise, solicit, represent or hold themselves out in any manner to the general public that they will furnish, construct, repair or alter prosthetic, orthodontic or other appliances, with or without consideration, to be used as substitutes for or as part of natural teeth or associated structures or for the correction of malocclusions or deformities, or that they will perform any other dental service.

These rules are intended to implement Iowa Code chapter 153 and 2000 Iowa Acts, chapter 1002.

[Filed 10/23/00, effective 1/1/01]

[Published 11/15/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.

ARC 0267B

**ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 11, "Certified School to Career Program," Iowa Administrative Code.

The amendments allow changes in program guidelines and program administration procedures and eliminate the role of the Iowa Department of Economic Development from joint program approval responsibilities (in conjunction with the Department of Education). In addition, the amendments modify the definition of "participant" and clarify the eligible paid employment periods.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 6, 2000, as **ARC 0120B**.

A public hearing to receive comments about the proposed amendments was held on September 26, 2000. No comments were received. The adopted amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 15.362 and 15.363 as amended by 2000 Iowa Acts, chapter 1013, and Iowa Code Supplement section 15.364 as amended by 2000 Iowa Acts, chapter 1013.

The IDED Board adopted these amendments on October 19, 2000.

These amendments will become effective on December 20, 2000.

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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 [11.1 to 11.4] is being omitted. These amendments are identical to those published under Notice as **ARC 0120B**, IAB 9/6/00.

[Filed 10/23/00, effective 12/20/00]
[Published 11/15/00]

[For replacement pages for IAC, see IAC Supplement 11/15/00.]

ARC 0268B**ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts an amendment to Chapter 53, "Community Economic Betterment Program," and adopts a new Chapter 65, "Brownfield Redevelopment Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0123B** on September 6, 2000. These amendments were also Adopted and Filed Emergency and published in the September 6, 2000, Iowa Administrative Bulletin as **ARC 0124B**.

The new chapter implements a new program authorized by 2000 Iowa Acts, chapter 1101. The rules describe the purpose of the Brownfield Redevelopment Program, eligibility requirements, evaluation criteria, and the application process. The amendment to the CEBA program adds a rating criterion for remediation or redevelopment of a brownfield site.

A public hearing to receive comments about the amendment and new chapter was held on September 26, 2000. Comments were submitted by the cities of Cedar Falls, Des Moines, Cedar Rapids and Marshalltown. As a result of the comments, the following revisions were made to the rules:

Subrule 65.3(3), paragraph "2," was amended to add the following sentence:

"Title transfer is not required when the applicant is the owner of the property and no title transfer occurs."

Subrule 65.4(3) limits financial assistance to no more than 25 percent of the agreed-upon total costs of remediation. This subrule was revised to include acquisition or redevelopment costs in addition to remediation.

The IDEED Board adopted these amendments on October 19, 2000.

These amendments will become effective on December 20, 2000, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These amendments are intended to implement 2000 Iowa Acts, chapter 1101.

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 [53.8(3)"f"(3), Ch 65] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC**

0123B and Adopted and Filed Emergency as **ARC 0124B**, IAB 9/6/00.

[Filed 10/23/00, effective 12/20/00]
[Published 11/15/00]

[For replacement pages for IAC, see IAC Supplement 11/15/00.]

ARC 0271B**ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 211, "Recreation, Environment, Art and Cultural Heritage Initiative (REACH)—Community Attraction and Tourism Development Program," Iowa Administrative Code.

The amendments to Chapter 211 update the current rules to incorporate the requirements of 2000 Iowa Acts, chapter 1174. References to the Department are replaced with "Vision Iowa Board," citations are updated, and new evaluation criteria are added.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0119B** on September 6, 2000.

Public hearings to receive comments about the amendments were held on September 27, 2000, and September 29, 2000. Both hearings were well attended. Individuals participated in the public hearings at IDEED and through 36 ICN sites, 16 remote sites on September 27 and 20 remote sites on September 29.

Input from the public can be characterized as falling into three general categories: (1) comments relating to legislative requirements outlined in 2000 Iowa Acts, chapter 1174, (2) comments about the application process, and (3) requests for specific revisions to the rules. A more detailed summary of the comments received is available on the Vision Iowa Board's Web site at visioniowa.org.

The key policy issues emerging from the public hearings were as follows:

(1) Public art. A request was made to set aside up to 1 percent of Community Attraction and Tourism (CAT) funds to promote fine arts in projects receiving CAT assistance.

(2) Wage rate. The Vision Iowa Board was asked to reconsider its decision not to include a wage requirement for jobs associated with CAT projects.

(3) Local match, specifically, what constitutes eligible local match. Questions were raised about how far back in time an applicant will be permitted to go to count expenditures to meet the local match requirement. For example, commenters asked whether the value of land can be considered match if the land has already been purchased and whether the value of the completed portion of a phased project can be treated as match.

(4) Application process. Several participants requested that the CAT application form be simplified and streamlined. An "Intent to Award" process was also suggested. This process was described as an opportunity to provide the public with one last time period (e.g., 10 to 14 days) to comment on the award before contracts are executed.

In addition to these four main policy issues, several technical corrections were requested. The corrections were sug-

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gested in order to avoid duplication within the rules and to provide consistency with the CAT legislation.

The Vision Iowa Board met on October 11, 2000, to review the comments from the public hearing. A special meeting of the Board was also held on October 20, 2000, to clarify the local match requirements and to discuss whether to include a wage threshold provision. Each of the above policy issues and technical corrections was discussed. As a result of the comments received, the following revisions were made to the rules:

- In rule 211.2(78GA,ch1174), the amended definition of "attraction" was revised to include the word "educational" and reads as follows: "'Attraction' means a permanently located recreational, cultural, educational or entertainment activity that is available to the general public."

- A sentence was added to the introductory paragraph of rule 211.9(78GA,ch1174), which pertains to application review criteria, to clarify that all eligible applications will be reviewed by the Vision Iowa Board.

- Subrule 211.9(1) regarding the feasibility criterion was revised to incorporate application requirements previously located in subrule 211.10(3) as amended under Notice. A sentence was added to clarify that the applicant's comprehensive business plan and operational plan will be reviewed to assess project feasibility. Details about the content of the business plan, specifically, those concerning sources of funding and financial projections for five years, that were described in subrule 211.10(3) are now included under this subrule. An expanded description of the contents of the operational plan has been relocated from subrule 211.10(3) to this subrule. An operational plan shall provide detailed information about how the proposed attraction will be operated and maintained including a time line for implementing the project.

- Subrule 211.9(2) was revised to incorporate application requirements previously located in subrule 211.10(3) as amended under Notice. An application must include a description of its long-term tax generation. This measurement excludes the use of economic multipliers. This exclusion was stated in subrule 211.10(3), but not subrule 211.9(2). This omission has been corrected. The restriction on the use of economic multipliers is now included in adopted subrule 211.9(2). Also added to this subrule is a phrase to clarify that the application must include a review of the wages and benefits associated with the jobs to be created.

- The following sentences were added to subrule 211.9(4) to resolve the issue of how far back an applicant will be permitted to go to count expenditures as matching funds: "Moneys expended toward implementation of the project after May 9, 2000, may be considered to be a local match. Moneys raised at any time but not yet spent may also be considered to be a local match." The Vision Iowa Board selected May 9, 2000, as the cutoff date because this was the date 2000 Iowa Acts, chapter 1174, was signed by the Governor. It was the consensus of the Board that on or after this date, potential applicants may have reasonably initiated steps to facilitate project development.

- In subrule 211.9(5) pertaining to planning principles, the phrase "and enhancing" was added to paragraph "c." The paragraph now reads as follows:

"c. Maintenance of unique sense of place by respecting and enhancing local cultural, historical and natural environmental features."

- Subrule 211.9(6) establishes a review factor for technology and values. The phrase "regional or statewide" was added to paragraph "a." The paragraph now reads as follows:

"a. Extent to which the project encourages technologies that allow regional or statewide access for long-distance learning and Internet access to facility resources."

Proposed paragraph "a" also required access to such technologies so that "all Iowa communities may benefit from the development." This phrase was not adopted. This change was in response to a comment that providing access to "all Iowa communities" was too broad a standard. There was a request to allow access to technologies on a regional basis, too. Paragraph "a," as adopted, permits an applicant to demonstrate either statewide or regional access to technologies that encourage long-distance learning and use of the Internet.

- A new paragraph "d" was added to subrule 211.9(6) to take into account the extent to which the facilities enhance or promote fine arts. For purposes of this paragraph, "fine arts" means "fine arts" as defined in Iowa Code section 304A.8(2) and also includes landscaping. Rather than set aside at least 1 percent of Vision Iowa funds for projects that promote public art as suggested during the public hearing process, the Vision Iowa Board voted to include this item as a review criterion under this subrule.

- Proposed amendments to subrule 211.10(3) were not adopted. However, a sentence was added to the adopted subrule to clarify that an application must include the information outlined in rule 211.9(78GA,ch1174). The application elements previously required in subrule 211.10(3) have now been incorporated into rule 211.9(78GA,ch1174). The purpose for this revision was to ensure that the application review criteria are consistent with information required in the application.

- Paragraph 211.11(1)"a" was revised to provide that the board reserves the right to negotiate wage rates as well as other terms and conditions of the contract.

The Vision Iowa Board also decided to follow the suggestions received about simplifying the CAT application form and about the issuance of a Notice of Intent to Award. The Board has asked staff to develop a more streamlined version of the application for review by the Board at a future meeting. A Notice of Intent to Award will be released by the Vision Iowa Board after the selection process to allow time for public comment.

The IDED Board adopted the final amendments on October 19, 2000.

These amendments will become effective on December 20, 2000.

These amendments are intended to implement 2000 Iowa Acts, chapter 1174.

The following amendments are adopted.

ITEM 1. Amend **261—Chapter 211**, title, as follows:

CHAPTER 211
RECREATION, ENVIRONMENT, ART AND
CULTURAL HERITAGE INITIATIVE
(REACH)—COMMUNITY ATTRACTION AND
TOURISM DEVELOPMENT PROGRAM

ITEM 2. Amend the parenthetical implementation in rules **261—211.1(78GA,HF772)** through **261—211.11(78GA,HF772)** by striking "(78GA,HF772)" and inserting "(78GA,ch1174)."

ITEM 3. Amend **261—211.1(78GA,ch1174)** as follows:

261—211.1(78GA,ch1174) Purpose. The community attraction and tourism development program, ~~a component of the recreation, environment, art and cultural heritage initia-~~

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ive (REACH), is designed to assist communities in the development and creation of multiple-purpose attraction and tourism facilities.

ITEM 4. Amend 261—211.2(78GA,ch1174) as follows:

261—211.2(78GA,ch1174) Definitions. When used in this chapter, unless the context otherwise requires:

~~“Activity” means one or more specific activities or projects assisted with community attraction and tourism development funds.~~

“Attraction” means a permanently located recreational, cultural, educational or entertainment activity, or event that is available to the general public.

“Board” means the vision Iowa board established by 2000 Iowa Acts, chapter 1174, section 2.

“Community” or “political subdivision” means a city or county, or an entity established pursuant to Iowa Code chapter 28E.

“Community attraction and tourism program review committee” or “CAT review committee” means the committee established by 2000 Iowa Acts, chapter 1174, section 9, and identified as the following members of the vision Iowa board: the three members of the general public, one from each of the three tourism regions; the mayor of a city with a population of less than 20,000; and the county supervisor from a county that has a population ranking in the bottom 33 counties according to the 1990 census. The chair and vice chair of the vision Iowa board may serve as ex officio members of any subcommittee of the board.

“Department” or “IDED” means the Iowa department of economic development.

“Economic development organization” means an entity organized to position a community to take advantage of economic development opportunities and strengthen a community’s competitiveness as a place to work and live.

“Float loan” or “interim financing” means a short-term loan (maximum of 30 months) from obligated but unexpended funds.

“Fund” means the community attraction and tourism fund established pursuant to 1999 Iowa Acts, House File 772, section 3(2) 2000 Iowa Acts, chapter 1174, section 10(1).

“Loan” means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the award. A deferred loan is one for which the payment of principal, interest, or both, is not required for some specified period. A forgivable loan is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

“Local support” means endorsement by local individuals or entities and organizations that have a substantial interest in a project, particularly by those whose opposition or indifference would hinder the activity’s success.

“Nonfinancial support” may include, but is not limited to, the value of labor and services which may not total more than 25 percent of a local match. Real property and personal property donated for purposes of the project are considered financial support at their fair market value.

“Private organization” means a corporation, partnership, or other organization that is operated for profit.

“Program” means the community attraction and tourism program established in 2000 Iowa Acts, chapter 1174, section 8.

“Public organization” means a not-for-profit economic development organization or other not-for-profit organization that sponsors or supports including those that sponsor or support community or tourism attractions and activities.

“Recipient” means the entity under contract with IDED the vision Iowa board to receive community attraction and tourism development funds and undertake the funded activity.

“Recreational and cultural attraction” means an attraction that enhances the quality of life in the community.

“School district” means a school corporation organized under Iowa Code chapter 274.

“Subrecipient” means a private organization or other entity operating under an agreement or contract with a recipient to carry out a funded community attraction and tourism development activity.

“Tourism opportunity” means a facility that draws people into the community from at least 50 miles (one way) away from home.

“Vertical infrastructure” means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails. “Vertical infrastructure” does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

ITEM 5. Amend 261—211.3(78GA,ch1174) as follows:

261—211.3(78GA,ch1174) Program components and eligibility requirements. There are three two direct components to the community attraction and tourism development program. The first component relates to community attraction, tourism or leisure activities projects that are sponsored by political subdivisions, and public organizations, and school districts in cooperation with a city or county. This component is referred to as the community attraction component. The second component relates to the encouragement and creation of public-private partnerships for exploring the development of new community tourism and attraction activities. This component is referred to as the project development component. A third The second component provides community attraction and tourism development funds for interim financing for eligible projects under the community attraction component. This component is referred to as the interim financing component.

211.3(1) Community attraction component. The objective of the community attraction component is to provide financial assistance for community-sponsored attraction and tourism activities projects. Community attraction projects may include but are not limited to the following: museums, theme parks, cultural and recreational centers, heritage attractions, sports arenas and other attractions.

211.3(2) Project development component. The department, at its discretion, may also provide funding for project development related to proposed activities under this program. Project development assistance could be for the purpose of assisting in departmental evaluation of proposals, or could be one of the proposed activities in a funding request whose further project development could reasonably be expected to lead to an eligible community attraction and tourism development activity. Feasibility studies are eligible for assistance under this component.

211.3(3) 211.3(2) Interim financing component.

a. The objective of the community attraction and tourism development interim financing component is to provide short-term financial assistance for eligible community attraction and tourism activities projects. Financial assistance may be provided as a float loan. A float loan may only be made for activities projects that can provide the department vision Iowa board with an irrevocable letter of credit or

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equivalent security instrument from a lending institution rated AA or better, assignable to IDED in an amount equal to or greater than the principal amount of the loan.

b. Applications for float loans shall be processed, reviewed and considered on a first-come, first-served basis to the extent funds are available. Applications that are incomplete or require additional information, investigation or extended negotiation may lose funding priority. Applications for float loans shall meet all other criteria required for the community attraction component.

ITEM 6. Amend 261—211.4(78GA,ch1174) as follows:

261—211.4(78GA,ch1174) Allocation of funds.

211.4(1) Except as otherwise noted in this rule, all community attraction and tourism development funds shall be awarded for activities projects as specified in rule 211.3(78GA,ch1174).

211.4(2) ~~IDED may retain a portion of community attraction and tourism development funds for administrative costs associated with program implementation and operation. The percent of funds retained for administrative costs shall not exceed 1 percent in any year.~~

211.4(3) ~~For the fiscal year beginning July 1, 1999, \$400,000 is allocated from the fund to be used to provide grants to up to three political subdivisions, in an amount not to exceed \$200,000 per grant. The purpose of the three grants is to study the feasibility and viability of developing and creating a multiple-purpose attraction and tourism facility.~~

211.4(2) *One-third of the moneys shall be allocated to provide assistance to cities and counties which meet the following criteria:*

a. *A city which has a population of 10,000 or less according to the most recently published census.*

b. *A county which has a population that ranks in the bottom 33 counties according to the most recently published census.*

211.4(3) *Two-thirds of the moneys shall be allocated to provide assistance to any city and county in the state, which may include a city or county included under subrule 211.4(2).*

211.4(4) *If two or more cities or counties submit a joint project application for financial assistance under the program, all joint applicants must meet the criteria of subrule 211.4(2) in order to receive any moneys allocated under that subrule.*

211.4(5) *If any portion of the allocated moneys under subrule 211.4(2) has not been awarded by April 1 of the fiscal year for which the allocation is made, the portion which has not been awarded may be utilized by the vision Iowa board to provide financial assistance under the program to any city or county in the state.*

ITEM 7. Amend 261—211.5(78GA,ch1174), introductory paragraph, as follows:

261—211.5(78GA,ch1174) Eligible applicants. Eligible applicants for community attraction and tourism development funds include political subdivisions, and public organizations, and school districts in cooperation with a city or county.

ITEM 8. Amend 261—211.6(78GA,ch1174) as follows:

261—211.6(78GA,ch1174) Eligible activities projects and forms of assistance—all components.

211.6(1) Eligible activities projects include those which are related to a community or tourism attraction, and which would position a community to take advantage of economic

development opportunities in tourism and strengthen a community's competitiveness as a place to work and live. Eligible activities projects include building construction or reconstruction, rehabilitation, conversion, acquisition, demolition for the purpose of clearing lots for development, site improvement, equipment purchases, and other activities projects as may be deemed appropriate by IDED the vision Iowa board.

211.6(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, float loans under the interim financing component, interest subsidies, deferred payment loans, forgivable loans, loan guarantees, or other forms of assistance as may be approved by IDED the vision Iowa board.

211.6(3) Financial assistance for an eligible activity project may be provided in the form of a multiyear award to be paid in increments over a period of years, subject to the availability of funds.

211.6(4) IDED, with the approval of the chair or vice chair of the vision Iowa board, reserves the right to negotiate the terms of an award make technical corrections which are within the intent of the terms of a board-approved award.

211.6(5) Recipients Applicants may use community attraction and tourism funds in conjunction with other sources of funding must report other sources of funding or pending funding, public or private, for the project including the local recreation infrastructure grants program administered by the department of natural resources and the Iowa historic site preservation program administered by the department of cultural affairs. IDED may consult with appropriate staff from the department of cultural affairs and the department of natural resources to coordinate the review of applications under the programs.

ITEM 9. Amend subrules 211.7(1) and 211.7(3) as follows:

211.7(1) The department vision Iowa board shall not approve an application for assistance under this program to re-finance an existing loan.

211.7(3) The department vision Iowa board shall not approve an application for assistance in which community attraction and tourism development funding would constitute more than 50 percent of the total project costs. A portion of the resources provided by the applicant for project costs may be in the form of in-kind or non-cash nonfinancial contributions.

ITEM 10. Amend 261—211.8(78GA,ch1174) as follows:

261—211.8(78GA,ch1174) Threshold application requirements. To be considered for funding under the community attraction and tourism development program, an application must meet the following threshold requirements:

211.8(1) There must be demonstrated local support for the proposed activity.

211.8(2) A need for community attraction and tourism development program funds must exist after other financial resources have been identified for the proposed activity project.

211.8(3) ~~Some portion of the~~ The proposed activity project must primarily involve the creation or renovation of vertical infrastructure with demonstrated substantial regional or statewide economic impact.

211.8(4) The project must provide and pay at least 50 percent of the cost of a standard medical insurance plan for all full-time employees working at the project after the comple-

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tion of the project for which financial assistance was received.

ITEM 11. Amend 261—211.9(78GA,ch1174) as follows:

261—211.9(78GA,ch1174) Application review criteria. Applications meeting the threshold requirements of rule 211.8(78GA,ch1174) will be reviewed by IDED staff and passed on to the vision Iowa board. IDED staff shall provide a review, analysis and evaluation of the applications to the CAT review committee of the vision Iowa board. All eligible applications will be reviewed by the vision Iowa board. The CAT review committee shall evaluate and rank applications based on the following criteria:

211.9(1) Feasibility (0-25 points). The feasibility of the existing or proposed facility to remain a viable enterprise. ~~(0-25 points). The applicant's comprehensive business plan and operational plan will be reviewed as part of this criterion.~~ Rating factors for this criterion include, but are not limited to, the following: *analysis of the comprehensive business plan which shall include a description of initial capitalization, sources of funding, project budget, detailed financial projections for five years, marketing analysis, marketing plan, management team, and operational plan that provides detailed information about how the proposed attraction will be operated and maintained including a time line for implementing the project.* In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

211.9(2) Economic impact (0-25 points). Number of jobs created and other ~~measure~~ *measures* of economic impact including long-term tax generation, *but excluding the use of economic multipliers.* The evaluation of the economic impact of a proposed ~~activity~~ *project* shall also include a review of the wages, and benefits, (including health benefits) *associated with the jobs to be created, safety, and other attributes of the activity project that would improve the quality of attraction and tourism employment in the community.* Additionally, the economic impact of ~~an activity may the project~~ *shall also be reviewed based on the degree to which the activity project enhances the quality of life in a community and; increases the recreational and cultural attraction and tourism opportunities; contributes to the community's efforts to retain and attract a skilled workforce; and creatively uses existing resources in the community.* In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

211.9(3) Leveraged activity (0-10 points). The degree to which the facility *or project* will stimulate the development of other ~~community attraction and tourism activities~~ *recreational and cultural attractions or tourism opportunities and enhance economic growth and job opportunities.* ~~(0-25 points).~~ In order to be eligible for funding, proposals must score at least 45 6 points on this rating factor.

211.9(4) Geographic diversity. ~~The extent to which facilities are located in different regions of the state (0-10 points).~~

211.9(5) 211.9(4) Local match Matching funds (0-25 points). The proportion of ~~local~~ *nonstate* match to be contributed to the project, and the extent of public and private participation ~~(0-15 points).~~ *Moneys expended toward implementation of the project after May 9, 2000, may be considered to be a local match. Moneys raised at any time but not yet spent may also be considered to be a local match.*

211.9(5) Planning principles (0-10 points). *The extent to which the project has taken the following planning principles into consideration:*

a. *Efficient and effective use of land resources and existing infrastructure by encouraging development in areas with*

existing infrastructure or capacity to avoid costly duplication of services and costly use of land.

b. *Provision for a variety of transportation choices, including pedestrian traffic.*

c. *Maintenance of unique sense of place by respecting and enhancing local cultural, historical and natural environmental features.*

d. *Conservation of open space and farmland and preservation of critical environmental areas.*

e. *Promotion of the safety, livability, and revitalization of existing urban and rural communities.*

211.9(6) Technology and values (0-5 points). *Whether the project has taken the following into consideration:*

a. *Extent to which the project encourages technologies that allow regional or statewide access for long-distance learning and Internet access to facility resources.*

b. *Extent to which the project enhances education, wellness (health), and breadth of the project to attract Iowans of all ages.*

c. *Extent to which facilities are nonsmoking.*

d. *Extent to which facilities enhance or promote fine arts. For purposes of this paragraph, "fine arts" means "fine arts" as defined in Iowa Code section 304A.8(2) and also includes landscaping.*

A minimum score of 65 points is needed for a project to be recommended for funding.

ITEM 12. Amend rule 261—211.10(78GA,ch1174) as follows:

261—211.10(78GA,ch1174) Application procedure. Subject to availability of funds, applications are reviewed ~~and rated~~ by IDED staff on an ongoing basis *and reviewed at least quarterly by the board.* Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. ~~The IDED staff may refer applications to the project development component, subject to the availability of funds.~~ *Recommendations A review, analysis and evaluation from the IDED staff will be submitted to the director of the department the CAT review committee of the board who will then make a final recommendation to the complete board for final approval, denial or deferral. The vision Iowa board has the option to fund a component of a proposed project if the entire project does not qualify for funding.*

211.10(1) No change.

211.10(2) IDED may provide technical assistance to applicants as necessary. IDED staff *and board members* may conduct on-site evaluations of proposed ~~activities~~ *projects.*

211.10(3) *Applications shall include, at a minimum, the information detailed in rule 211.9(78GA,ch1174), application review criteria. A comprehensive business plan must accompany the application and shall include at least the following information: initial capitalization including a description of sources of funding, project budget, financial projections, marketing analysis, marketing plan, management team, and the operational plan including a time line for implementing the activity. Additionally, applicants shall also provide the following information: the number of jobs to be created, and the wages and benefits associated with those jobs; direct measures of economic impact including long-term tax generation, but excluding the use of economic multipliers; a description of the current attraction and tourism employment opportunities in the community including information about wages, benefits and safety; and a description of how the activity will enhance the quality of life in a*

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~~community and contribute to the community's efforts to retain and attract a skilled workforce.~~

ARC 0270B

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Adopted and Filed

ITEM 13. Amend subrule 211.11(1) as follows:

211.11(1) Administration of awards.

a. A contract shall be executed between the recipient and ~~IDED the vision iowa board~~. These rules and applicable state laws and regulations shall be part of the contract. *The board reserves the right to negotiate wage rates as well as other terms and conditions of the contract.*

b. The recipient must execute and return the contract to ~~IDED the vision iowa board~~ within 45 days of transmittal of the final contract from ~~IDED the vision iowa board~~. Failure to do so may be cause for ~~IDED the vision iowa board~~ to terminate the award.

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

d. Awards may be conditioned upon commitment of other sources of funds necessary to complete the ~~activity project~~.

e. Awards may be conditioned upon IDEED receipt and board approval of an implementation plan for the funded ~~activity project~~.

ITEM 14. Amend subrule 211.11(5) as follows:

211.11(5) Amendments to contracts. Any substantive

change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alteration of the funded ~~activities project~~ that change the scope, location, objectives or scale of the approved ~~activity project~~. Amendments must be requested in writing by the recipient and are not considered valid until *approved by the vision iowa board and approved confirmed* in writing by IDEED following the procedure specified in the contract between the recipient and IDEED.

ITEM 15. Amend subrule 211.11(8) as follows:

211.11(8) Remedies for noncompliance. At any time before contract closeout, ~~IDED the board~~ may, for cause, find that a recipient is not in compliance with the requirements of this program. At ~~IDED's the board's~~ discretion, remedies for noncompliance may include penalties up to and including the return of program funds to ~~IDED the board~~. Reasons for a finding of noncompliance include but are not limited to the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded ~~activities projects~~ in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved ~~activity project~~ in a timely manner.

ITEM 16. Amend 261—Chapter 211, implementation clause, as follows:

These rules are intended to implement ~~1999 Iowa Acts, House File 772, section 3, subsection 2, and sections 23 and 24 2000 Iowa Acts, chapter 1174.~~

[Filed 10/23/00, effective 12/20/00]

[Published 11/15/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts new Chapter 212, "Vision Iowa Program," and Chapter 213, "Vision Iowa Board: Uniform Waiver and Variance Rules," Iowa Administrative Code.

Chapter 212, "Vision Iowa Program," establishes program guidelines, describes application procedures, outlines review criteria, and provides information on program administration. Chapter 213, "Vision Iowa Board: Uniform Waiver and Variance Rules," describes the procedures for applying for, issuing or denying waivers and variances from Vision Iowa Board rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 6, 2000, as **ARC 0118B**.

Public hearings to receive comments about the new chapters were held on September 27, 2000, and September 29, 2000. Both hearings were well attended. Individuals participated in the public hearings at IDEED and through 36 ICN sites, 16 remote sites on September 27 and 20 remote sites on September 29.

Input from the public can be characterized as falling into three general categories: (1) comments relating to legislative requirements outlined in 2000 Iowa Acts, chapter 1174, (2) comments about the application process, and (3) requests for specific revisions to the rules. A more detailed summary of the comments received is available on the Vision Iowa Board's Web site at www.visioniowa.org.

The key policy issues emerging from the public hearings were as follows:

(1) Public art. A request was made to set aside up to 1 percent of Vision Iowa funds to promote fine arts in projects receiving Vision Iowa assistance.

(2) Wage rate. The Vision Iowa Board was asked to reconsider its decision not to include a wage requirement for jobs associated with Vision Iowa projects.

(3) Local match, specifically, what constitutes eligible local match. Questions were raised about how far back in time an applicant will be permitted to go to count expenditures to meet the local match requirement. For example, commenters asked whether the value of land can be considered match if land has already been purchased and whether the value of the completed a portion of a phased project can be treated as match.

(4) Application process. Several participants requested that the application form be simplified and streamlined. Requests were received to establish an "Intent to Apply" process. The Intent to Apply concept could provide the Vision Iowa Board with notice of anticipated applications and the likely time line for submittal. An "Intent to Award" process was also suggested. This process was described as an opportunity to provide the public with one last time period (e.g., 10 to 14 days) to comment on the award before contracts are executed.

In addition to these four main policy issues, several technical corrections were requested. The corrections were suggested in order to avoid duplication within the rules and to provide consistency with the Vision Iowa legislation.

The Vision Iowa Board met on October 11, 2000, to review the comments from the public hearing. A special meet-

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ing of the Board was also held on October 20, 2000, to clarify the local match requirements and to discuss whether to include a wage threshold. Each of the above policy issues and technical corrections was discussed. As a result of the comments received, the following revisions were made to the rules:

- Rule 212.1(78GA,ch1174) was amended to include the word "entertainment" to be consistent with governing legislation. The last sentence in the rule now reads as follows: "The vision Iowa board will support projects that build on Iowa's unique assets and values and expand the recreational, cultural, educational, and entertainment opportunities in the state."

- In rule 212.2(78GA,ch1174), the definition of "attraction" was revised to include the word "educational" and now reads as follows: "'Attraction' means a permanently located recreational, cultural, educational or entertainment activity that is available to the general public."

- A sentence was added in the introductory paragraph of rule 212.8(78GA,ch1174) to clarify that all applications will be reviewed by the Vision Iowa Board.

- Rule 212.8(78GA,ch1174) containing application review criteria was revised to incorporate application requirements previously located in proposed subrules 212.9(4) and 212.9(5). A sentence was added to subrule 212.8(1) regarding the feasibility criterion to clarify that the applicant's comprehensive business plan and operational plan will be reviewed to assess project feasibility. Details about the content of the business plan, specifically, those concerning sources of funding and financial projections including revenues and expenses for five years, that were described in proposed subrules 212.9(4) and 212.9(5) are now included under this criterion. An expanded description of the contents of the operational plan has been relocated from proposed subrule 212.9(4) to subrule 212.8(1). The revised subrule states that an operational plan "shall provide detailed information about how the proposed attraction will be operated and maintained including a time line for implementing the project."

- Subrule 212.8(2) regarding economic impact states that an application must include a description of its long-term tax generation. This measurement excludes the use of economic multipliers. This exclusion was referenced in proposed subrule 212.9(5), but not subrule 212.8(2). This omission has been corrected. The restriction on the use of economic multipliers is in revised subrule 212.8(2). Also added to this subrule is a phrase to clarify that the application must include a review of the wages and benefits associated with the jobs to be created.

- The following sentences were added to subrule 212.8(4), pertaining to matching funds, to resolve the issue of how far back an applicant would be permitted to go to count expenditures as matching funds: "Moneys expended toward implementation of the project after May 9, 2000, may be considered to be a local match. Moneys raised at any time but not yet spent may also be considered to be a local match." The Vision Iowa Board selected May 9, 2000, as the cutoff date because this was the date 2000 Iowa Acts, chapter 1174, was signed by the governor. It was the consensus of the Board that, on or after this date, potential applicants may have reasonably initiated steps to facilitate project development.

- In subrule 212.8(5) pertaining to planning principles, the phrase "and enhancing" was added to paragraph "c." The paragraph now reads as follows:

"c. Maintenance of unique sense of place by respecting and enhancing local cultural, historical and natural environmental features."

- Subrule 212.8(6) establishes review factors for the technology and values criteria. The phrase "regional or statewide" was to paragraph "a." The paragraph now reads:

"a. Extent to which the project encourages technologies that allow for regional or statewide access for long-distance learning and Internet access to facility resources."

The proposed language required access to such technologies so "all Iowa communities may benefit from the development." This phrase was not adopted as part of paragraph "a." This change was in response to a comment that providing access to "all Iowa communities" was too broad a standard. There was also a request to allow access to technologies on a regional basis. Adopted paragraph "a" permits an applicant to demonstrate either statewide or regional access to technologies that encourage long-distance learning and use of the Internet.

Also in subrule 212.8(6), a new paragraph "d" was added that takes into account the extent to which the facilities enhance or promote fine arts. For purposes of this paragraph, "fine arts" means "fine arts" as defined in Iowa Code section 304A.8(2) and also includes landscaping. Rather than set aside at least 1 percent of Vision Iowa funds for projects that promote public art, as suggested during the public hearing process, the Vision Iowa Board voted to include this item as a review criterion under this subrule.

- Proposed subrules 212.9(4) and 212.9(5) were not adopted. However, new subrule 212.9(4) was adopted stating that applications must contain information detailed in rule 212.8(78GA,ch1174).

- In rule 212.10(78GA,ch1174) regarding administration of awards, the following sentence was added to subrule 212.10(1): "The board reserves the right to negotiate wage rates as well as other terms and conditions of the contract."

The Vision Iowa Board also decided to follow the suggestions received which requested that applicants submit a Notice of Intent to Apply and that the Board issue Notices of Intent to Award. Applicants will be asked, but are not required, to submit a Notice of Intent to Apply, to alert the Board to pending applications and the anticipated submittal date. A Notice of Intent to Award will be released by the Vision Iowa Board after the selection process to allow time for public comment.

The IDED Board adopted these rules on October 19, 2000.

These rules will become effective on December 20, 2000.

These rules are intended to implement 2000 Iowa Acts, chapter 1174.

The following new chapters are adopted.

CHAPTER 212 VISION IOWA PROGRAM

261—212.1(78GA,ch1174) Purpose. The vision Iowa board is charged by the Iowa legislature and the governor with establishing, overseeing and providing approval of the administration of the vision Iowa program and the community attraction and tourism program of the state of Iowa. The board will encourage and support creative projects that enhance the lives of Iowans throughout the state, will encourage and support visionary thinking in cities and towns and counties of all sizes and in all areas, and will leverage state money as heavily as possible to attract funds for these projects from other sources. The vision Iowa board will support projects that build on Iowa's unique assets and values and expand the

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recreational, cultural, educational, and entertainment opportunities in the state.

261—212.2(78GA,ch1174) Definitions. When used in this chapter, the following definitions apply unless the context otherwise requires:

“Attraction” means a permanently located recreational, cultural, educational or entertainment activity that is available to the general public.

“Board” means the vision Iowa board as established in 2000 Iowa Acts, chapter 1174.

“Department” or “IDED” means the Iowa department of economic development.

“Economic development organization” means an entity organized to position a community to take advantage of economic development opportunities and strengthen a community’s competitiveness as a place to work and live.

“Float loan” or “interim financing” means a short-term loan (maximum of 30 months) from obligated but unexpended funds.

“Fund” means the vision Iowa fund established pursuant to 2000 Iowa Acts, chapter 1174, section 16(1).

“Loan” means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the award. A deferred loan is one for which the payment of principal, interest, or both, is not required for some specified period. A forgivable loan is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

“Local support” means endorsement by local individuals and organizations that have a substantial interest in a project.

“Major tourism facility” means a project of at least \$20 million in scope that has substantial regional or statewide economic impact.

“Nonfinancial support” may include, but is not limited to, the value of labor and services which may not total more than 25 percent of a local match. Real property and personal property donated for purposes of the project are considered financial support at their fair market value.

“Political subdivision” means a city or county, or an entity established pursuant to Iowa Code chapter 28E.

“Private organization” means a corporation, partnership, or other organization that is operated for profit.

“Program” means the vision Iowa program established in 2000 Iowa Acts, chapter 1174.

“Public organization” means a not-for-profit economic development organization or other not-for-profit organization including those that sponsor or support community or tourism attractions and activities.

“Recipient” means the entity under contract with the vision Iowa board to receive vision Iowa funds and undertake the funded project.

“School district” means a school corporation organized under Iowa Code chapter 274.

“Subrecipient” means a private organization or other entity operating under an agreement or contract with a recipient to carry out a funded vision Iowa project.

“Vertical infrastructure” means land acquisition and construction, major renovation and major repairs of buildings, all appurtenant structures, utilities, site development, and recreational trails. “Vertical infrastructure” does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

“Vision Iowa program review committee” means the committee established by 2000 Iowa Acts, chapter 1174, and identified as the following members of the vision Iowa

board: the four members of the general public, the mayor of a city with a population of 20,000 or more, the director of the Iowa department of economic development, the treasurer of state or designee, and the auditor of state or designee. The chair and vice chair of the vision Iowa board may serve as ex officio members of any subcommittee of the board.

261—212.3(78GA,ch1174) Allocation of funds. Except as otherwise noted in 2000 Iowa Acts, chapter 1174, all vision Iowa funds shall be awarded for projects as specified in Iowa Code section 12.72.

261—212.4(78GA,ch1174) Eligible applicants.

212.4(1) Eligible applicants for vision Iowa funds include political subdivisions, public organizations, and school districts in cooperation with a city or county.

212.4(2) Any eligible applicant may apply directly or on behalf of a subrecipient.

212.4(3) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

261—212.5(78GA,ch1174) Eligible projects and forms of assistance.

212.5(1) Eligible projects include those which are related to a major tourism facility which would position a community to take advantage of economic development opportunities in tourism and strengthen a community’s competitiveness as a place to work and live. Eligible projects include building construction or reconstruction, rehabilitation, conversion, acquisition, demolition for the purpose of clearing lots for development, site improvement, equipment purchases, and other projects as may be deemed appropriate by the vision Iowa board.

212.5(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, interim financing, interest subsidies, deferred payment loans, forgivable loans, loan guarantees, float loans, or other forms of assistance as may be approved by the vision Iowa board.

212.5(3) Financial assistance for an eligible project may be provided in the form of a multiyear award to be paid in increments over a period of years, subject to the availability of funds.

212.5(4) IDED, with the approval of the chair and vice chair of the vision Iowa board, reserves the right to make technical corrections which are within the intent of the terms of a board-approved award.

212.5(5) Applicants must report other sources of funding or pending funding, public or private, for the project including the local recreation infrastructure grants program administered by the department of natural resources and the Iowa historic site preservation program administered by the department of cultural affairs. IDED may consult with appropriate staff from the department of cultural affairs and the department of natural resources to coordinate the review of applications under the programs.

261—212.6(78GA,ch1174) Ineligible projects. The board shall not approve an application for assistance under this program under any of the following circumstances:

1. To refinance an existing loan.
2. To fund a project that has previously received financial assistance under the vision Iowa program, unless the applicant demonstrates that the assistance would be used for a significant expansion of the project.
3. A project in which vision Iowa funding would constitute more than 50 percent of the total project costs. A portion

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of the resources provided by the applicant for project costs may be in the form of nonfinancial support.

261—212.7(78GA,ch1174) Threshold application requirements. To be considered for funding under the vision Iowa program, an application shall meet the following threshold requirements:

212.7(1) There must be demonstrated local support for the proposed project.

212.7(2) A need for vision Iowa program funds must exist after other financial resources have been identified for the proposed project.

212.7(3) The proposed project must primarily involve the creation or renovation of vertical infrastructure with demonstrated substantial regional or statewide economic impact.

212.7(4) The project must provide and pay at least 50 percent of the cost of a standard medical insurance plan for all full-time employees working at the project after the completion of the project for which financial assistance was received.

261—212.8(78GA,ch1174) Application review criteria. Applications meeting the threshold requirements of rule 212.7(78GA,ch1174) will be reviewed by IDED and passed on to the vision Iowa board. IDED staff shall provide a review, analysis and evaluation of applications to the vision Iowa program review committee of the vision Iowa board. All eligible applications will be reviewed by the board. The vision Iowa program review committee shall evaluate and rank applications based on the following criteria:

212.8(1) Feasibility (0-25 points). The feasibility of the existing or proposed facility to remain a viable enterprise. The applicant's comprehensive business plan and operational plan will be reviewed as part of this criterion. Rating factors for this criterion include, but are not limited to, the following: analysis of the comprehensive business plan which shall include a description of initial capitalization, sources of funding, project budget, detailed financial projections (including revenues and expenses) for five years, marketing analysis, marketing plan, and management team; and analysis of the operational plan which shall provide detailed information about how the proposed attraction will be operated and maintained including a time line for implementing the project. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

212.8(2) Economic impact (0-25 points). Number of jobs created and other measures of economic impact including long-term tax generation, but excluding the use of economic multipliers. The evaluation of the economic impact of a proposed project shall also include a review of the wages and benefits (including health benefits) associated with the jobs to be created, safety, and other attributes of the project that would improve the quality of employment in the community. Additionally, the economic impact of a project shall be reviewed based on the degree to which the project enhances the quality of life in a region, increases diversity of projects available, contributes to the community's efforts to retain and attract a skilled workforce, and creatively uses existing resources in the community. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

212.8(3) Leveraged activity (0-10 points). The degree to which the facility or project will stimulate the development of other recreational and cultural attractions or tourism opportunities and enhance economic growth and job opportunities. The degree to which the facility or project is strategically aligned with other existing regional or statewide cultur-

al, recreational, entertainment, or educational activities in the community. In order to be eligible for funding, proposals must score at least 6 points on this rating factor.

212.8(4) Matching funds (0-25 points). The proportion of local match to be contributed to the project, and the extent of public and private participation. Moneys expended toward implementation of the project after May 9, 2000, may be considered to be a local match. Moneys raised at any time but not yet spent may also be considered to be a local match.

212.8(5) Planning principles (0-10 points). The extent to which the project has taken the following planning principles into consideration:

a. Efficient and effective use of land resources and existing infrastructure by encouraging development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land.

b. Provision for a variety of transportation choices, including pedestrian traffic.

c. Maintenance of unique sense of place by respecting and enhancing local cultural, historical and natural environmental features.

d. Conservation of open space and farmland and preservation of critical environmental areas.

e. Promotion of the safety, livability, and revitalization of existing urban and rural communities.

212.8(6) Technology and values (0-5 points). Whether the project has taken the following into consideration:

a. Extent to which the project encourages technologies that allow regional or statewide access for long-distance learning and Internet access to facility resources.

b. Extent to which the project enhances education, wellness (health), and breadth of the project to attract Iowans of all ages.

c. Extent to which facilities are nonsmoking.

d. Extent to which facilities enhance or promote fine arts. For purposes of this paragraph, "fine arts" means "fine arts" as defined in Iowa Code section 304A.8(2) and also includes landscaping.

A minimum score of 65 points is required for a project to be recommended for funding.

261—212.9(78GA,ch1174) Application procedure.

212.9(1) Subject to availability of funds, applications will be reviewed by IDED staff on an ongoing basis and reviewed at least quarterly by the board. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. A review, analysis and evaluation from the IDED staff will be submitted to the vision Iowa program review committee of the board who will then make a final recommendation to the complete board for final approval, denial or deferral. The vision Iowa board has the option to fund a component of a proposed project if the entire project does not qualify for funding.

212.9(2) Application forms for vision Iowa are available upon request from IDED, 200 East Grand Avenue, Des Moines, Iowa 50309.

212.9(3) IDED may provide technical assistance as necessary to applicants. IDED staff may conduct on-site evaluations of proposed projects.

212.9(4) Applications shall include, at a minimum, the information detailed in rule 212.8(78GA,ch1174).

261—212.10(78GA,ch1174) Administration of awards.

212.10(1) A contract shall be executed between the recipient and the vision Iowa board. These rules and applicable

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state laws and regulations shall be part of the contract. The board reserves the right to negotiate wage rates as well as other terms and conditions of the contract.

212.10(2) The recipient must execute and return the contract to the vision Iowa board within 45 days of transmittal of the final contract from the vision Iowa board. Failure to do so may be cause for the vision Iowa board to terminate the award.

212.10(3) Certain projects may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

212.10(4) Awards may be conditioned upon commitment of other sources of funds necessary to complete the project.

212.10(5) Amendments to contracts. Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alteration of the funded projects that change the scope, location, objectives or scale of the approved project. Amendments must be requested in writing by the recipient and are not considered valid until approved by the vision Iowa board and confirmed in writing by IDED following the procedure specified in the contract between the recipient and the vision Iowa board.

These rules are intended to implement 2000 Iowa Acts, chapter 1174.

CHAPTER 213

VISION IOWA BOARD: UNIFORM WAIVER
AND VARIANCE RULES

261—213.1(17A,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the board. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the board.

213.1(1) Definitions.

“Board” or “vision Iowa board” means the vision Iowa board established by 2000 Iowa Acts, chapter 1174.

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

“Waiver or variance” means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

213.1(2) Authority.

a. A waiver or variance from rules adopted by the board may be granted in accordance with this chapter if (1) the board has 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.

261—213.2(17A,ExecOrd11) 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.

213.2(1) Criteria for waiver or variance. The board may, in response to a completed petition or on its 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 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 or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

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

d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

In determining whether waiver or variance 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 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, grantees and constituents.

213.2(2) 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.

261—213.3(17A,ExecOrd11) Requester’s responsibilities in filing a waiver or variance petition.

213.3(1) Application. All petitions for waiver or variance must be submitted in writing to the Vision Iowa Board, 200 East Grand Avenue, Des Moines, Iowa 50309-1819. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

213.3(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 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. 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 board and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the last five years.

f. Any information known to the requester regarding the board’s treatment of similar cases.

g. The name, address, and telephone number of any public agency or political subdivision which also regulates the

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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 board with information relevant to the waiver or variance.

213.3(3) Burden of persuasion. When a petition is filed for a waiver or variance from a board rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant the petitioner a waiver or variance.

261—213.4(17A,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 board attesting that notice has been provided.

261—213.5(17A,ExecOrd11) Board responsibilities regarding petition for waiver or variance.

213.5(1) 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 designee, a committee of the board, or a quorum of the board.

213.5(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of rule filed within a contested case; (b) when the board so provides by rule or order; or (c) when a statute so requires.

213.5(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.

213.5(4) 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.

213.5(5) 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.

213.5(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.

213.5(7) Service of order. Within seven days of its issuance, any order issued under this chapter shall be trans-

mitted 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.

261—213.6(17A,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 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 Vision Iowa Board, 200 East Grand Avenue, Des Moines, Iowa 50309-1819.

261—213.7(17A,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 board may at any time cancel a waiver or variance 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 or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

261—213.8(17A,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.

261—213.9(17A,ExecOrd11) 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.

261—213.10(17A,ExecOrd 11) 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.

Exhibit A
Sample Petition (Request) for Waiver/Variance

BEFORE THE VISION IOWA BOARD

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 board rule shall include the following information in the petition for waiver or variance where applicable and known:

- a. Provide the petitioner's (person asking for a waiver or variance) name, address, and telephone number.
- b. Describe and cite the specific rule from which a waiver or variance is requested.
- c. Describe the specific waiver or variance requested; 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 answer 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

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waiver or variance will not prejudice the substantial legal rights of any person; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

e. Provide history of prior contacts between the board and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the past five years.

f. Provide information known to the petitioner regarding the board'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.

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 board with information relevant to the waiver or variance.

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 or variance:

1. The petitioner has the burden of proving to the board, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; and (b) waiver or variance on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The board may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the Vision Iowa Board, 200 East Grand Avenue, Des Moines, Iowa 50309-1819. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Executive Order Number 11, Iowa Code chapter 17A, and 2000 Iowa Acts, chapter 1174.

[Filed 10/23/00, effective 12/20/00]

[Published 11/15/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.

ARC 0292B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The purpose of this amendment is to clarify the requirements for a one-year conditional license. This amendment removes any potential confusion with regard to the requirements necessary for the issuance of the conditional license under this option.

The Board has documented the need for this amendment through its practical work with applicants seeking Iowa licensure both from out-of-state institutions and with recent graduates of Iowa colleges and universities offering approved practitioner preparation programs.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 28, 2000, as ARC 9927A. A public hearing on the proposed amendment was held on July 27, 2000, and no one attended this hearing. No written comments were received.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective January 1, 2001. The following amendment is adopted.

Amend rule 282—14.15 (272), introductory paragraph, as follows:

282—14.15(272) Requirements for a one-year conditional license. A conditional license valid for one year may be issued to an individual who has completed a practitioner preparation program under the following conditions:

[Filed 10/27/00, effective 1/1/01]

[Published 11/15/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.

ARC 0296B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

This amendment eliminates the requirement for an individual to teach one hour per day for 160 days if the individual does not meet the teaching experience required for an endorsement. The amendment specifies the prerequisite teaching or administrative experience necessary for the issuance of a conditional license for the principal's or superintendent's endorsement.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 28, 2000, as ARC 9929A. A

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public hearing on the amendment was held on July 27, 2000. No one attended the meeting, and no written comments were received.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective January 1, 2001. The following amendment is adopted.

Amend rule 282—14.16(272) as follows:

282—14.16(272) Requirements for a two-year conditional license. A conditional license valid for two years may be issued to an individual under the following conditions:

If a person is the holder of a valid license and is the holder of one or more endorsements, but is seeking to obtain some other endorsement, a two-year conditional license may be issued if requested by an employer and the individual seeking this endorsement has completed at least two-thirds of the content requirements or one-half of the content requirements in a state-designated shortage area, leading to completion of all requirements for that endorsement.

~~If teaching experience is a requirement of the endorsement sought, a maximum of one year of teaching experience may be earned within the term of the conditional license by teaching a minimum of one hour per day for a minimum of 160 days per year in a classroom for which the applicant holds the proper endorsement. For the principal's endorsement, three years of teaching experience must have been met prior to applying for the conditional license. For the superintendent's endorsement, all experience requirements three years of teaching experience and three years as a building principal or other PK-12 districtwide or intermediate agency experience are acceptable for becoming a superintendent, and must have been met prior to applying for the conditional license.~~

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

This license is not renewable.

[Filed 10/27/00, effective 1/1/01]
[Published 11/15/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.

ARC 0293B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

These amendments revise the elementary and secondary school counselor competencies in subrules 14.20(5) and 14.20(6).

These amendments eliminate a course-based system for counselor endorsements and replace it with a competency-based system. These amendments also permit a person with a bachelor's degree from an accredited college to enter the program, and they mandate a practicum of a minimum of 500 contact hours.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 28, 2000, as **ARC 9920A**. A public hearing on the proposed amendments was held on July 27, 2000. Two persons attended the meeting, and seven written comments were received, all supporting the proposed changes. These amendments are identical to those published under Notice of Intended Action. The effective date has been changed to January 1, 2001, on the basis of suggestions by representatives from institutions of higher education indicating that they are ready to implement the changes at that time.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective on January 1, 2001.

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 [14.20(5), 14.20(6)] is being omitted. These amendments are identical to those published under Notice as **ARC 9920A**, IAB 6/28/00.

[Filed 10/27/00, effective 1/1/01]
[Published 11/15/00]

[For replacement pages for IAC, see IAC Supplement 11/15/00.]

ARC 0294B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The amendment reinstates the general science endorsement previously issued by the Board of Educational Examiners which was rescinded on July 1, 2000.

This amendment provides greater opportunities for applicants to receive a science endorsement and the general science endorsement.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 28, 2000, as **ARC 9928A**. A public hearing on the proposed amendment was held on July 27, 2000, and no one attended the meeting. No written comments were received.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective January 1, 2001. The following amendment is adopted.

Amend paragraph **14.21(17)"e"** as follows:

e. General science. 7-12. ~~Rescinded IAB 4/7/99, effective 7/1/00. Completion of 24 semester hours in science to in-~~

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clude coursework in biological science, chemistry, and physics.

[Filed 10/27/00, effective 1/1/01]
[Published 11/15/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.

ARC 0295B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

These amendments modify the two-year administrator exchange license. One amendment changes the terminology "home state" to "preparation state." This change eliminates potential confusion as the current terminology could be easily confused as the state of residence rather than the state in which the preparation was completed. The other amendment changes the term of teaching experience required for this exchange license.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 28, 2000, as **ARC 9921A**. A public hearing on the proposed amendments was held on July 27, 2000. No one attended the meeting, and no written comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective January 1, 2001.

The following amendments are adopted.

Amend rule 282—14.25(272) as follows:

282—14.25(272) Two-year administrator exchange license.

14.25(1) A two-year nonrenewable exchange license may be issued to an individual under the following conditions. The individual:

a. Has completed a state-approved teacher education program in a college or university approved by the state board of education or the state board of educational examiners in the individual's ~~home state~~ *preparation state*.

b. Has completed a state-approved administrator education program in a college or university approved by the state board of education or the state board of educational examiners in the individual's ~~home state~~ *preparation state*.

c. Holds a valid regular administrative certificate or license.

d. Is not subject to any pending disciplinary proceedings in any state.

e. Meets the experience requirements for the administrative endorsements. Verified successful completion of ~~five~~ *three* years of full-time teaching and administrative experience in other states, on a valid license, shall be considered equivalent experience necessary for the principal endorsement. Verified successful completion of ~~eight~~ *six* years of full-time teaching and administrative experience in other

states, on a valid license, shall be considered equivalent experience for the superintendent endorsement provided that *at least three years were as a teacher and at least three years were as a building principal or other PK-12 districtwide or area education agency administrator.*

14.25(2) Each exchange license shall be limited to the area(s) and level(s) of administration as determined by an analysis of the application, the transcripts, and the license or certificate held in the state in which the basic preparation for the administrative licensure was completed.

14.25(3) Each individual receiving the two-year exchange license will have to complete any identified licensure deficiencies in order to be eligible for a regular educational and administrative license in Iowa.

[Filed 10/27/00, effective 1/1/01]
[Published 11/15/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.

ARC 0252B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 48, "Certified School to Career Program Approval," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 23, 2000, as **ARC 0085B**. No public comment was received on these amendments. These amendments are identical to those published under Notice of Intended Action.

The amendments implement a change in the program approval process for a new program authorized by 2000 Iowa Acts, chapter 1013. The amendments increase flexibility for students seeking to enter the program by allowing program approval at the local level instead of the state level. Certified School to Career Program Approval is designed to provide an articulated sequential program of study, including secondary and postsecondary components, resulting in a diploma, associate degree, or other credential and utilizing paid work site internships in partnership with an employer to prepare participants for specific employment. Additionally, the program assists participants in preparing for a career field and provides postsecondary education financing and employment opportunities in Iowa.

These amendments shall become effective December 20, 2000.

These amendments are intended to implement 2000 Iowa Acts, chapter 1013.

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 48, title, 48.2 to 48.4] is being omitted. These amendments are identical to those published under Notice as **ARC 0085B**, IAB 8/23/00.

[Filed 10/20/00, effective 12/20/00]
[Published 11/15/00]

[For replacement pages for IAC, see IAC Supplement 11/15/00.]

ARC 0253B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 97, "Supplementary Weighting," Iowa Administrative Code.

These amendments establish the procedures for school districts to generate funding for students in at-risk programs and alternative school programs. 2000 Iowa Acts, chapter 1198, authorized a supplementary weighting plan for students in at-risk and alternative school programs based on enrollment and poverty factors.

Notice of Intended Action was published in the August 23, 2000, Iowa Administrative Bulletin as **ARC 0080B**. The adopted amendments are identical to those published under Notice.

These amendments were approved during the October 19, 2000, meeting of the State Board of Education.

These amendments will become effective on December 20, 2000.

These amendments are intended to implement Iowa Code section 257.11 as amended by 2000 Iowa Acts, chapter 1198.

The following amendments are adopted.

ITEM 1. Amend rule **281—97.1(257)** by adopting the following **new** definition in alphabetical order:

"Supplementary weighting plan for at-risk students" shall mean a plan as defined in this chapter to add a weighting for each resident student enrolled in the district and a weighting for each resident student enrolled in grades one through six, as reported by the school district on the basic educational data survey for the base year, who is eligible for free and reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. Sections 1751-1785, to generate funding to be used to develop or maintain at-risk programs, which may include alternative school programs.

ITEM 2. Amend rule **281—97.2(257)**, catchwords, as follows:

281—97.2(257) Supplementary weighting plan.

ITEM 3. Amend subrule 97.2(4) as follows:

97.2(4) Attend class taught by a teacher jointly employed with another school district. All of the following conditions must be met for any student attending class taught by a teacher jointly employed to be eligible for supplementary weighting under paragraph 97.2(1)"c." The school districts jointly employing the teacher must have:

- a. A joint teacher evaluation process and instruments.
- b. A joint educational excellence phase III plan.
- c. ~~A joint seniority list.~~
- d. ~~One single, unified master contract which illustrates joint collective bargaining.~~
- e. One single salary schedule.

Except for joint employment contracts which meet the requirements of paragraphs "a" to "e" "c" above, no two or more school districts shall list each other for the same classes and grade levels.

ITEM 4. Amend subrule 97.2(5), introductory paragraph, as follows:

97.2(5) Attend class in a community college. All of the following conditions must be met for any student attending

~~class in a community college-offered class to be eligible for supplementary weighting under paragraph 97.2(1)"d."~~

ITEM 5. Amend subrule **97.2(6)** by adopting the following **new** paragraph "1":

1. Students enrolled in an at-risk program or alternative school program.

ITEM 6. Renumber rule **281—97.3(257)** as subrule **97.2(8)** and adopt the following **new** rule:

281—97.3(257) Supplementary weighting plan for at-risk students.

97.3(1) Uses of funds. Funding generated by the supplementary weighting plan for at-risk students shall be used to develop or maintain at-risk programs, which may include alternative school programs.

97.3(2) Calculation of funding. Funding for the supplementary weighting plan for at-risk students is calculated as follows:

a. Adding a weighting for each resident student of one hundred fifty-six one-hundred-thousandths, and

b. Adding a weighting of forty-eight ten-thousandths for each resident student enrolled in grades one through six, as reported by the school district on the basic educational data survey for the base year, who is eligible for free and reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. Sections 1751-1785.

97.3(3) Guarantee. Notwithstanding subrule 97.3(2), a school district which received supplementary weighting for an alternative high school program for the budget year beginning July 1, 1999, shall receive an amount of supplementary weighting for the next three budget years as follows:

a. For budget year 2000-2001, the greater of the amount of supplementary weighting determined pursuant to subrule 97.3(2) or 65 percent of the amount received for the budget year 1999-2000.

b. For budget year 2001-2002, the greater of the amount of supplementary weighting determined pursuant to subrule 97.3(2) or 40 percent of the amount received for the budget year 1999-2000.

c. For budget year 2002-2003, and succeeding budget years, the amount of supplementary weighting determined pursuant to subrule 97.3(2).

d. If a school district receives an amount under this subrule which exceeds the amount the district would otherwise have received pursuant to subrule 97.3(2), the department of management shall annually determine the amount of the excess that would have been state aid and the amount that would have been property tax if the school district had generated that amount pursuant to subrule 97.3(2), and shall include the amounts in the state aid payments and property tax levies of school districts.

97.3(4) Recalculation of funding. The department of management shall recalculate the supplementary weighting amount received each year to add the amount of the reduction in funding from one budget year to the next pursuant to subrule 97.3(3) into the statewide total amount generated. In making this recalculation, the department of management shall keep the statewide sum of the amount generated by weighting resident students approximately equal to the statewide sum of the amount generated by weighting resident students enrolled in grades one through six that are eligible for free and reduced price meals.

97.3(5) School-based youth services. For budget years 2000-2001 and 2001-2002, if the amount to be received under subrule 97.3(2) or subrule 97.3(3) by a school district or a

EDUCATION DEPARTMENT[281](cont'd)

consortium of school districts is less than \$50,000 and the school district or consortium received funding for school-based youth services during the budget year 1999-2000, that school district or consortium shall receive a total under this subrule of \$50,000 for each of the budget years beginning July 1, 2000, and beginning July 1, 2001. The department of management shall adjust the supplementary weighting of a school district or the school district acting as the fiscal agent for a consortium eligible under this subrule in a manner to ensure that the district or the consortium receives the total sum of \$50,000 as guaranteed in this subrule. If the consortium elects not to continue a school-based youth service program, the funds shall be distributed equally to the school districts in the consortium.

[Filed 10/20/00, effective 12/20/00]

[Published 11/15/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.

ARC 0277B

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 60, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions," and Chapter 63, "Monitoring, Analytical and Reporting Requirements," Iowa Administrative Code.

The purpose of these amendments is to update references to federal effluent and pretreatment standards and associated analytical methods. References to federal effluent and pretreatment standards found in rules 62.4(455B) and 62.5(455B) are amended to reflect updates to 40 Code of Federal Regulations (CFR). The change to rule 60.2(455B) updates the definition of "Act" to include amendments to the Water Pollution Control Act through July 1, 2000. The change to subrule 63.1(1) updates the reference to the latest federally approved methods for the analysis of wastewater samples.

In accordance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary. Under rule 62.2(455B), the Commission has determined previously that good cause exists for exempting from the notice and public participation requirements of Iowa Code section 17A.4(1) the adoption by reference of certain federal effluent and pretreatment standards. The Commission found that public participation is unnecessary since the Commission must adopt effluent and pretreatment standards at least as stringent as the enumerated promulgated federal standards in order to have continued approval of the Environmental Protection Agency (EPA) of the Department's NPDES program. Iowa Code section 455B.173(3) requires that the effluent and pretreatment standards adopted by the Commission not be more stringent than the enumerated promulgated federal standards. The Commission also found that public participation is unnecessary when updating the reference to approved methods for analysis because these methods are required by EPA to be used to implement federal effluent and pretreatment standards.

The Commission adopted these amendments on October 16, 2000. These amendments will become effective on December 20, 2000.

These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendments are adopted.

ITEM 1. Amend rule **567—60.2(455B)**, definition of "Act," to read as follows:

"Act" means the Federal Water Pollution Control Act as amended through July 1, ~~1999~~ 2000, 33 U.S.C. §1251 et seq.

ITEM 2. Amend rule 567—62.4(455B), introductory paragraph, to read as follows:

567—62.4(455B) Federal effluent and pretreatment standards. The federal standards, 40 Code of Federal Regulations (CFR), revised as of July 1, ~~1999~~ 2000, are applicable to the following categories:

ITEM 3. Amend subrule 62.4(37) to read as follows:

62.4(37) ~~Water supply point source category.~~ Centralized waste treatment point source category. Reserved.

ITEM 4. Amend subrule 62.4(41) to read as follows:

62.4(41) ~~Transportation point source category.~~ Industrial laundries point source category. Reserved.

ITEM 5. Amend subrule 62.4(42) to read as follows:

62.4(42) ~~Fish hatcheries and farms point source category.~~ Reserved. Transportation equipment cleaning point source category. The following is adopted by reference: 40 CFR Part 442.

ITEM 6. Amend subrule 62.4(44) to read as follows:

62.4(44) ~~Autos and other laundries point source category.~~ Reserved. Waste combustors point source category. The following is adopted by reference: 40 CFR Part 444.

ITEM 7. Amend subrule 62.4(45) to read as follows:

62.4(45) ~~Converted paper products point source category.~~ Reserved. Landfills point source category. The following is adopted by reference: 40 CFR Part 445.

ITEM 8. Amend rule 567—62.5(455B) to read as follows:

567—62.5(455B) Federal toxic effluent standards. The following is adopted by reference: 40 CFR Part 129, revised as of July 1, ~~1999~~ 2000.

ITEM 9. Amend subrule **63.1(1)**, paragraph "a," to read as follows:

a. The following is adopted by reference: 40 Code of Federal Regulations (CFR) Part 136, revised as of July 1, ~~1999~~ 2000.

[Filed Without Notice 10/27/00, effective 12/20/00]

[Published 11/15/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.

ARC 0272B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of 2000 Iowa Acts, chapter 1221, section 3, subsection 3, paragraph "b," the Risk Pool Board established by Iowa Code section 426B.5(3)"b" hereby amends Chapter 25, "Disability Services Management," appearing in the Iowa Administrative Code.

The Seventy-eighth General Assembly, in 2000 Iowa Acts, chapter 1221, section 3, as amended by chapter 1232, section 4, provided an appropriation from the Tobacco Settlement Fund to establish a risk pool fund. This fund is established to provide assistance to counties with limited county mental health, mental retardation, and developmental disabilities services fund balances to pay reimbursement increases to certain service providers that have increased the compensation of their service staff in state fiscal year 2001.

Any county wishing to receive assistance from the Tobacco Settlement Fund risk pool must apply to the Risk Pool Board by September 25, 2000. The legislature appropriated \$2 million for the fund for fiscal year 2001. The total amount of Tobacco Settlement Fund risk pool assistance to counties shall be limited to the amount available in the risk pool for a fiscal year. If the total amount of eligible assistance exceeds the amount available in the risk pool, the Risk Pool Board shall prorate among the counties eligible for assistance the amount of assistance or adjust the percentage rate increase allowed to providers. These rules contain provisions for repaying the risk pool funds under specified conditions.

These rules do not provide for waivers in specified situations because the requirements for eligibility for funds and for awarding and repayment of funds are all stated in the statute. These requirements cannot be waived by rule.

These amendments were previously Adopted and Filed Emergency and published in the July 26, 2000, Iowa Administrative Bulletin as **ARC 9993A**. Notice of Intended Action to solicit comments on that submission was published in the July 26, 2000, Iowa Administrative Bulletin as **ARC 9994A**.

The Risk Pool Board adopted these rules October 19, 2000.

These rules are identical to those published under Notice of Intended Action.

These rules are intended to implement 2000 Iowa Acts, chapter 1221, section 3, as amended by chapter 1232, section 4.

These rules shall become effective January 1, 2001, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [25.71 to 25.77] is being omitted. These rules are identical to those published under Notice as **ARC 9994A** and Adopted and Filed Emergency as **ARC 9993A**, IAB 7/26/00.

[Filed 10/23/00, effective 1/1/01]
[Published 11/15/00]

[For replacement pages for IAC, see IAC Supplement 11/15/00.]

ARC 0285B**INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 505.8, 513B.14 and 513C.12, the Insurance Division hereby amends Chapter 5, "Regulation of Insurers—General Provisions," Chapter 71, "Small Group Health Benefit Plans," and Chapter 75, "Iowa Individual Health Benefit Plans," Iowa Administrative Code.

The amendments eliminate reporting requirements by insurance carriers to the health data commission. The amendments also eliminate the lifetime maximum benefit for transplant coverage under the small group and individual guaranteed issue standard health benefit plans.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 20, 2000, as **ARC 0133B**. A public hearing was held on October 13, 2000, at the Insurance Division office. No public comments were received at the hearing. The Division received no written comments. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Division on October 25, 2000.

These amendments will become effective December 20, 2000.

These amendments are intended to implement Iowa Code sections 505.8, 513B.14 and 513C.12.

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 [5.90, 71.14(8), 75.10(5)] is being omitted. These amendments are identical to those published under Notice as **ARC 0133B**, IAB 9/20/00.

[Filed 10/27/00, effective 12/20/00]
[Published 11/15/00]

[For replacement pages for IAC, see IAC Supplement 11/15/00.]

ARC 0282B**REVENUE AND FINANCE
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue and Finance hereby amends Chapter 17, "Exempt Sales," and Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXIII, Number 6, page 521, on September 20, 2000, as **ARC 0140B**.

These amendments concern three exemptions enacted by the 2000 General Assembly. In 2000 Iowa Acts, chapter 1169, the Legislature created an exemption from sales and use tax applicable to livestock ear tags sold by nonprofit organizations if the proceeds from the ear tag sales are used in bovine research programs selected or approved by the selling organization.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

The Legislature also created, retroactively in 2000 Iowa Acts, chapter 1207, an exemption from sales and use tax in favor of goods, wares, merchandise, and taxable services purchased by a nonprofit hospital for use in the fulfillment of written construction contracts. The exemption is applicable only to a limited time period. In connection with that exemption, the Legislature also created a right of refund for taxes paid, and this right of refund is applicable to future as well as past periods.

A third enactment, 2000 Iowa Acts, chapter 1189, expands the exemption from sales tax applicable to Internet access charges. The exemption is expanded to include the service of providing any information made available through a computer server.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective December 20, 2000, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapters 1169 and 1207, and Iowa Code Supplement section 422.45, subsection 56, as amended by 2000 Iowa Acts, chapter 1189, section 29.

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 [17.35, 18.20(5), 18.59] is being omitted. These amendments are identical to those published under Notice as **ARC 0140B**, IAB 9/20/00.

[Filed 10/27/00, effective 12/20/00]
[Published 11/15/00]

[For replacement pages for IAC, see IAC Supplement 11/15/00.]

ARC 0284B**REVENUE AND FINANCE
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue and Finance hereby amends Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXIII, Number 6, page 523, on September 20, 2000, as **ARC 0139B**.

The 2000 Session of the legislature excluded from the definition of a taxable "sale" of tangible personal property any transaction the substance of which is delivered to a purchaser digitally, electronically, or by utilizing cable, radio waves, microwaves, satellites, or fiber optics. The legislation is retroactive to March 15, 1995, and is repealed December 31, 2002. A new rule is created to explain the legislation and certain of its ramifications.

This rule is identical to the one published under Notice of Intended Action.

This rule will become effective December 20, 2000, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This rule is intended to implement Iowa Code Supplement section 422.43 as amended by 2000 Iowa Acts, chapter 1195, section 2.

The following amendment is adopted.

Amend 701—Chapter 18 by adopting the following **new** rule:

701—18.61(422,423) Exclusion from tax for property delivered by certain media. For the period beginning March 15, 1995, and ending December 31, 2002, inclusive, a taxable "sale" of tangible personal property does not occur if the substance of the transaction is delivered to the purchaser digitally, electronically, or by utilizing cable, radio waves, microwaves, satellites, or fiber optics. This exclusion from tax is not applicable to any leasing of tangible personal property, a lease not being a "sale" of tangible personal property for the purposes of Iowa sales and use tax law, Cedar Valley Leasing, Inc. v. Iowa Department of Revenue, 274 N.W.2d 357 (Iowa 1979). The exclusion is also not applicable to property delivered by any medium other than those listed above. Sales of items such as artwork, drawings, photographs, music, electronic greeting cards, "canned" software (see subrule 18.34(1)), entertainment properties (e.g., films, concerts, books, and television and radio programs), and all other digitized products delivered as described above are not taxable, except the exclusion does not repeal by implication the tax on the service of providing pay television. See rule 701—26.56(422). If an order for a product is placed by way of any of the media described above but the product ordered is delivered by conventional, physical means, e.g., the U.S. Postal Service or common carrier, sale of the product is not excluded from tax under this rule.

This rule is intended to implement Iowa Code Supplement section 422.43 as amended by 2000 Iowa Acts, chapter 1195, section 2.

[Filed 10/27/00, effective 12/20/00]
[Published 11/15/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.

ARC 0283B**REVENUE AND FINANCE
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue and Finance hereby amends Chapter 84, "Unfair Cigarette Sales," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXII, Number 23, page 1683, on May 17, 2000, as **ARC 9836A**.

The rules provide a procedure for wholesalers and retailers to prove to the Department that their cost of doing business validates that the price at which they sell cigarettes does not violate the minimum price law; list various costs that may be considered in determining a wholesaler's or retailer's cost of doing business; require that any discounts offered be shown on the invoice to be allowed as a reduction in the cost of doing business; and clarify that any incentives offered by the manufacturer to the consumer do not affect the minimum sales price of cigarettes.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective December 20, 2000, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 421B.

The following amendments are adopted.

ITEM 1. Amend rule 701—84.2(421B), introductory paragraph, as follows:

701—84.2(421B) Minimum price. The formula for determining the “cost of cigarettes” to a wholesaler or retailer as ~~determined~~ defined in Iowa Code section 421B.2 is not conclusive. The retailer, wholesaler or the department may prove that the “cost of cigarettes” is either higher or lower.

Any wholesaler or retailer who desires to prove that the wholesaler’s or retailer’s cost is less than the statutory presumptive cost computed according to the Iowa unfair cigarette sales Act, Iowa Code chapter 421B, shall submit a petition for approval of a lower cost along with actual cost data to the department of revenue and finance. The statutory presumptive cost must be used in determining minimum price until approval has been granted by the department. If the requester continues to sell cigarettes at less than the presumptive cost, the department may revoke the requester’s permit or seek an injunction pursuant to Iowa Code section 427B.10 to prevent such action.

Any requester making sales of cigarettes in or into Iowa for more than 12 months shall submit cost data for the 12-month period ending no more than 30 days prior to the submission of the petition. Any requester making sales of cigarettes in or into Iowa for less than 12 months shall submit cost data for the period beginning with the start of business and ending no more than 30 days prior to the submission of the petition. The department shall notify the wholesaler or retailer of the acceptance or rejection of the petition. If the requester disagrees with the department’s determination, the requester may file a protest within 60 days of the department’s decision in accordance with rule 701—7.41(17A).

Costs of doing business shall include, but are not limited to, freight charges, labor, and equipment costs to affix stamps, ink, glue, permit fees, management fees, labor costs (including salaries of officers), rents, depreciation, selling costs, maintenance expenses, interest expenses, delivery

costs, taxes, insurance, advertising expenses, and any other operational and administrative costs. The requester shall set forth the basis for allocated costs. When the computed price cost amounts to any fractional part of a cent, the price cost must not be less than the next higher cent. However, sales made between wholesalers as provided for in Iowa Code section 421B.5, sales described in Iowa Code section 421B.6, and sales outside of the ordinary channels of trade as provided in Iowa Code section 421B.9 shall not be required to adhere to the minimum pricing requirements set forth in Iowa Code section 421B.3 and this rule. See rule 84.5(421B).

ITEM 2. Amend rule **701—84.2(421B)**, first unnumbered paragraph, as follows:

For purposes of determining the basic cost of cigarettes for wholesalers or retailers, trade or cash discounts may be deducted, if available, even though not taken. *The discount taken or available must be clearly specified on the invoice or it will not be allowed as a reduction in the basic cost of cigarettes. Any financial incentive given to a wholesaler or retailer by a manufacturer at a later date will not reduce the basic cost of cigarettes.*

ITEM 3. Amend rule 701—84.4(421B) as follows:

701—84.4(421B) Retail redemption of coupons. The redemption of coupons by retailers, which coupons were supplied to consumers by manufacturers and will be redeemed from the retailers by the manufacturers, does not affect the minimum sales price of cigarettes. The retailer is still receiving the statutory minimum price even though that price is paid by two different persons, the consumer and the manufacturer. (See 1986 O.A.G. 68.) *Manufacturer incentives to the consumer in lieu of a coupon which reduce the cost of the cigarettes to the consumer do not affect the minimum sales price of cigarettes when the manufacturer absorbs the loss for the incentive.*

This rule is intended to implement Iowa Code section 421B.3.

[Filed 10/27/00, effective 12/20/00]

[Published 11/15/00]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/15/00.



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

*** PROCLAMATION OF DISASTER EMERGENCY**

WHEREAS, THE 2000 GRAIN HARVEST ACROSS IOWA IS AHEAD OF SCHEDULE WITH YIELDS IN MANY AREAS GREATLY EXCEEDING EXPECTATIONS; AND

WHEREAS, REGIONS OF THE STATE ARE HAVING STORAGE CAPACITY PROBLEMS DUE TO THESE ABUNDANT YIELDS; AND

WHEREAS, WITH 1999 CROPS STILL OCCUPYING A MAJOR PORTION OF IOWA'S GRAIN STORAGE FACILITIES, THERE ARE RESULTING STORAGE PROBLEMS AS THE 2000 CROP ARRIVES; AND

WHEREAS, THERE ARE REGIONS OF THE STATE THAT ARE EXPERIENCING A SLOW HARVEST DUE TO DISEASE AND WEATHER DAMAGE THAT MAY LEAD TO A POTENTIAL LOSS OF GRAIN AND ECONOMIC HARDSHIP; AND

WHEREAS, STRICT COMPLIANCE WITH THE PERMIT AND FEE REQUIREMENTS OF IOWA CODE SECTION 321E.29 AND 761 IAC 511 ALLOWING OVERSIZE AND OVERWEIGHT DIVISIBLE LOADS UNDER CERTAIN CIRCUMSTANCES WOULD PREVENT OR HINDER EFFORTS TO COPE WITH THIS DISASTER EMERGENCY:

NOW, THEREFORE, I, THOMAS J. VILSACK, GOVERNOR OF THE STATE OF IOWA, ACTING UNDER THE AUTHORITY VESTED IN ME BY IOWA CONSTITUTION ARTICLE IV, SECTIONS 1 AND 8 AND IOWA CODE SECTION 29C.6(1) DO HEREBY DECLARE THE ENTIRE STATE TO BE IN A STATE OF DISASTER EMERGENCY. FURTHER, PURSUANT TO IOWA CODE SECTION 29C.6(6), I DO HEREBY SUSPEND THE REGULATORY PROVISIONS OF IOWA CODE SECTIONS 321.463 AND 321E.29, AND 761 IAC 511 TO THE EXTENT THAT THOSE PROVISIONS RESTRICT THE MOVEMENT OF OVERSIZE AND OVERWEIGHT LOADS OF SOYBEANS, CORN, HAY, STRAW AND STOVER AND REQUIRE A PERMIT TO TRANSPORT SUCH LOADS. SUSPENSION OF THESE PROVISIONS APPLIES TO LOADS TRANSPORTED ON ALL HIGHWAYS WITHIN IOWA, EXCLUDING THE INTERSTATE SYSTEM, AND WHICH DO NOT EXCEED A MAXIMUM OF 90,000 POUNDS GROSS WEIGHT. THIS ACTION IS INTENDED TO ALLOW VEHICLES TRANSPORTING SOYBEANS, CORN, HAY, STRAW, AND STOVER TO BE OVERSIZE AND OVERWEIGHT, NOT EXCEEDING 90,000 POUNDS GROSS WEIGHT, WITHOUT A PERMIT, BUT ONLY FOR THE DURATION OF THIS PROCLAMATION.

*Reproduced as submitted

THIS PROCLAMATION EXPIRES 30 DAYS FROM THE DATE ISSUED. THE IOWA DEPARTMENT OF TRANSPORTATION IS HEREBY DIRECTED TO MONITOR THE OPERATION OF THIS PROCLAMATION TO ASSURE THE PUBLIC'S SAFETY AND FACILITATE THE MOVEMENT OF THE TRUCKS INVOLVED.



IN TESTIMONY WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND CAUSED THE GREAT SEAL OF THE STATE OF IOWA TO BE AFFIXED. DONE AT DES MOINES THIS 6TH DAY OF OCTOBER IN THE YEAR OF OUR LORD TWO THOUSAND.

Thomas J. Vilsack

THOMAS J. VILSACK
GOVERNOR

ATTEST:

Chester J. Culver by Dean Leino,

CHESTER J. CULVER
SECRETARY OF STATE *Chief Deputy*

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