



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXX
December 5, 2007

NUMBER 12
Pages 1009 to 1080

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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 and rules adopted by state agencies.

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

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

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

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CITATION of Administrative Rules

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

441 IAC 79	(Chapter)
441 IAC 79.1(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 2008

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 26 '07	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08
Jan. 11 '08	Jan. 30	Feb. 19	Mar. 5	Mar. 7	Mar. 26	Apr. 30	July 28
Jan. 25	Feb. 13	Mar. 4	Mar. 19	Mar. 21	Apr. 9	May 14	Aug. 11
Feb. 8	Feb. 27	Mar. 18	Apr. 2	Apr. 4	Apr. 23	May 28	Aug. 25
Feb. 22	Mar. 12	Apr. 1	Apr. 16	Apr. 18	May 7	June 11	Sept. 8
Mar. 7	Mar. 26	Apr. 15	Apr. 30	May 2	May 21	June 25	Sept. 22
Mar. 21	Apr. 9	Apr. 29	May 14	***May 14***	June 4	July 9	Oct. 6
Apr. 4	Apr. 23	May 13	May 28	May 30	June 18	July 23	Oct. 20
Apr. 18	May 7	May 27	June 11	June 13	July 2	Aug. 6	Nov. 3
May 2	May 21	June 10	June 25	***June 25***	July 16	Aug. 20	Nov. 17
May 14	June 4	June 24	July 9	July 11	July 30	Sept. 3	Dec. 1
May 30	June 18	July 8	July 23	July 25	Aug. 13	Sept. 17	Dec. 15
June 13	July 2	July 22	Aug. 6	Aug. 8	Aug. 27	Oct. 1	Dec. 29
June 25	July 16	Aug. 5	Aug. 20	***Aug. 20***	Sept. 10	Oct. 15	Jan. 12 '09
July 11	July 30	Aug. 19	Sept. 3	Sept. 5	Sept. 24	Oct. 29	Jan. 26 '09
July 25	Aug. 13	Sept. 2	Sept. 17	Sept. 19	Oct. 8	Nov. 12	Feb. 9 '09
Aug. 8	Aug. 27	Sept. 16	Oct. 1	Oct. 3	Oct. 22	Nov. 26	Feb. 23 '09
Aug. 20	Sept. 10	Sept. 30	Oct. 15	Oct. 17	Nov. 5	Dec. 10	Mar. 9 '09
Sept. 5	Sept. 24	Oct. 14	Oct. 29	Oct. 31	Nov. 19	Dec. 24	Mar. 23 '09
Sept. 19	Oct. 8	Oct. 28	Nov. 12	***Nov. 12***	Dec. 3	Jan. 7 '09	Apr. 6 '09
Oct. 3	Oct. 22	Nov. 11	Nov. 26	***Nov. 26***	Dec. 17	Jan. 21 '09	Apr. 20 '09
Oct. 17	Nov. 5	Nov. 25	Dec. 10	***Dec. 10***	Dec. 31	Feb. 4 '09	May 4 '09
Oct. 31	Nov. 19	Dec. 9	Dec. 24	***Dec. 24***	Jan. 14 '09	Feb. 18 '09	May 18 '09
Nov. 12	Dec. 3	Dec. 23	Jan. 7 '09	Jan. 9 '09	Jan. 28 '09	Mar. 4 '09	June 1 '09
Nov. 26	Dec. 17	Jan. 6 '09	Jan. 21 '09	Jan. 23 '09	Feb. 11 '09	Mar. 18 '09	June 15 '09
Dec. 10	Dec. 31	Jan. 20 '09	Feb. 4 '09	Feb. 6 '09	Feb. 25 '09	Apr. 1 '09	June 29 '09
Dec. 24	Jan. 14 '09	Feb. 3 '09	Feb. 18 '09	Feb. 20 '09	Mar. 11 '09	Apr. 15 '09	July 13 '09

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
14	Wednesday, December 12, 2007	January 2, 2008
15	Wednesday, December 26, 2007	January 16, 2008
16	Friday, January 11, 2008	January 30, 2008

PLEASE NOTE:

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

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

*****Note change of filing deadline*****

SUBSCRIPTION INFORMATION

In 2008, mail subscriptions to the Iowa Administrative Bulletin and the Iowa Administrative Code will be discontinued, and Internet updating and printing options will be instituted through the Iowa General Assembly's Internet home page: www.legis.state.ia.us.

Iowa Administrative Bulletin

July 2007 through December 2007 \$169

Iowa Administrative Code Supplement

*July 2007 through December 2007 \$263

***Please note that if the Internet updating and printing options are not operational in January 2008, the above six-month subscriptions (July 2007 – December 2007) will be continued at no cost to the subscriber until the Internet updating and printing options become operational.**

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IAC Binders

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
CREDIT UNION DIVISION[189]		
Debt cancellation products, ch 5 IAB 12/5/07 ARC 6430B	Conference Room 200 E. Grant Ave. Des Moines, Iowa	December 27, 2007 10 a.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Practitioner's licenses and endorsements—TOEFL, 14.104 IAB 12/5/07 ARC 6457B	Room 3 SW, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 2, 2008 1 p.m.
Practitioner's licenses and endorsements—adding endorsements, 14.106 IAB 12/5/07 ARC 6446B	Room 3 SW, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 2, 2008 1 p.m.
Practitioner's licenses and endorsements—adding endorsements, 14.121(2) IAB 12/5/07 ARC 6445B	Room 3 SW, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 2, 2008 1 p.m.
Practitioner's licenses and endorsements—administrator license, 14.142(1) IAB 12/5/07 ARC 6450B	Room 3 SW, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 2, 2008 1 p.m.
EMPOWERMENT BOARD, IOWA[349]		
Community empowerment, amendments to ch 1 IAB 12/5/07 ARC 6429B	Room 142 Lucas State Office Bldg. Des Moines, Iowa	January 7, 2008 9:30 a.m.
ENERGY INDEPENDENCE, OFFICE OF[350]		
Organization of energy independence office; Iowa power fund, chs 1 to 4, 51 to 55 IAB 11/21/07 ARC 6411B (ICN Network)	Room 8, Building 6 DMACC 2006 S. Ankeny Blvd. Ankeny, Iowa	December 18, 2007 1 p.m.
	Room 115, Industrial Tech. Bldg. Northeast Iowa Comm. College 1625 Hwy 150 S. Calmar, Iowa	December 18, 2007 1 p.m.
	Room 402, Building D Northwest Iowa Comm. College 603 W. Park St. Sheldon, Iowa	December 18, 2007 1 p.m.
	Room 306, Clarinda Center Iowa Western Comm. College 923 E. Washington Clarinda, Iowa	December 18, 2007 1 p.m.

ENERGY INDEPENDENCE, OFFICE OF[350] (Cont'd)

Room 528, Trustee Hall, N. Campus Southeastern Comm. College 1500 West Agency, West Burlington, Iowa	December 18, 2007 1 p.m.
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INSPECTIONS AND APPEALS DEPARTMENT[481]

Food Code provisions, amendments to chs 30, 31, 34, 35; rescind ch 32 IAB 12/5/07 ARC 6454B	Room 319 Lucas State Office Bldg. Des Moines, Iowa	December 27, 2007 10 a.m.
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INSURANCE DIVISION[191]

Uniform health insurance application form, 71.26 IAB 12/5/07 ARC 6435B	330 Maple St. Des Moines, Iowa	January 4, 2008 10 a.m.
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NATURAL RESOURCE COMMISSION[571]

Waters cost-share and grant programs, 30.1, 30.51 to 30.63 IAB 12/5/07 ARC 6444B	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 2, 2008 3 p.m.
Nonresident deer hunting, 94.1(1), 94.7(6), 94.8 IAB 12/5/07 ARC 6442B	Fourth Floor E. Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 2, 2008 1 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Board administrative processes; fees, chs 4, 5 IAB 11/21/07 ARC 6409B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	December 11, 2007 9 to 9:30 a.m.
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PUBLIC HEALTH DEPARTMENT[641]

Swimming pool registration, 15.6(2) IAB 11/21/07 ARC 6427B	Room 518 Lucas State Office Bldg. Des Moines, Iowa	December 11, 2007 1 p.m.
WIC program, 73.2, 73.3, 73.7(7), 73.8(2), 73.13(7) IAB 11/21/07 ARC 6428B	6th Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 19, 2007 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 6430B**CREDIT UNION DIVISION[189]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 17A.3 and 2007 Iowa Acts, Senate File 557 [Iowa Code Supplement section 533.107], the Credit Union Division hereby gives Notice of Intended Action to adopt new Chapter 5, “Debt Cancellation Products,” Iowa Administrative Code.

These rules implement the authority of credit unions organized in accordance with Iowa Code chapter 533 to engage in the activity of offering debt cancellation products in accordance with 2007 Iowa Acts, Senate File 557 [Iowa Code Supplement section 533.315(9)“b”]. The proposed rules are promulgated under the authority of 2007 Iowa Acts, Senate File 557 [Iowa Code Supplement section 533.107].

Interested persons may make written comments on the proposed rules on or before December 27, 2007. Such written material should be directed to the Superintendent of Credit Unions, Credit Union Division, Department of Commerce, 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Superintendent of Credit Unions, Department of Commerce, at (515)281-6516 or at 200 East Grand Avenue, Suite 370, Des Moines.

Also, a public hearing will be held on December 27, 2007, at 10 a.m. in the Credit Union Division Conference Room at 200 East Grand Avenue in Des Moines. Persons may present their views at the public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Superintendent of Credit Unions at least one day prior to the date of the public hearing.

These rules are intended to implement 2007 Iowa Acts, Senate File 557 [Iowa Code Supplement section 533.315(9)“b”].

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

The following **new** chapter is proposed.

CHAPTER 5**DEBT CANCELLATION PRODUCTS****189—5.1(533) Authority and purpose.**

5.1(1) Authority. This chapter implements the authority of credit unions organized in accordance with Iowa Code chapter 533 to engage in the activity of offering debt cancellation products in accordance with 2007 Iowa Acts, Senate File 557 [Iowa Code Supplement section 533.315(9)“b”]. These rules are promulgated under the authority of 2007 Iowa Acts, Senate File 557 [Iowa Code Supplement section 533.107].

5.1(2) Purpose. These rules set forth the standards that apply to voluntary debt cancellation contracts and agreements entered into by credit unions. The purpose of these standards is to ensure that credit unions offer and implement

such contracts and agreements consistent with safe and sound practices, and subject to appropriate consumer protections.

189—5.2(533) Definitions. The definitions of terms included in rule 189—1.1(533) apply to such terms used in this chapter unless otherwise provided in this rule. In addition, the following definitions apply as used in these rules:

“Actuarial method” means the formula used in calculating refunds which produces a refund equal to the original fee multiplied by the ratio of the sum of the remaining scheduled monthly loan balances divided by the sum of the original scheduled monthly loan balances as of the due date next following the date of refund.

“Bona fide” means authentic and genuine in nature and made in a sincere and honest fashion without any intention to deceive.

“Borrower” means an individual who is a credit union member and who obtains an extension of credit from a credit union primarily for personal, family or household purposes.

“Business day” means every day except Saturday, Sunday and federal holidays unless on any such day an office of the credit union is open to conduct substantially all of its business.

“Contract” means a debt cancellation contract or a debt suspension agreement.

“Debt cancellation product” means a written contractual arrangement between a credit union and a borrower modifying loan terms under which the credit union agrees to suspend or cancel all or part of the borrower’s obligation to repay an extension of credit from that credit union upon the occurrence of a specified event. The contractual arrangement may be in the form of a debt cancellation contract, a debt suspension agreement or other accord and may be separate from or a part of other loan documents. A debt cancellation product does not include a loan payment deferral arrangement which is the borrower’s unilateral election to defer repayment or the credit union’s unilateral decision to allow a deferral of repayment.

“Reasonable fee structure” means a fee structure which allows a moderate return on investment and is suited to or within the means of an ordinary person, and is not formulated in a manner that an ordinary person would consider the fee structure excessive, outrageous, overreaching or unconscionable.

“Residential mortgage loan” means a real property loan secured by a one to four family dwelling that is the borrower’s primary or secondary residence.

189—5.3(533) Debt cancellation products.

5.3(1) General. A credit union may offer any debt cancellation product so long as the credit union complies with this chapter. The product may be offered for a fee or as an additional charge under a lease, loan or other extension of credit, and participation by a borrower must be voluntary.

5.3(2) Policies required. A credit union, before offering any debt cancellation product, must adopt written policies approved by its board of directors which establish and maintain effective risk management and control processes over the offering of the product. In addition, the policies must establish:

a. A reasonable fee structure, if any fee will be charged for the product;

b. Appropriate disclosures, which shall be given to the borrower in accordance with this chapter; and

c. Claims-processing procedures, which shall be utilized to process debt cancellation claims.

CREDIT UNION DIVISION[189](cont'd)

5.3(3) Additional requirements. A credit union offering any debt cancellation product must:

a. Purchase insurance from an insurance company authorized to do business in Iowa to indemnify the credit union from loss resulting from offering the product. A credit union, before purchasing insurance, shall perform an appropriate level of due diligence to satisfy itself of the selected insurer's financial stability and claims-paying ability;

b. Maintain an adequate loss reserve relating to the debt cancellation product in an amount sufficient to offset potential losses, if any, not covered by the insurance required by paragraph 5.3(3)"a." The superintendent may require any credit union offering a debt cancellation product to provide evidence of the adequacy of the loss reserve related to that product, including, but not limited to, an actuarial opinion assessing the adequacy of the loss reserve; and

c. Not condition the making or alteration of the terms or conditions of a lease, loan or extension of credit upon the borrower's agreeing to purchase a debt cancellation product.

5.3(4) Notification to the superintendent of intent to offer debt cancellation products. A credit union must notify the superintendent in writing of its intent to offer any type of debt cancellation product at least 30 days prior to any such product being offered to borrowers. The notice must contain:

a. A statement describing the type(s) of debt cancellation product(s) the credit union will offer to its membership;

b. The fee structure established for the debt cancellation product, if any. The superintendent may require a credit union to cost justify its fee structure if it appears the fees are not reasonable; and

c. The name of the insurance company from which the credit union will purchase contractual liability coverage or other insurance required by paragraph 5.3(3)"a," along with information describing policy limits, deductible amounts and all limitations on coverage.

5.3(5) Existing debt cancellation products offered prior to [effective date of this rule]. A credit union offering any type of debt cancellation product prior to [effective date of this rule] must, immediately following that date, provide to the superintendent notice of the existence of such product and provide to the superintendent the same information as required in subrule 5.3(4). A debt cancellation product in existence prior to [effective date of this rule] may continue in force with a borrower, but all debt cancellation products offered by the credit union on and after [effective date of this rule] must meet the requirements of this chapter.

189—5.4(533) Prohibited practices.

5.4(1) Anti-tying. A credit union may not extend credit or alter the terms or conditions of an extension of credit conditioned upon the borrower's entering into a debt cancellation contract or debt suspension agreement with the credit union.

5.4(2) Misrepresentations generally. A credit union may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to a debt cancellation agreement.

5.4(3) Prohibited contractual arrangement terms. A credit union may not offer debt cancellation agreements that contain terms:

a. Giving the credit union the right to unilaterally modify the arrangement unless:

(1) The modification is favorable to the borrower and is made without additional charge to the borrower; or

(2) The borrower is notified of any proposed change and is provided a reasonable opportunity to cancel the arrangement without penalty before the change goes into effect; or

b. Requiring the borrower to make a lump-sum, single payment at the outset of the contract or agreement where the debt subject to the contract or agreement is a residential mortgage loan.

189—5.5(533) Refunds of fees in the event of termination or prepayment of the covered loan.

5.5(1) Refund. If a debt cancellation contract or debt suspension agreement is terminated (including, for example, when the borrower prepays the covered loan), a credit union shall refund to the borrower any unearned fees paid for the contract unless the contract provides otherwise. A credit union may offer a borrower a debt cancellation product that does not provide for a refund only if the credit union also offers that borrower a bona-fide option to purchase a comparable contractual arrangement that provides for a refund.

5.5(2) Method of calculation. A credit union shall calculate the amount of a refund using a method at least as favorable to the borrower as the actuarial method. However, if the refund calculation produces a result of less than \$5, the unearned fees may be considered to be zero and no refund will be owed to the borrower.

189—5.6(533) Method of payment of fees. Except as provided in paragraph 5.4(3)"b," a credit union may offer a borrower the option of paying the fee for a debt cancellation product in a single payment or on a weekly, monthly or other periodic payment schedule. If a credit union offers the borrower the option to finance the single payment by adding the single payment to the amount financed, the credit union must also disclose to the borrower, in accordance with rule 189—5.7(533), whether, and, if so, the time period during which, the borrower may cancel the arrangement and receive a refund.

189—5.7(533) Disclosures. In connection with offering debt cancellation products, a credit union must make the short- and long-form disclosures described in this rule. In order to satisfy the requirements of this rule, the short-form disclosure must be substantially in the form described in rule 189—5.9(533), and the long-form disclosure must be substantially in the form described in rule 189—5.10(533).

5.7(1) Short-form disclosure. The credit union must make the short-form disclosure orally at the time the credit union first solicits the purchase of the contract or agreement with the borrower.

5.7(2) Long-form disclosure. The credit union must make the long-form disclosure in writing before the borrower completes the purchase of the contract or agreement. If the initial solicitation occurs in person, then the credit union shall provide the long-form disclosure in writing either at that time or at the time of the loan closing, but in no case later than three business days following the credit approval decision.

5.7(3) Exceptions for non-in-person transactions.

a. If the debt cancellation product is solicited by telephone, the credit union must make the short-form disclosure orally as required in subrule 5.7(1) and must mail the long-form disclosure required in subrule 5.7(2) and, if appropriate, a copy of the contract or agreement to the borrower within three business days, beginning with the first business day after the telephone solicitation or at the time of the loan closing, whichever is later.

b. If the debt cancellation product is solicited using the mail or "take-one" applications, the credit union may make only the short-form disclosure in writing as part of the written materials. If it is not included in the application materials, the long-form disclosure must be mailed to the borrower within three business days after the borrower contacts the

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credit union in response to the solicitation, beginning with the first business day, or at the time of the loan closing, whichever is later.

c. If the debt cancellation product is solicited using electronic media, the credit union may provide the disclosures required by this rule electronically, consistent with the requirements of this rule and the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq. The short-form disclosure shall be provided with the initial electronic solicitation, and the long-form disclosure no later than at the time of the loan closing or three business days following credit approval.

5.7(4) Exception to receipt of borrower's acknowledgment of disclosures. A credit union may not obligate the borrower to pay for the debt cancellation product until after receiving the borrower's written acknowledgment of receipt of disclosures unless, in the case of telephone, mail or "take-one" application solicitations, the credit union:

a. Maintains sufficient documentation to demonstrate that it provided the acknowledgment of receipt of disclosures to the borrower as required by this subrule;

b. Maintains sufficient documentation to demonstrate that it made reasonable efforts to obtain from the borrower a written acknowledgment of receipt of the long-form disclosure; and

c. Permits the borrower to cancel the purchase of the contract without penalty within 30 days after the credit union mailed the long-form disclosure to the borrower.

5.7(5) Form of disclosure. The disclosures required by this rule must be in a meaningful form, conspicuous, direct, and readily understandable, must be designed to call attention to the nature and significance of the information provided, and, if in written or electronic form, must include:

a. A plain-language heading to call attention to the disclosure.

b. A type size and a typeface that are easy to read.

c. Wide margins and ample line spacing.

d. Boldface or italics for key words and phrases.

e. Distinctive type style and graphic devices when the disclosures are combined with other information.

5.7(6) Disclosures in advertisements and promotional materials. The short-form disclosure is required in advertisements and promotional materials except where the debt cancellation product is merely listed among products and services offered by the credit union.

189—5.8(533) Affirmative election to purchase and acknowledgment of receipt of disclosure.

5.8(1) Before entering into a debt cancellation contract or agreement, the credit union must obtain from the borrower a written affirmative election to purchase the product and written acknowledgment of receipt of the disclosures required in rule 189—5.7(533). The election and acknowledgment information must meet the intent and purpose of the standards established in rule 189—5.7(533).

5.8(2) The credit union must maintain sufficient documentation to demonstrate that it provided to the borrower the disclosures required by rule 189—5.7(533) and obtained from the borrower the documents required by this rule.

5.8(3) The credit union must permit the borrower to cancel the purchase of the debt cancellation product without penalty within 30 days after the credit union has mailed or otherwise provided the long-form disclosure to the borrower or has provided it to the borrower according to paragraph 5.7(4)"c" for an electronic media solicitation.

189—5.9(533) Short-form disclosure. The short-form disclosure must state:

5.9(1) The product is optional. "Your purchase of [debt cancellation product name] is optional. Whether or not you purchase [debt cancellation product name] will not affect your application for credit or the terms of any credit agreement you have with the credit union."

5.9(2) Financing the payment of the fee. "Adding the fee to the amount you borrow will increase the cost of [product name]."

NOTE: This provision is applicable if the credit union offers to the borrower the option to pay the fee in a single payment. This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.9(3) Refund of fee. "You may choose [product name] with a refund provision or without a refund provision. Prices of refund and no-refund products are likely to differ." And either: "If you pay the fee in a single payment, you may cancel [product name] within 30 days and receive a full refund." or "If you finance the payment of the fee as part of your loan and you pay off your loan early, you will receive a refund of any unearned fee calculated by the actuarial method." or "If you cancel [product name] after the first 30 days of your loan, you will not receive a refund."

NOTE: This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.9(4) Additional disclosures. "We will give you additional information before you are required to pay for [product name]." And, if applicable: "This information will include a copy of the contract containing the terms of [product name]."

5.9(5) Eligibility requirements, conditions, and exclusions. "There are certain eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [product name]." And either: "You should carefully read our additional information for a full explanation of the terms of [product name]." or "You should carefully read the contract for a full explanation of the terms of [product name]."

189—5.10(533) Long-form disclosure. The long-form disclosure must state:

5.10(1) The product is optional. "Your purchase of [product name] is optional. Whether or not you purchase [product name] will not affect your application for credit or the terms of any credit agreement you have with the credit union."

5.10(2) Explanation of debt suspension agreement. "If [product name] is activated, your duty to pay the loan principal and interest to the credit union is only suspended. You must fully repay the loan after the period of suspension has expired." And, if applicable: "This includes interest accumulated during the period of suspension."

NOTE: This provision is applicable if the contract has a debt suspension feature.

5.10(3) Amount of fee. For closed-end credit: "The total fee for [product name] is \$_____." For open-end credit, either: "The monthly fee for [product name] is based upon your account balance each month multiplied by the unit cost, which is \$_____." or "The formula used to compute the fee is _____."

5.10(4) Financing the payment of the fee. "Adding the fee to the amount you borrow will increase the cost of [product name]."

NOTE: This provision is applicable if the credit union offers the option to pay the fee in a single payment. Lump-sum payment of the fee is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

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5.10(5) No refund of fee paid in lump sum. “You have the option to purchase [product name], which includes a refund of the unearned fee if you terminate the contract or repay the loan in full prior to the scheduled termination date. Prices of refund and no-refund products may differ.”

NOTE: This provision is applicable if the credit union offers the option to pay the fee in a single payment for a no-refund debt cancellation product. This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.10(6) Refund of fee paid in lump sum. Either: “If you pay the fee in a single payment, you may cancel [product name] within 30 days and receive a full refund.” or “If you finance the payment of the fee as part of your loan and you pay off your loan early, you will receive a refund of any unearned fee calculated by the actuarial method.” or “If you cancel [product name] after the first 30 days of your loan, you will not receive a refund.”

NOTE: This provision is applicable where the borrower pays the fee in a single payment and the fee is added to the amount borrowed. This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.10(7) Termination of [product name]. Either: “You have no right to cancel [product name].” or “You have the right to cancel [product name] in the following circumstances: _____.” And either: “The credit union has no right to cancel [product name].” or “The credit union has the right to cancel [product name] in the following circumstances: _____.”

5.10(8) Eligibility requirements, conditions, and exclusions. “There are certain eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [product name].” And either: “The following is a summary of the eligibility requirements, conditions, and exclusions: [Summary of eligibility requirements, conditions, and exclusions.]” or “You may find a complete explanation of the eligibility requirements, conditions, and exclusions in paragraph(s) _____ of the [product name] agreement.”

189—5.11(533) Safe and sound practices.

5.11(1) A credit union must ensure that risks associated with debt cancellation contracts and debt suspension agreements are managed in accordance with safe and sound principles and practices. Consequently, a credit union must implement and maintain effective risk management and control processes in conjunction with its debt cancellation contracts and debt suspension agreements, including, but not limited to, appropriate recognition and reporting of income, expenses, assets and liabilities. Additionally, the processes must provide for the recognition and financial reporting of the appropriate treatment of all expected and unexpected losses associated with these products.

5.11(2) A credit union must assess the adequacy of its internal controls and risk mitigation activities in view of the characteristics and extent of its debt cancellation contracts and debt suspension agreements. Accordingly, a credit union must evaluate its existing risk tolerances and management systems to assess, evaluate and monitor third-party relationships in connection with the development, offering and servicing of the credit union’s debt cancellation contracts and debt suspension agreements, including compliance and reputation risks, and the potential adverse impact nonperformance by the third party may have on the financial performance of the credit union.

5.11(3) Debt cancellation agreements may only be offered by a credit union in connection with an extension of credit primarily for personal, family or household purposes.

189—5.12(533) Exception for Guarantee Automobile Protection or Guarantee Asset Protection (GAP) and other debt cancellation products offered by credit unions through unaffiliated, nonexclusive agents.

5.12(1) Credit unions offering Guarantee Automobile Protection or Guarantee Asset Protection (GAP) and other debt cancellation products through unaffiliated, nonexclusive agents, most notably on vehicle loans made available through automobile dealers, are exempt from compliance with respect to:

a. The requirement to notify the superintendent of the existence of the Guarantee Automobile or Asset Protection (GAP) or other types of debt cancellation products in subrule 5.3(5);

b. The requirement that a credit union which offers a borrower a debt cancellation product without a refund also must offer a borrower a bona-fide option to purchase a comparable debt cancellation product that provides for a refund in subrule 5.5(1);

c. The requirement to provide the long-form disclosure in rule 189—5.10(533); and

d. The requirement to obtain a borrower’s written acknowledgment of receipt of disclosures in subrule 5.7(4).

5.12(2) Credit unions offering GAP debt cancellation products through unaffiliated, nonexclusive agents remain subject to the following requirements:

a. The credit union may not extend credit or alter the terms or conditions of an extension of credit when the extension or alteration is conditioned upon the borrower’s purchase of a debt cancellation product;

b. The credit union may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to information that must be disclosed under this rule;

c. The credit union may not offer a debt cancellation product that contains terms giving the credit union the unilateral right to modify the contract unless the modification is favorable to the borrower and is made without additional charge to the borrower; or unless the borrower is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect;

d. If a debt cancellation product is terminated, the credit union must refund to the borrower any unearned fees paid for the contract unless the contract provides otherwise;

e. The credit union shall calculate the amount of a refund using a method at least as favorable to the borrower as the actuarial method;

f. If the credit union offers the borrower the option to finance the fee for a debt cancellation product, the credit union must disclose to the borrower whether, and, if so, the time period during which, the borrower may cancel the contract and receive a refund;

g. At the time of the initial solicitation of the debt cancellation product, the credit union must provide to the borrower the short-form disclosure described in rule 189—5.9(533), as modified to reflect nonapplicability of those items described in subrule 5.12(1). The form of the short-form disclosures must be readily understandable and meaningful, and must be included in advertisements and other promotional material for debt cancellation products, unless the advertisements and promotional material are of a general nature;

CREDIT UNION DIVISION[189](cont'd)

h. Before entering into a contract, the credit union must obtain a borrower's written affirmative election to purchase the debt cancellation product. The written election must be conspicuous, simple, direct, and readily understandable and must be designed to call attention to its significance;

i. A credit union that does not provide the long-form disclosures will conspicuously inform borrowers that they will receive a copy of the contract before the borrowers are required to pay for the debt cancellation product; and

j. A credit union must manage the risks associated with the debt cancellation product in accordance with this rule.

These rules are intended to implement 2007 Iowa Acts, Senate File 557 [Iowa Code Supplement section 533.315(9)"b"].

ARC 6457B

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 to rule 282—14.104(272) strikes the part of the rule that requires applicants to pass the TOEFL test at a level established by the Board.

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 2, 2008, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, January 4, 2008. Written comments and suggestions should be addressed to Marcia J. Henderson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to marcia.henderson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

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

The following amendment is proposed.

Amend rule 282—14.104(272) as follows:

282—14.104(272) Applicants from foreign institutions. An applicant for initial licensure whose preparation was completed in a foreign institution must obtain a course-by-course credential evaluation report completed by one of the board-approved credential evaluation services and then file this report with the board of educational examiners for a determination of eligibility for licensure. ~~The applicant must demonstrate English proficiency by providing evidence of passing the TOEFL test at the level established by the board.~~

ARC 6446B

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 to subrule 14.106(1) and the rescission of subrule 14.106(2) reflect the current practices and language. Subrule 14.106(1) is changed to reflect more current language pertaining to endorsements. Option 4 is added to subrule 14.106(1) to reflect the current practice in which a teacher may ask for a review of transcripts in order to add an endorsement without first obtaining a letter of rejection or appeal from the college official.

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 2, 2008, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed 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 Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

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

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, January 4, 2008. Written comments and suggestions should be addressed to Marcia J. Henderson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to marcia.henderson@iowa.gov, or by fax to (515)281-7669.

These amendments are intended to implement Iowa Code chapter 272.

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

The following amendments are proposed.

ITEM 1. Amend subrule 14.106(1) as follows:

14.106(1) To add an endorsement, the applicant must follow one of these options:

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

Option 1. Receive the Iowa teacher education institution's recommendation that the current approved program requirements for the endorsement have been met.

~~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 2. Receive verification from the Iowa teacher education institution that the minimum state requirements for the endorsement have been met in lieu of the institution's approved program.

~~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.~~

Option 3. Receive verification from a state approved and regionally accredited institution that the Iowa minimum requirements for the endorsement have been met.

Option 4. Apply for a review of the transcripts by the board of educational examiners' staff to determine if all Iowa requirements have been met. The applicant must submit documentation that all of the Iowa requirements have been met by filing transcripts and supporting documentation for review. The fee for the transcript evaluation is \$60 for each new endorsement requested. This fee shall be in addition to the fee for adding the endorsement.

ITEM 2. Rescind subrule 14.106(2) as follows:

~~**14.106(2)** Appeal. If an applicant cannot obtain a recommendation for an endorsement from an institution, and if the applicant can document that all of the Iowa requirements have been met, the applicant may apply for the endorsement by filing transcripts and supporting documentation for review. The application must be accompanied by a letter of rejection from an institution that offers the endorsement. Upon receipt of all materials, the staff of the board of educational examiners will review documents to determine if all Iowa requirements have been met.~~

ARC 6445B**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 proposal to amend subrule 14.121(2) reflects the current practice which allows a teacher to ask for a review of transcripts in order to add an endorsement without first obtaining a letter of rejection or appeal from the college official.

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 2, 2008, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, January 4, 2008. Written comments and suggestions should be addressed to Marcia J. Henderson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to marcia.henderson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

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

The following amendment is proposed.

Amend subrule 14.121(2) as follows:

14.121(2) Adding endorsements. Effective September 1, 2004, the fee for the addition of each endorsement to a license, following the issuance of the initial license and endorsement(s), shall be \$50. Applicants who are unable to secure a college or university recommendation for the addition of a new endorsement may ask the board of educational examiners to analyze transcripts if the applicant believes all requirements have been met. Applicants who request board of

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educational examiners transcript analysis shall be assessed a \$60 transcript evaluation fee for each new endorsement requested. This fee shall be in addition to the fee for adding the endorsement.

ARC 6450B**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 to paragraph "c" of subrule 14.142(1) allows an administrator from another state to obtain the same license in Iowa that is held in the other state, and the administrator will not be required to complete the coursework for other grade levels.

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 2, 2008, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, January 4, 2008. Written comments and suggestions should be addressed to Marcia J. Henderson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to marcia.henderson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

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

The following amendment is proposed.

Amend subrule **14.142(1)**, paragraph "c," as follows:

c. Other.

(1) The applicant must have had three years of teaching experience at the early childhood through grade twelve level.

~~(2) Graduates from institutions in other states who are seeking initial Iowa licensure and the PK-12 principal and PK-12 supervisor of special education endorsement must meet the requirements for the standard license in addition to the experience requirements.~~

ARC 6429B**EMPOWERMENT BOARD,
IOWA[349]****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 28.4, the Iowa Empowerment Board hereby gives Notice of Intended Action to amend Chapter 1, "Community Empowerment," Iowa Administrative Code.

The proposed amendments to Chapter 1 add definitions and incorporate language placed into the Iowa Code during the 2006 and 2007 legislative sessions and provide an overall update to the rules. These amendments add definitions for "community empowerment gifts and grants account," "fiscal assessment," "home visitation," and "preschool programming support services"; amend the definitions of "state agency" and "state empowerment team" to include the Department of Workforce Development; update the Iowa Empowerment Board membership; and clarify language regarding the responsibility of community empowerment boards and the carryforward-of-funds process established by the Iowa Empowerment Board.

Any interested person may make written suggestions or comments on the proposed amendments on or before December 25, 2007. Such written materials should be sent to the Facilitator, Office of Empowerment, Iowa Department of Management, State Capitol Building, Des Moines, Iowa 50319; by facsimile to (515)281-4225; or by electronic mail to shanell.wagler@iowa.gov.

A public hearing will be held on January 7, 2008, at 9:30 a.m. in Room 142 at the Lucas State Office Building, Des Moines, Iowa, at which time comments may be submitted orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Shanell Wagler at (515)281-4321 to advise of any specific needs.

These amendments are intended to implement Iowa Code chapter 28.

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

The following amendments are proposed.

ITEM 1. Amend rule **349—1.4(28)** as follows:

EMPOWERMENT BOARD, IOWA[349](cont'd)

Amend the definitions of “core functions,” “parent education,” “state agency,” and “state empowerment team” as follows:

“Core functions” means components of services which provide a common foundation for ~~home visitation, parent family support and education~~ and preschool services.

“Parent education” means ~~any~~ developmentally appropriate ~~information services~~ provided to or facilitated with individuals who function in the role of parents or expectant parents.

“State agency” means a department of the executive branch including, but not limited to, the departments of *economic development*, education, *human rights*, *human services*, public health, ~~human services and human rights and workforce development~~.

“State empowerment team” means the central office of empowerment in the *department of management* and identified personnel from the state agencies of economic development, education, *human rights*, *human services*, public health, ~~human services and human rights and workforce development~~ to provide the day-to-day operational work of local- and state-level community empowerment and support to the Iowa board.

Add the following **new** definitions:

“Community empowerment gifts and grants account” means an account created in the Iowa empowerment fund under the authority of the department of management to be used for the community empowerment-related purposes for which the moneys were received.

“Fiscal assessment” means a comprehensive listing of funding to support children from birth through five years of age.

“Home visitation” means a face-to-face visit with a family in the family’s home, or other temporary location, to facilitate meeting the family’s goals. Home visitation is a method of providing family support services.

“Preschool programming support services” means assistance with preschool tuition not covered by another source for children ages three, four, or five for families meeting the eligibility requirements; support for transporting children to and from preschool; or services that directly enhance or expand existing programming for children.

ITEM 2. Amend paragraph **1.5(3)“i”** as follows:

i. Work with the state and local components of the community empowerment initiative, ~~shared visions programs funded under Iowa Code chapter 256A~~, and other public and private efforts to improve the early care system.

ITEM 3. Amend subrule 1.6(1) as follows:

1.6(1) Membership. The Iowa board shall consist of 48 22 voting members: ~~13~~ 16 citizen members and ~~5~~ 6 state agency director members. Six legislators shall serve as non-voting members.

a. ~~Five~~ Six members shall be the directors, not the designees, of the state agencies of economic development, education, human rights, human services, and public health, and *workforce development*.

b. The ~~13~~ 16 citizen members shall be appointed by the governor, subject to confirmation by the senate.

(1) Appointments of citizen members shall ensure that each of the state’s congressional districts is represented by *at least* two citizen members.

(2) to (4) No change.

c. No change.

ITEM 4. Amend subparagraph **1.6(3)“d”(5)** as follows:

(5) Core functions for family support *services*, parent ~~support education programs~~ and preschool services provided through the community plan.

ITEM 5. Amend paragraph **1.6(3)“m,”** introductory paragraph, as follows:

m. The Iowa board shall establish a process for designation to occur every three ~~fiscal~~ years.

ITEM 6. Amend numbered paragraph **1.6(3)“o”(1)“1”** as follows:

1. The early learning standards for children aged *birth to three*, and three to five proposed by the early learning standards group created pursuant to federal child care and development block grant requirements and with assistance from the Iowa child care and early education network, department of education, department of human services, Iowa head start association, and Iowa state university of science and technology, as prepared with consideration of the standards and recommendations issued by the United States Department of Education regarding early childhood cognitive development and learning and preschool and research-based standards for high-quality early care, including but not limited to the practices identified by the Institute of Education Sciences of the United States Department of Education. As early learning standards are identified in law, the proposed standards posted on the Web page shall be replaced with the standards identified in law.

ITEM 7. Rescind and reserve paragraph **1.7(1)“b.”**

ITEM 8. Amend subrule 1.8(2) as follows:

1.8(2) Responsibility.

a. A community board shall:

(1) Obtain extensive community input to develop a mission and a vision for the empowerment area.

(2) Designate a fiscal agent from a public agency, a community action agency, an area education agency or a nonprofit corporation.

(3) Administer, at a minimum, the community empowerment funds from the state awarded for the empowerment area.

(4) Administer funds as provided by law or from other federal, state, local, grant, foundation, or private moneys or other funds.

(5) Ensure that interest or earnings on the community empowerment funds will be used for services in the community plan.

(6) Coordinate with the decategorization governing boards the community plan and budget for the empowerment geographic area.

(7) Develop and implement *a fiscal assessment and a community plan*, with identified priorities, based on community assessments which address early care, human service, education and health needs to support children and their families to reach desired results. *At a minimum within the fiscal assessment, the community board shall identify federal, state, local and private funding sources available in the empowerment area that will be used to provide services to children from birth through five years of age. The fiscal assessment should also include a description of how the funding sources will be used.*

(8) Ensure that an annual report for the empowerment area on the effectiveness of the community plan is submitted each fiscal year *on September 15* to the Iowa board and to local governing bodies in the empowerment area.

1. Complete a ~~budget information~~ that identifies existing sources of funding, including in kind and match, and how

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these funds may be coordinated with the early childhood and school ready funds to support the community plan.

2. Identify members of the community board, including each member's representation.

3. Identify local empowerment area indicators to assess the effectiveness of the community plan.

4. Provide measures, data, facts and statistics, including analysis, on progress of the community collaboration and the community plan.

5. Include baseline data and the ensuing fiscal year's data for local indicators *and include data source*, identify priorities, link local indicators to desired results, and report performance measures.

6. *Include financial statements for both early childhood and school ready grant funds.*

(9) Provide for staff to the empowerment area and community board through the collaborative efforts of public and private organizations committed to reaching desired results for children and their families.

(10) Develop a plan to sustain community efforts to support children and their families within the empowerment area.

~~(11) Function as a coordinating body for collaboration and alignment of services, which are offered by different entities and directed toward similar purposes, within the empowerment area. Include within its community plan a process for evaluating progress.~~

(12) Assume other responsibilities established by law or administrative rule.

b. A community board may:

(1) Designate one or more committees for oversight of empowerment funds awarded to the empowerment area.

(2) Develop, within the empowerment area, neighborhood bodies for community-level input to the community board and implementation of the community plan.

~~(3) Implement the Iowa board's process to award funds at the beginning of the fiscal year to service providers.~~

(4)(3) Establish an advisory council with representatives from the empowerment area to advocate, make recommendations, provide expertise, suggest public policy, and provide guidance to the community board. The community board may appoint an advisory council including members who are professionals knowledgeable in the fields of health, human services, early care, and education.

~~(5)(4)~~ Apply to the Iowa board or state agencies for waivers in order to administer categorical funds for services provided in the empowerment area which support the desired results for children and their families.

~~(6)(5)~~ By mutual written agreement between the community board, the decategorization board, and the state department of human services, assume the duties of the decategorization board, or the decategorization board may serve as a committee of the community board.

(6) Function as a coordinating body for collaboration and alignment of services offered by different entities and directed toward similar purposes within the empowerment area.

ITEM 9. Amend rules 349—1.9(28) and 349—1.10(28) as follows:

349—1.9(28) Iowa empowerment fund. An Iowa empowerment fund is created in the state treasury as specified in Iowa Code section 28.9. A school ready funding account is created in the Iowa empowerment fund under the authority of the Iowa board to be administered by the director of the department of education. Moneys credited to the account shall

be distributed by the department of education to designated empowerment areas pursuant to criteria established by the Iowa board in accordance with law. An early childhood funding account is created in the Iowa empowerment fund and shall be distributed by the *director of the department of human services* to designated empowerment areas pursuant to criteria established by the Iowa board in accordance with law. ~~Interest or earnings on moneys deposited in the Iowa empowerment fund shall be credited to the fund.~~ *A community empowerment gifts and grants account is created in the Iowa empowerment fund under the authority of the department of management. The account shall consist of gift or grant moneys obtained from any source, including but not limited to the federal government. Moneys credited to the account are appropriated to the department of management to be used for the community empowerment-related purposes for which the moneys were received. Interest or earnings on moneys deposited in the Iowa empowerment fund shall be credited to the fund.*

349—1.10(28) Iowa empowerment funds.

1.10(1) Purpose. The purpose of Iowa empowerment funds is to:

a. Encourage early intellectual stimulation of very young children;

b. Increase the basic skill levels of students entering school;

c. Increase the health status of children;

d. Reduce the incidence of child abuse and neglect;

e. Increase ~~parents' a family's~~ *parents' a family's* involvement with ~~their~~ *the* family's children; and

f. Increase the quality and accessibility of child care and preschool.

1.10(2) Criteria for the use of early childhood funds. Use of early childhood funds is defined in department of human services 441—Chapter 169, Iowa Administrative Code.

1.10(3) Criteria for school ready funds. School ready funds may be provided according to the community plan following community assessment of assets, resources and needs and identification of priorities.

a. Services, ~~at a minimum~~ in a community plan, may include, but are not limited to:

(1) Child development services.

(2) Child care services.

(3) Child care provider training on a child's early learning experience.

(4) Children's health and safety.

~~(5) Assessment services to identify chemically exposed infants and children.~~

~~(6)(5) Parent Family support services and parent education.~~

~~(7)(6) Preschool programming support services for children at risk.~~

b. Up to 3 percent, ~~not to exceed \$60,000~~, of annual school ready funds may be used by the community board for administrative costs and other implementation expenses.

c. Empowerment areas ~~are encouraged to~~ *shall* commit *approximately* 60 percent of *the remainder of* school ready funds to family ~~home visitation and parent support services and parent education programs targeted to families with children who are prenatal through age five~~ based upon a local community needs assessment.

d. The Iowa board will incorporate statewide quality standards and results indicators adopted by other boards and commissions into the Iowa board's funding requirements for investments in early care, education, health, and human service.

EMPOWERMENT BOARD, IOWA[349](cont'd)

e. Eligibility to receive school ready funds shall be limited to designated empowerment areas.

f. School ready funds may be adjusted for other federal and state grant moneys received by the empowerment area.

g. Distribution of school ready funds shall be in accordance with directives in the current legislative appropriation of these funds.

1.10(4) The Iowa board shall identify and apply limitations on the carryforward of school ready children grant funding. Carryforward of funds cannot exceed three years.

The Iowa board defined an unusually high percentage as 30 percent of the annual school ready allocation, based on an accrual reporting system. *A carryforward process, including an exception to policy has been established by the Iowa board. For fiscal years ending after July 1, 2006, empowerment areas reporting a carryover balance of school ready funds in excess of 30 percent of the previous year's allocation will receive a reduction equal to the excess amount above the 30 percent in their next year's school ready allocation, based on accrual reporting.*

~~All local community empowerment areas receive an automatic waiver for fiscal year '06 because of the significant increased allocation and stipulations to the school ready fund for fiscal year '06. Beginning in fiscal year '07, local CEAs shall file an appeal to the Iowa board to carry forward more than 30 percent of their annual school ready allocation. The appeal would provide an opportunity for local CEAs to explain their special circumstances, the particular use designated for the carryforward funds, how this action is in alignment with their community plan, and how this plan benefits Iowa's children and families.~~

Any excess carryforward funds will be distributed to all local boards, through the formula, for locally identified activities that are within the guidelines for use of school ready funds.

ARC 6468B**HOMELAND SECURITY AND
EMERGENCY MANAGEMENT
DIVISION[605]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 30.5, the Iowa Emergency Response Commission gives Notice of Intended Action to amend Chapter 104, "Required Reports and Records," Iowa Administrative Code.

The proposed amendments implement 2007 Iowa Acts, Senate File 551, by changing the office for filing reports required under Sections 311 and 312 of the Emergency Planning and Community Right-to-know Act [Section 302 & Tier II] from the Department of Workforce Development to the Department of Natural Resources.

Consideration will be given to all written suggestions or comments on the proposed amendments submitted on or before December 25, 2007. Such written materials should be sent to the Administrator, Iowa Homeland Security and Emergency Management Division, 7105 NW 70th Avenue,

Camp Dodge W4, Johnston, Iowa 50131, or by facsimile to (515)725-3260.

These amendments are intended to implement Iowa Code chapter 29C.

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

The following amendments are proposed.

ITEM 1. Amend subrule 104.1(1) as follows:

104.1(1) Emergency planning notification. The owner or operator of each facility subject to the planning notification requirement shall notify the department of public defense, emergency management division, that the facility is subject to the requirements of Section 302, Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11002. The notification is to be on the Tier Two form specified in subrule 104.3(2) 104.2(4). The facility owner or operator shall submit the notification to the ~~division of labor services department of natural resources~~ by March 1 for covered chemicals in its possession. If the facility is reporting chemicals to the ~~division of labor services department of natural resources~~ on the Tier Two form pursuant to subrule 104.3(2) 104.2(4), a duplicate report is not required. The report shall be revised by a notification on the Tier Two form within 60 days after the acquisition of chemicals meeting the notification requirements and reported to the *homeland security and emergency management division*.

ITEM 2. Renumber subrule **104.2(3)** as **104.2(5)** and adopt the following new subrules:

104.2(3) Material safety data sheet information. The owner or operator of a facility required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall submit a list of each chemical required to be submitted under Section 311, Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11021. The list shall be submitted to the department of natural resources and to the appropriate local emergency planning committee (LEPC) and the fire department in whose jurisdiction the facility is located. The submission of material safety data sheets in lieu of a list is not permitted. A form is not designated.

104.2(4) Emergency and hazardous chemical inventory form (Tier Two). The owner or operator of a facility required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall submit emergency and hazardous chemical inventory information required to be submitted under Section 312, Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11022. The information shall be submitted to the department of natural resources, the appropriate local emergency planning committee (LEPC), and the fire department within whose jurisdiction the facility is located by March 1 for the chemicals in its inventory the preceding calendar year. Tier One forms will not be accepted. The information shall be submitted on the Iowa Tier Two form or in any electronic format approved by the department of natural resources.

ITEM 3. Rescind and reserve rule **605—104.3(30)**.

ARC 6431B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

The proposed amendments:

- Expand Medicaid eligibility for newborn children of Medicaid-eligible mothers to include children born to mothers who are only Medicaid-eligible for three days of emergency services for labor and delivery of the child.
- Add provisions for verifying identity and citizenship using affidavits.

The Department has received federal guidance from the Centers for Medicare and Medicaid Services that its current rule on eligibility for newborns is too narrow. Health care benefits are critical to the healthy development of newborn babies. Deeming newborns eligible for Medicaid because of the mother’s status allows the infant to qualify for Medicaid immediately, without waiting for the normal application and verification procedures. This change will give all newborns the same opportunity for deemed Medicaid eligibility in the first year of life, regardless of the level of Medicaid benefits for which the mother qualifies.

Federal guidance now allows affidavits as verification of identity and citizenship in certain situations when no other verifying document is available. These amendments specify those requirements.

These amendments do not provide for waivers in specified situations because they expand opportunities for attaining Medicaid eligibility. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before December 26, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.3.

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

The following amendments are proposed.

ITEM 1. Amend subrule 75.1(20), introductory paragraph and paragraph “a,” as follows:

75.1(20) Newborn children of Medicaid-eligible mothers. Medicaid shall be available without an application to newborn children of women who had applied for Medicaid prior to the end of their pregnancy and were subsequently *are de-*

termined eligible for Medicaid for the month of the child’s birth or for three-day emergency services for labor and delivery for the child’s birth. Eligibility begins with the month of the birth and continues through the month of the first birthday as long as the child lives with the mother and (1) the mother remains eligible for Medicaid or (2) for a child born on or after January 1, 1991, or the mother would be eligible under Iowa’s state plan if she were still pregnant or qualified for emergency services for childbirth.

a. The department shall accept any written or verbal statement as verification of the newborn’s birth date shall be verified in order to establish the effective date for Medicaid unless the birth date is questionable.

ITEM 2. Amend subrule **75.11(2)** by adopting **new** paragraphs “g” and “h” as follows:

g. If no other identity documentation allowed by subparagraph 75.11(2)“e”(1) is available, identity may be documented by affidavit as described in this paragraph. However, affidavits cannot be used to document both identity and citizenship.

(1) For children under the age of 16, identity may be documented using Form 470-4386 or 470-4386(S), Affidavit of Identity, signed by the child’s parent, guardian, or caretaker relative under penalty of perjury.

(2) For disabled persons who live in a residential care facility, identity may be documented using Form 470-4386 or 470-4386(S), Affidavit of Identity, signed by a residential care facility director or administrator under penalty of perjury.

h. If no other documentation that provides proof of United States citizenship or nationality allowed by subparagraph 75.11(2)“e”(2) is available, United States citizenship or nationality may be documented using Form 470-4373 or 470-4373(S), Affidavit of Citizenship. However, affidavits cannot be used to document both identity and citizenship.

(1) Two affidavits of citizenship are required. The person who signs the affidavit must provide proof of citizenship and identity. A person who is not related to the applicant or member must sign at least one of the affidavits.

(2) When affidavits of citizenship are used, Form 470-4374 or 470-4374(S), Affidavit Concerning Documentation of Citizenship, or an equivalent affidavit explaining why other evidence of citizenship does not exist or cannot be obtained must also be submitted and must be signed by the applicant or member or by another knowledgeable person.

ARC 6458B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 172, “Family-Centered Child Welfare Services,” Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments remove requirements for purchasing legal services for permanency through a statewide formal competitive selection process. The Department is not required to purchase legal services through a competitive process. (See Iowa Department of Administrative Services' rule 11—106.7(8A).) Because of the uniquely local nature of legal services and the limited budget available, the Department has decided to adopt the process used for legal services in the adoption and guardianship subsidy programs. Under these amendments, a family who is receiving child welfare services and is in need of legal services to modify a child custody order or to create a guardianship or adoptive relationship will hire a local attorney and submit the expenses to the Department for reimbursement, up to the limits currently applied in adoption and guardianship subsidies. This will allow families who do not qualify for those subsidies to have equivalent access to legal services.

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 6456B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before December 26, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 234.6.

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

ARC 6434B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 600.22, the Department of Human Services proposes to amend Chapter 201, “Subsidized Adoptions,” Iowa Administrative Code.

The proposed amendments make technical changes to the chapter to remove obsolete references and terminology. The name of the Department's division responsible for the adoption subsidy program has changed. The rule cross-referenced in paragraph 201.4(4)“b” has been rescinded. Failure to participate in the subsidy renewal process is no

longer grounds for terminating a subsidy, since annual reviews of the subsidy are no longer required.

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

Any interested person may make written comments on the proposed amendments on or before December 26, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 600.17 to 600.23.

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

The following amendments are proposed.

ITEM 1. Amend rule 441—201.1(600) as follows:

441—201.1(600) Administration. The Iowa department of human services, through the administrator of the division of ~~behavioral, developmental, child and protective family~~ services for families, adults, and children, shall administer the subsidized adoption program, in conformance with the legal requirements for adoption as defined in Iowa Code chapter 600.

ITEM 2. Amend subrule 201.4(4) as follows:

201.4(4) An application for subsidy cannot be taken after the child is adopted except when ~~one of the following occurs:~~
a.—~~There~~ *there* are facts relevant to a child's eligibility that were not presented before the finalizing of the adoption.

a. Upon receiving verification that the child was eligible before the child's adoption, the department may conduct an administrative review of the facts and may determine the child an eligible special needs child. Eligibility will be effective after Form 470-0744, Application for Subsidy, is completed and Form 470-0749, Adoption Subsidy Agreement, is signed by all parties.

b. ~~The child is adopted as provided in 201.3(2)“a.”~~ Requests for determining a child an eligible special needs child after the adoption is finalized shall be forwarded with verification of eligibility to the division of ~~behavioral, developmental, child and protective family~~ services for families, adults, and children, adoption program. The division shall conduct an administrative review of eligibility factors and render a written decision regarding the child's eligibility as a special needs child within 30 days of receipt of request and verification materials unless additional verification is requested. If additional verification is requested, a decision shall be reached within 30 days of receipt of additional verification materials.

ITEM 3. Rescind and reserve subrule **201.7(8)**.

ITEM 4. Amend rule 441—201.8(600) as follows:

441—201.8(600) Reinstatement of subsidy. Reinstatement of subsidy will be made when the subsidy was terminated because of reasons in 201.7(3), ~~or~~ 201.7(6), ~~to~~ ~~201.7(8)~~ ~~or~~ 201.7(7) and the reason for termination no longer exists.

ARC 6454B**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 137F.2 and 2007 Iowa Acts, Senate File 601, section 212, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 30, "Food and Consumer Safety," Chapter 31, "Food Establishment and Food Processing Plant Inspections," Chapter 34, "Home Food Establishments," and Chapter 35, "Contractor Requirements," and to rescind Chapter 32, "Food Protection and Certification Programs," Iowa Administrative Code.

This rule making adopts the 2005 Food and Drug Administration Food Code with Supplement; updates definitions and other provisions to be consistent with Iowa Code changes; updates the license fees to the amounts set in 2007 Iowa Acts, Senate File 601; clarifies the procedures for fees not paid in a timely manner and clarifies provisions relating to violations; updates several references; accepts programs that are approved by the Conference on Food Protection as certified food safety programs; and rescinds Chapter 32 on food protection and certification programs.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 25, 2007. Such written materials should be directed to Steven Mandernach, Administrative Rules Coordinator, Department of Inspections and Appeals, Third Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319; fax (515)242-6863; or E-mail steven.mandernach@dia.iowa.gov.

A public hearing will be held on December 27, 2007, at 10 a.m. at the office of the Department of Inspections and Appeals, Room 319, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

The rules are subject to waiver under the Department's general waiver provisions contained in 481—Chapter 6, "Uniform Waiver and Variance Rules."

These amendments are intended to implement Iowa Code chapters 137C, 137D, and 137F as amended by 2007 Iowa Acts, Senate File 601.

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

The following amendments are proposed.

ITEM 1. Rescind rule 481—30.1(10A) and adopt the following **new** rule in lieu thereof:

481—30.1(10A) Food and consumer safety bureau. The food and consumer safety bureau inspects food establishments, egg handlers, food processing plants, home food establishments, food and beverage vending machines, and hotels and motels.

ITEM 2. Amend rule 481—30.2(10A) by adding the following introductory paragraph:

481—30.2(10A) Definitions. *If both the 2005 Food and Drug Administration Food Code with Supplement and rule 481—30.2(10A) define a term, the definition in rule 481—30.2(10A) is adopted.*

ITEM 3. Amend rule **481—30.2(10A)** as follows:

Amend the following definitions:

"Food establishment" means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes ~~a food service operation in a salvage or distressed food operation~~, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school or the Iowa juvenile home. "Food establishment" does not include the following:

1. A food processing plant.
2. An establishment that offers only prepackaged foods that are not potentially hazardous.
3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
4. Premises which are a home food establishment pursuant to Iowa Code chapter 137D.
5. Premises which operate as a farmers market.
6. Premises of a residence in which food that is not potentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. *This exception does not apply to resale goods.*
7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
8. A private home that receives catered or home-delivered food.
9. Child day care facilities and other food establishments located in hospitals or health care facilities ~~which~~ *that serve only patients and staff* and are subject to inspection by other state agencies or divisions of the department.
10. Supply vehicles, vending machine locations or boarding houses for permanent guests.
11. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to Iowa Code section 189A.3.
12. Premises covered by a current Class "A" beer permit as provided in Iowa Code chapter 123.
13. Premises covered or regulated by Iowa Code section 192.107 with a milk or milk products permit issued by the department of agriculture and land stewardship.
14. Premises or operations which are regulated by or subject to Iowa Code section 196.3 and which have an egg handler's license.
15. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.
16. *Premises regularly used by a nonprofit organization which engages in the serving of food on the premises as long*

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as the nonprofit organization does not exceed the following restrictions:

a. The nonprofit organization serves food no more than one day per calendar week and not on two or more consecutive days;

b. Twice per year, the nonprofit organization may serve food to the public for up to three consecutive days; and

c. The nonprofit organization may use the premises of another nonprofit organization not more than twice per year for one day to serve food.

“Mobile food unit” means a food establishment that is self-contained, with the exception of grills and smokers, and readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

“Pushcart” means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures, or limited precooked foods that require limited assembly such as to the preparation and serving of frankfurters.

Rescind the definition of “potentially hazardous food.”

ITEM 4. Amend rule 481—30.3(137C,137D,137F,196) as follows:

481—30.3(137C,137D,137F,196) Licensing and postings.

A license to operate any of the above must be granted by the department of inspections and appeals. Application for a license is made on a form furnished by the department which contains the names of the business, owner, and manager; location of buildings; or and other data relative to the license requested. Applications are available from the Inspections Division, Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from contractors.

30.3(1) A license is not transferable. Licenses are not refundable unless the license is surrendered to the department prior to the effective date of the license.

30.3(2) A license is renewable and expires after one year.

30.3(3) A valid license and the most recent routine inspection, current complaint, and reinspection reports shall be posted no higher than eye level where the public can see it them. Vending machines shall bear a tag to affirm the license.

30.3(4) Any change in business ownership or business location requires a new license. Vending machines, mobile food units and pushcarts may be moved without obtaining a new license. A farmers market potentially hazardous food license may be used in the same county at different individual locations without obtaining a new license. Multiple locations operated simultaneously each require a separate license. Nutrition sites for the elderly licensed under Iowa Code chapter 137F may change locations in the same city without obtaining a new license.

30.3(5) The regulatory authority may require documentation from a license holder of the annual gross sales of food and drink sold by a licensed food establishment or a licensed food processing establishment. The documentation submitted by the license holder will be kept confidential and will be used to verify that the license holder is paying the appropriate license fee based on annual gross sales of food and drink. Documentation shall include at least one of the following:

- A copy of the firm's business tax return;
- Quarterly sales tax data;
- A letter from an independent tax preparer;
- Other appropriate records.

30.3(6) A delinquent license shall only be renewed if it is renewed within 60 days of its expiration. If a delinquent li-

cense is not renewed within 60 days, an establishment must apply for a new license and meet all the requirements for licensure. Establishments that have not renewed the license within 60 days of the expiration of the license shall be closed by the department or a contractor. The establishment shall not be reopened until a new license application has been submitted and approved.

This rule is intended to implement Iowa Code sections 10A.502(2), 137C.8, 137D.2 and 137E.4 to 137E.6 as amended by 2002 Iowa Acts, House File 2620 chapter 137F as amended by 2007 Iowa Acts, Senate File 601.

ITEM 5. Amend rule 481—30.4(137C,137D,196) as follows:

481—30.4(137C,137D,196) License fees. The license fee is the same for an initial license and a renewal license. Licenses expire one year from the date of issuance, except for temporary food establishments. Applications for licenses are available from the Department of Inspections and Appeals, Inspections Division Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083; or from a contracting local health department contractor. License fees are set by the Iowa Code sections listed below and charged as follows:

30.4(1) Retail food establishments are based on annual gross sales of food or food products to consumer customers intended for preparation or consumption off the premises (Iowa Code section 137F.6 as amended by 2007 Iowa Acts, Senate File 601, section 215) as follows:

- For annual gross sales of less than \$10,000—\$30 \$40.50;
- For annual gross sales of \$10,000 to \$250,000—\$75 \$101.25;
- For annual gross sales of \$250,000 to \$500,000—\$115 \$155.25;
- For annual gross sales of \$500,000 to \$750,000—\$150 \$202.50;
- For annual gross sales of \$750,000 or more—\$225 \$303.75.

30.4(2) Food service establishments are based on annual gross sales of food and drink for individual portion service intended for consumption on the premises (Iowa Code section 137F.6 as amended by 2007 Iowa Acts, Senate File 601, section 215) or subject to Iowa sales tax as provided in Iowa Code section 422.45 as follows:

- For annual gross sales of less than \$50,000—\$50 \$67.50;
- For annual gross sales of \$50,000 to \$100,000—\$85 \$114.50;
- For annual gross sales of \$100,000 to \$250,000—\$175 \$236.25;
- For annual gross sales of \$250,000 to \$500,000—\$200 \$275.00;
- For annual gross sales of \$500,000 or more—\$225 \$303.75.

30.4(3) Food and beverage vending machines, \$20 for the first machine and \$5 for each additional machine (Iowa Code section 137F.6).

30.4(4) Home food establishments, \$25 \$33.75 (Iowa Code section 137D.2(1) as amended by 2007 Iowa Acts, Senate File 601, section 209).

30.4(5) Hotels are based on the number of rooms provided to transient guests (Iowa Code section 137C.9 as amended by 2007 Iowa Acts, Senate File 601, section 208) as follows:

- For 1 to 15 guest rooms—\$20 \$27.00;
- For 16 to 30 guest rooms—\$30 \$40.50;

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- c. For 31 to 75 guest rooms—\$40 \$54.00;
- d. For 76 to 149 guest rooms—\$50 \$57.50;
- e. For 150 or more guest rooms—\$75 \$101.25.

30.4(6) Mobile food unit or pushcart, \$20 \$27 (Iowa Code section 137F.6 as amended by 2007 Iowa Acts, Senate File 601, section 215).

30.4(7) Temporary food service establishments issued for up to 14 consecutive days in conjunction with a single event or celebration, \$25 \$33.50 (Iowa Code section 137F.6 as amended by 2007 Iowa Acts, Senate File 601, section 215).

A temporary food establishment license for a temporary food establishment located in a farmers market is valid at that site until December 31, 2001, provided the food establishment does not operate more than 14 consecutive days at this location. This paragraph will expire as of January 1, 2002.

30.4(8) For food processing plants, the annual license fee is based on the annual gross sales of food and food products handled at that plant or warehouse (Iowa Code section 137F.6 as amended by 2007 Iowa Acts, Senate File 601, section 215) as follows:

- a. Annual gross sales of less than \$50,000—\$50 \$67.50;
- b. Annual gross sales of \$50,000 to \$250,000—\$100 \$135.00;
- c. Annual gross sales of \$250,000 to \$500,000—\$150 \$202.50;
- d. Annual gross sales of \$500,000 or more—\$250 \$337.50.

30.4(9) Egg handlers are based on the total number of cases of eggs purchased or handled during the month of April (Iowa Code section 196.3 as amended by 2007 Iowa Acts, Senate File 601, section 218) as follows:

- a. For less than 125 cases—\$15 \$20.20;
- b. For 125 to 249 cases—\$35 \$47.25;
- c. For 250 to 999 cases—\$50 \$67.50;
- d. For 1,000 to 4,999 cases—\$100 \$135;
- e. For 5,000 to 9,999 cases—\$175 \$236.25;
- f. For 10,000 or more cases—\$250 \$337.50.

For the purpose of determining fees, each case shall be 30 dozen eggs.

30.4(10) Pursuant to 2002 Iowa Acts, House File 2620, section 2, a person selling potentially hazardous food at a farmers market must pay an annual license fee of \$100 for each county of operation. Persons who operate simultaneously at more than one location within a county are required to have a separate license for each location.

30.4(11) If an establishment is licensed as a retail food establishment or food service establishment and has had a person in charge for the entire previous 12-month period who holds an active certified food protection manager certificate from a program approved by the Conference on Food Protection, and the establishment has not been issued a critical violation during the previous 12-month period, the establishment's license fee for the current renewal period shall be reduced by \$50 but no more than the establishment's total license fee(s).

30.4(12) The department shall charge a voluntary inspection fee of \$100 when a premises that is not a food establishment requests a voluntary inspection.

ITEM 6. Amend rule 481—30.5(137F) as follows:

481—30.5(137F) Penalty and delinquent fees.

30.5(1) Food establishment licenses and food processing plant licenses that are renewed by the licensee after the license expiration date shall be subject to a penalty of 10 percent of the license fee per month. A license shall only be re-

newed if it meets the requirements set forth in subrule 30.3(5).

30.5(2) A person who opens or operates a food establishment or food processing plant without a license is subject to a penalty of up to twice the amount of the annual license fee.

30.5(3) A person who violates Iowa Code chapter 137F or these rules shall be subject to a civil penalty of \$100 for each violation. Each critical violation shall constitute a separate violation. A critical violation that remains uncorrected after the required date of correction shall be considered a violation for each day it remains uncorrected.

a. For the department, prior to the assessment of any civil penalties, the licensee shall have the opportunity for a hearing conducted by the appeals division in the department of inspections and appeals.

b. For contractors, licensees shall have the opportunity for a hearing before the local board of health must be provided as required in rule 481—30.13(10A). If the hearing is conducted before the local board of health, the licensee may appeal to the department.

c. If the licensee does not appeal pursuant to rule 481—30.13(10A), the assessment shall become final after 15 days.

This rule is intended to implement Iowa Code sections 137F.4, 137F.9 and 137F.17.

ITEM 7. Amend rule 481—30.8(137C,137D,137F) as follows:

481—30.8(137C,137D,137F) Inspection frequency.

30.8(1) Food establishments shall be inspected at an interval specified in Section Subpart 8-401.10 of the Food Code Recommendations of the Food and Drug Administration. Food service operations in schools, summer camps, assisted living facilities, residential service substance abuse treatment facilities, halfway house substance abuse treatment facilities, correctional facilities operated by the department of corrections, the state training school, and the Iowa juvenile home shall be inspected at least once annually.

30.8(2) Food processing plants shall be inspected at least once annually.

30.8(3) Hotels shall be inspected at least once biennially.

30.8(4) Home food establishments and vending machine license holders shall be inspected at least once annually.

30.8(5) Egg handlers shall be inspected at least once annually.

30.8(6) Farmers market potentially hazardous food licenses shall be inspected at least once annually.

This rule is intended to implement Iowa Code sections 137C.11, 137D.2, 137F.2 as amended by 2007 Iowa Acts, Senate File 601, and section 196.2.

ITEM 8. Rescind and reserve rule 481—30.10(137C, 137D,137F).

ITEM 9. Amend rule 481—30.11(22) as follows:

481—30.11(22) Examination of records. Information collected by the inspections division food and consumer safety bureau and contractors is considered public information. Records are stored in computer files and are not matched with any other data system. Information is available for public review and will be provided when requested from the office of the director. Inspection reports are available for public viewing at <http://dia.iowa.gov/food/>.

ITEM 10. Amend rule 481—30.13(10A) as follows:

481—30.13(10A) Formal hearing. All decisions of the bureau may be contested by an adversely affected party. Re-

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quest *A request* for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within ~~30~~ 15 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 10, “Contested Case Hearings.”

30.13(1) The proposed decision of the administrative law judge becomes final *if there is no appeal from or review of the proposed decision 30 days after it is mailed.*

30.13(2) Any request for administrative review of a proposed decision must:

- a. Be made in writing;
- b. Be filed with the director of the department of inspections and appeals within ~~30~~ 15 days *of its issuance after the proposed decision was mailed to the aggrieved party (date of receipt by personal service or the postmarked date is time of filing);*
- c. State the reason(s) for the request.

30.13(3) The decision of the director shall be based upon the record and becomes final agency action upon mailing.

This rule is intended to implement Iowa Code section 137F.2 as amended by 2007 Iowa Acts, Senate File 601, section 207.

ITEM 11. Rescind rule 481—31.1(137F) and adopt the following **new** rule in lieu thereof:

481—31.1(137F) Inspection standards. The department adopts the 2005 Food Code with Supplement of the Food and Drug Administration as the state’s “food code” with the following exceptions.

31.1(1) Section 3-201.11 is amended to allow honey which is stored; prepared, including by placement in a container; or labeled on or distributed from the premises of a residence to be sold in a food establishment.

31.1(2) Subparagraph 3-201.17(A)(4) is amended to state that field-dressed wild game shall not be permitted in food establishments.

31.1(3) Paragraph 3-502.12(A) is amended by adding the following: “Packaging of raw meat and poultry using an oxygen packaging method, with a 30-day ‘sell by’ date from the date it was packaged, shall be exempt from having a HACCP Plan.”

31.1(4) Reserved.

31.1(5) Paragraph 4-301.12(C) is amended by adding the following: “Establishments need not have a three-compartment sink when each of the following conditions is met:

- “1. Three or fewer utensils are used for food preparation;
- “2. Utensils are limited to tongs, spatulas, and scoops; and
- “3. The department has approved after verification that the establishment can adequately wash and sanitize these utensils.”

31.1(6) Paragraph 5-203.11(C) is deleted.

31.1(7) Section 5-203.14 is amended by adding the following: “Water outlets with hose attachments, except for water heater drains and clothes dryer connections, shall be protected by a non-removable hose bibb backflow preventer or by a listed atmospheric vacuum breaker installed at least six inches above the highest point of usage and located on the discharge side of the last valve.”

31.1(8) Paragraph 5-402.11(C) is amended by adding the following: “A culinary sink or sink used for food preparation shall not have a direct connection between the sewage system and a drain originating from that sink. Culinary sinks or sinks used in food preparation shall be separated by an air gap of not less than one inch between the outlet and the rim of the floor sink or receptor.”

31.1(9) Elder group homes as defined by Iowa Code section 231B.1 shall be inspected by the department, but Chapters 4 and 6 of the Food Code shall not apply. Elder group homes shall pay the lowest inspection fee in 481—subrule 30.4(2).

31.1(10) Nonprofit organizations that are licensed as temporary food establishments may serve nonpotentially hazardous food from an unapproved source for a period of up to three days.

ITEM 12. Amend rule 481—31.2(137F) as follows:

481—31.2(137F) Food processing plant standards.

1. Standards used to inspect establishments where wholesale food is manufactured, processed, packaged or stored are found in the Code of Federal Regulations in 21 CFR, Part 110, April 1, 1998 2007, publication, “Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding Human Food.”

2. Standards used to inspect establishments where bakery products, flour, cereals, food dressings and flavorings are manufactured on a wholesale basis are found in the Code of Federal Regulations, in 21 CFR, Parts 136, 137 and 169, April 1, 1998 2007, publication.

3. Standards used to inspect establishments which process low-acid food in hermetically sealed containers are found in 21 CFR, Part 113, April 1, 1998 2007, “Thermally Processed Low-Acid Food Packaged in Hermetically Sealed Containers.”

4. Standards used to inspect establishments which process acidified foods are found in 21 CFR, Part 114, April 1, 1998 2007, “Acidified Foods.”

5. Standards used to inspect establishments which process bottled drinking water are found in the Code of Federal Regulations in 21 CFR, Parts 129 and 165, April 1, 1998 2007, publication *publications*, “Processing and Bottling of Bottled Drinking Water” and “Beverages.”

6. In addition to compliance with ~~31.2“1,”~~ *rule 481—31.2(137F) “1,”* manufacturers of packaged ice must comply with the following:

- Equipment must be cleaned on a schedule of frequency that prevents the accumulation of mold, fungus and bacteria. A formal cleaning program and schedule which ~~includes~~ *include* the use of sanitizers to eliminate microorganisms must be developed and used.
- Packaged ice must be tested every 120 days for the presence of bacteria.
- Plants that use a nonpublic water system must sample the water supply monthly for the presence of bacteria and annually for chemical and pesticide contamination.

Copies of these regulations are available from the ~~Inspections Division~~, Department of Inspections and Appeals, *Bureau of Food and Consumer Safety*, Lucas State Office Building, Des Moines, Iowa 50319-0083.

ITEM 13. Amend rule 481—31.3(137F) as follows:

481—31.3(137F) Trichinae control for pork products prepared at retail. Pork products prepared at retail shall comply with the Code of Federal Regulations found in 9 CFR, Section 318.10, January 1, 1998 2007, publication, regarding the destruction of possible live trichinae in pork and pork products. Examples of pork products that require trichinae control include raw sausages containing pork and other meat products, raw breaded pork products, bacon used to wrap around steaks and patties, and uncooked mixtures of pork and other meat products contained in meat loaves and similar types of products. The use of “certified pork” as authorized

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by the department of agriculture and land stewardship or the United States Department of Agriculture, Food Safety and Inspection Service shall meet the requirements of this rule.

ITEM 14. Rescind rule 481—31.4(137F) and adopt the following **new** rule in lieu thereof:

481—31.4(137F) Certified food protection programs. For purposes of Section 2-102.11, a program approved by the Conference on Food Protection shall meet the criteria for a certified food protection manager.

ITEM 15. Rescind rule 481—31.9(137F) and adopt the following **new** rule:

481—31.9(137F) Toilets and lavatories. Separate toilet facilities for men and women shall be provided in places which seat 50 or more people, or in places which serve beer or alcoholic beverages.

ITEM 16. Amend rule 481—31.12(137F) as follows:

481—31.12(137F) Temporary food establishments and farmers market potentially hazardous food licensees.

31.12(1) Personnel.

a. Employees shall keep their hands and exposed portions of their arms clean.

b. Employees shall have clean garments, aprons and effective hair restraints. Smoking, eating or drinking in food booths is not allowed. All nonworking, unauthorized persons are to be kept out of the food booth.

c. All employees, including volunteers, shall be under the direction of the person in charge. The person in charge shall ensure that the workers are effectively cleaning their hands, that potentially hazardous food is adequately cooked, held or cooled, and that all multiuse equipment or utensils are adequately washed, rinsed and sanitized.

d. Employees and volunteers shall not work ~~in at a mobile food unit/pushcart~~ *temporary food establishment or farmers market potentially hazardous food establishment licensees if they the employees and volunteers* have open cuts, sores or communicable diseases. The person in charge shall take appropriate action to ensure that employees and volunteers who have a disease or medical condition transmissible by food are excluded from the food operation.

e. ~~All employees and volunteers~~ *Every employee and volunteer* must sign a logbook with the employee's or volunteer's name, address, telephone number and the date and hours worked. The logbook must be maintained for 30 days by the person in charge and be made available to the department upon request.

31.12(2) Food handling and service.

a. Dry storage. All food, equipment, utensils and single-service items shall be stored off the ground and above the floor on pallets, tables or shelving.

b. Cold storage. Refrigeration units shall be provided to keep potentially hazardous foods at 41°F or below. The inspector may approve an effectively insulated, hard-sided container with sufficient coolant for storage of less hazardous food or the use of such a container at events of short duration if the container maintains the temperature at 41°F or below.

c. Hot storage. Hot food storage units shall be used to keep potentially hazardous food at 140°F ~~135°F~~ or above. Electrical equipment is required for hot holding, unless the use of propane stoves and grills capable of holding the temperature at 140°F ~~135°F~~ or above is approved by the department. Sterno cans are allowed for hot holding if adequate temperatures can be maintained. Steam tables or other hot

holding devices are not allowed to heat foods and are to be used only for hot holding after foods have been adequately cooked.

d. Cooking temperatures. As specified in the following chart, the minimum cooking temperatures for food products are:

165°F	<ul style="list-style-type: none"> • Poultry and game animals that are not commercially raised • Products stuffed or in a stuffing that contains fish, meat, pasta, poultry or ratite • All products cooked in a microwave oven
155°F	<ul style="list-style-type: none"> • Pork, rabbits <i>Rabbits</i>, ratite and game meats that are commercially raised • Ground or comminuted (such as hamburgers) meat/fish products • Raw shell eggs not prepared for immediate consumption
145°F	<ul style="list-style-type: none"> • Raw Pork and raw shell eggs prepared for immediate consumption • Fish and other meat products not requiring a 155°F or 165°F cooking temperature as listed above

e. Consumer advisory requirement. If raw or undercooked animal food such as beef, eggs, fish, lamb, poultry or shellfish is offered in ready-to-eat form, the license holder (person in charge) shall post the *consumer advisory as required by the food code*. ~~following language as a consumer advisory:~~

~~“Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of food-borne illness. Individuals with certain health conditions may be at a higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.”~~

f. Thermometers. Each refrigeration unit shall have a numerically scaled thermometer to measure the air temperature of the unit accurately. A metal stem thermometer shall be provided where necessary to check the internal temperature of both hot and cold food. Thermometers must be accurate and have a range from 0°F to 220°F.

g. Food display. Foods on display must be covered. The public is not allowed to serve itself from opened containers of food or uncovered food items. Condiments such as ketchup, mustard, coffee creamer and sugar shall be served in individual packets or from squeeze containers or pump bottles. Milk shall be dispensed from the original container or from an approved dispenser. All fruits and vegetables must be washed before being used or sold. Food must be stored at least six inches off the ground. All cooking and serving areas shall be adequately protected from contamination. Barbeque areas shall be roped off or otherwise protected from the public. All food shall be protected from customer handling, coughing or sneezing by wrapping, sneeze guards or other effective means.

h. Food preparation. ~~Unless otherwise approved by a variance from the department, no bare hand contact of ready-to-eat food shall occur. Unless washing fruits and vegetables, food employees shall, to the extent practicable, avoid direct, bare hand contact with ready-to-eat food. Establishments shall train food employees on the need and public health reasons for adequate hand washing and personal hygiene. The person in charge shall monitor employee hand-washing practices to ensure that employees are effectively cleaning their hands. One of the following alternatives shall be used by food employees when handling ready-to-eat food:~~

~~(1) Single-use gloves, utensils, deli tissue, spatulas, tongs or dispensing equipment; or~~

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(2) ~~An approved antibacterial soap with all operations that permit limited bare hand contact with ready-to-eat foods.~~

i. Approved food source. All food supplies shall come from a commercial manufacturer or an approved source. The use of food in hermetically sealed containers that is not prepared in an approved food processing plant is prohibited. Transport vehicles used to supply food products are subject to inspection and shall protect food from physical, chemical and microbial contamination.

j. Leftovers. ~~Leftovers may not be used, sold or given away in a temporary food establishment.~~ Hot-held foods that are not used by the end of the day must be discarded.

31.12(3) Utensil storage and warewashing.

a. Single-service utensils. The use of single-service plates, cups and tableware is ~~strongly recommended required.~~ The use of multiuse eating or drinking utensils must be approved by the department.

b. Dishwashing. ~~An~~ *If approved, an* adequate means to heat the water and a minimum of three basins large enough for complete immersion of the utensils are required to wash, rinse and sanitize utensils or food-contact equipment.

c. Sanitizers. Chlorine bleach or another approved sanitizer shall be provided for warewashing sanitization and wiping cloths. An appropriate test kit shall be provided to check the concentration of the sanitizer used. The person in charge shall demonstrate knowledge in the determination of the correct concentration of sanitizer to be used.

d. Wiping cloths. Wiping cloths shall be stored in a clean, 100 ppm chlorine sanitizer solution or equivalent. Sanitizing solution shall be changed as needed to maintain the solution in a clean condition.

31.12(4) Water.

a. Water supply. An adequate supply of clean water shall be provided from an approved source. Water storage units and hoses shall be food grade and approved for use in storage of water. If not permanently attached, hoses used to convey drinking water shall be clearly and indelibly identified as to their use. Water supply systems shall be protected against backflow or contamination of the water supply. Backflow prevention devices, if required, shall be maintained and adequate for their intended purpose.

b. Wastewater disposal. Wastewater shall be disposed of in an approved wastewater disposal system sized, constructed, maintained and operated according to law.

31.12(5) Premises.

a. Hand-washing container. An insulated container with at least a two-gallon capacity with a spigot, basin, soap and dispensed paper towels shall be provided for hand washing. The container shall be filled with hot water.

b. Floors, walls and ceilings. If required, walls and ceilings shall be of tight design and weather-resistant materials to protect against the elements and flying insects. If required, floors shall be constructed of tight wood, asphalt, rubber or plastic matting or other cleanable material to control dust or mud.

c. Lighting. Adequate lighting shall be provided. Lights above exposed food preparation areas shall be shielded.

d. Food preparation surfaces. All food preparation or food contact surfaces shall be of a safe design, smooth, easily cleanable and durable.

e. Garbage containers. An adequate number of cleanable containers with tight-fitting covers shall be provided both inside and outside the establishment.

f. Toilet rooms. An adequate number of approved toilet and hand-washing facilities shall be provided at each event.

g. Clothing. Personal clothing and belongings shall be stored at a designated place in the establishment, adequately separated from food preparation, food service and dishwashing areas.

ITEM 17. Rescind and reserve **481—Chapter 32.**

ITEM 18. Amend subrule 34.1(4) as follows:

34.1(4) All potentially hazardous food must be refrigerated at 41°F or less, or held at 140°F *135 F* or higher to control ~~bacteria~~ *bacterial* growth. Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to an internal temperature of 165°F or higher before being placed in hot food storage holding units. Food warmers and other hot food holding units shall not be used for the reheating of potentially hazardous foods.

ITEM 19. Amend rule 481—34.2(137D) as follows:

481—34.2(137D) Enforcement.

34.2(1) All critical violations (~~four and five point items~~) shall be corrected within 10 days. Within 15 days, the license holder shall make a written report to the regulatory authority, stating the action taken to correct the critical violation. All noncritical violations shall be corrected ~~by the next routine inspection within the time period required by the inspection, but in all cases the violation shall be corrected within 90 days of the routine inspection.~~

34.2(2) Violation of these rules or any provision of Iowa Code chapter 137D is a simple misdemeanor. The department may employ various remedies if violations are discovered.

- a. A license may be revoked.
- b. An injunction may be sought.
- c. A case may be referred to a county attorney for criminal prosecution.

ITEM 20. Amend rules **481—35.1(137A,137B,137C,137D,137E)** to **481—35.11(137A,137B,137C,137D,137E)**, parenthetical implementation statute, as follows: ~~(137A,137B,137C,137D,137E 137F)~~

ITEM 21. Amend rule 481—35.1(137C,137D,137F) as follows:

481—35.1(137C,137D,137F) Definitions. ~~Definitions~~ *The definitions* in 481—30.2(10A) and Iowa Code sections ~~137A.1, 137B.2, 137C.2, 137D.1 and 137E.1~~ *137F.1* are hereby incorporated by reference as part of this chapter.

ITEM 22. Amend rule 481—35.2(137C,137D,137F) as follows:

481—35.2(137C,137D,137F) Contracts. A municipal corporation or county may enter into an agreement with the department to license, inspect and enforce under Iowa Code chapters ~~137A, 137B, 137C, 137D and 137E~~ *137F*.

35.2(1) The department will investigate the municipal corporation or county to determine if it possesses adequate resources to fulfill the requirements of the contract.

35.2(2) A copy of the contract is available from the ~~Inspections Division, Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083.~~

ITEM 23. Rescind and reserve subrule **35.3(3).**

ITEM 24. Amend subrule 35.4(1) as follows:

35.4(1) Contractor inspection personnel must possess experience and education qualifications equal to those required for state food ~~and sanitation~~ inspectors. Additionally, this

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

experience must include application of the *food code* ~~FDA Model Retail Food Store Sanitation Code, the Food Service Sanitation Ordinance or similar food inspection regulations.~~

Municipal corporations or counties that wish to contract with the department to perform food inspections under Iowa Code chapters ~~137A, 137B, 137C, 137D and 137E~~ 137F, but who do not have trained personnel to perform these services, shall reimburse the department for the cost of providing the required training.

ITEM 25. Amend rule 481—35.6(137C,137D,137F) as follows:

481—35.6(137C,137D,137F) Inspection standards. Inspections shall be completed using forms prescribed by the department for those inspections. The contractor shall follow applicable standards for inspections found in Iowa Code chapters ~~137A, 137B, 137C, 137D and 137E~~ 137F. Inspections shall be conducted pursuant to ~~481—Chapters 30 to 34 and 37~~ 481—*Chapters 30, 31, 34, 35, and 37.*

Copies of inspection standards are available from the ~~Inspections Division, Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083.~~

ITEM 26. Amend rule 481—35.7(137C,137D,137F) as follows:

481—35.7(137C,137D,137F) Enforcement. The contractor shall enforce state laws and rules, including ~~FDA~~ regulations adopted by reference. These regulations are the legal basis of authority in licensing and inspection of establishments under this contract.

ITEM 27. Amend rule 481—35.10(137C,137D,137F) as follows:

481—35.10(137C,137D,137F) Reporting requirements. ~~A report of all inspections made during the previous month shall be submitted to the department by the fifteenth day of the following month.~~

~~The contractor shall submit a semiannual listing of all licenses issued in the last 12 months on June 30 and December 31 of each year. Other data on licenses and inspections under this contract shall be submitted as requested by the department.~~

~~The contractor shall provide a monthly report of inspections performed for beer and liquor code violations to the Alcoholic Beverage Division, Department of Commerce, Ankeny, Iowa 50021.~~

~~The contractor shall provide a monthly report of inspections performed with fire code violations to the State Fire Marshal's Office, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319.~~

Inspection reports shall be uploaded to the department's food inspection database system at least monthly. The contractor shall ensure that the information uploaded to the department is accurate and complete. The contractor shall complete and submit to the department reports required by Iowa Code section 137F.3(4) as amended by 2007 Iowa Acts, Senate File 601, section 213.

ITEM 28. Amend rule 481—35.11(137C,137D,137F) as follows:

481—35.11(137C,137D,137F) Contract rescinded. If the department determines that Iowa Code chapters ~~137A, 137B, 137C, 137D and 137E~~ 137F are not being enforced by the contractor, the department may rescind the agreement. Notification of the department's action will be provided to the

contractor at least 30 days in advance of the action. The contractor has the right to request a hearing with the department to contest the action.

ARC 6435B**INSURANCE DIVISION[191]****Notice of Intended Action**

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

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

Pursuant to the authority of 2006 Iowa Acts, Senate File 2344, and 2007 Iowa Acts, Senate File 346, the Iowa Insurance Division hereby gives Notice of Intended Action to amend Chapter 71, “Small Group Health Benefit Plans,” Iowa Administrative Code.

The proposed rule implements the use of the small employer uniform health insurance application form when small employers seek premium quotes from small employer carriers for health insurance benefits. The use of the uniform application ensures that small employer carriers receive important information necessary to issue a premium quote by standardizing the key data elements, thus enabling the small employer to provide the information one time.

Chapter 71 does not provide for waivers. Persons seeking waivers must petition the Division for a waiver in the manner set forth under 191—Chapter 4.

Any interested person may make written comments on the proposed rule on or before January 4, 2008. Written comments may be sent to Angela Burke Boston, Assistant Commissioner, Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted electronically to angela.burke.boston@iid.state.ia.us.

A public hearing will be held at the office of the Insurance Division at 10 a.m. on January 4, 2008. The Division is located at 330 Maple Street, Des Moines, Iowa.

This rule is intended to implement 2006 Iowa Acts, Senate File 2344, and Iowa Code chapter 513B as amended by 2007 Iowa Acts, Senate File 346.

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

The following **new** rule is proposed.

191—71.26(513B) Uniform health insurance application form.

71.26(1) Small employer carriers shall use the small employer uniform health insurance application form as the only acceptable form when small employers apply for new health insurance coverage from small employer carriers. Small employer carriers shall implement procedures and policies necessary to use the small employer uniform health insurance application form.

71.26(2) Small employer carriers shall treat and accept a copy of the uniform health insurance application form as an original.

71.26(3) Use of the uniform health insurance application form shall not be required:

INSURANCE DIVISION[191](cont'd)

a. Upon renewal of an existing small employer group policy, or

b. When adding or removing employees or dependents under an existing small employer group policy.

71.26(4) Form and content of uniform health insurance application.

a. The uniform health insurance application form following this chapter contains the standardized data elements that must be included in the uniform health insurance application to ensure consistent usage by all small employer carriers when small employers apply for new health insurance coverage.

b. The standardized data elements shall not preclude a small employer carrier from utilizing electronic methods or other technologies to accommodate the uniform health insurance application form.

71.26(5) Small employer carriers may preprint the name of the small employer carrier on the uniform health insurance application form provided that the form contains at least three additional spaces to insert the names of small employer carriers to which the uniform health insurance application may be sent.

71.26(6) The information contained in each uniform health insurance application shall be considered current by the small employer carrier for a minimum of 60 days from receipt by the small employer carrier of the earliest signed and completed uniform health insurance application form. For the period of time that the information contained in the uniform employee application is considered current, small employer carriers shall not require an employee of a small employer to complete a new application form or any document, addendum or certification representing that the information contained in the completed uniform health insurance application is current.

71.26(7) A small employer carrier may accept and utilize information provided by an employee of a small employer subsequent to the date the employee signed the completed application if the employee is providing the small employer carrier with additional or modified information.

71.26(8) A small employer carrier may require employees of a small employer to complete and submit new uniform health insurance applications if either of the following occurs:

a. The authorization signed by the employees does not include the name of the small employer carrier from which the small employer is requesting an underwritten premium amount and coverage; or

b. The completed uniform health insurance applications are received by the small employer carrier after 60 days of completion of the earliest signed and completed uniform health insurance application.

71.26(9) A producer shall forward, within five business days from receipt of the applications, copies of the uniform health insurance applications to all small employer carriers identified in the uniform health insurance application authorization to receive the applications, or to an authorized representative of each small employer carrier, without requiring that a fee be paid for the photocopying or delivery of the copies of completed uniform health insurance applications. The producer may withhold distribution to a small employer carrier, or the carrier's authorized representative, at the written request of the small employer.

71.26(10) A copy of the completed uniform application, which may be in electronic or other reproduced forms, shall be maintained by the producer that submitted the application and by the small employer carrier that issued the policy.

71.26(11) Small employer carriers shall state the premium to the small employer within ten business days of receipt of all pertinent information required for a small employer carrier's underwriting of the small employer's application for group health insurance, including completed uniform employee applications.

71.26(12) Small employer carriers shall make a reasonable effort to promptly obtain information that a carrier determines is necessary to make an underwriting decision.

This rule is intended to implement 2006 Iowa Acts, Senate File 2344, and Iowa Code chapter 513B as amended by 2007 Iowa Acts, Senate File 346.

INSURANCE DIVISION[191](cont'd)

*** Iowa Uniform Group Health Application**

Agent No.

Employer Data

Employer _____ Group Number _____ Phone _____
 Street Address _____ City _____ State _____ Zip _____ Fax _____

Employee Data

Employee Name _____ Soc Sec Disabled? Y N Medicare Enrolled? Y N Sex: M F
 Home Address _____ City _____ State _____ Zip _____
 Work Phone # _____ Home Phone # _____ Email _____
 DOB _____ Height _____ Weight _____ Social Security # _____ Job Title _____ Date of Hire _____
 Primary Care Physician _____
 Average Hours Worked per Week _____ Salary/Wage \$ _____ Employment Status: Full-Time Part-Time Retired COBRA
 Marital Status: Married Single Divorced Legally Separated Widowed Common Law Marriage (Notarized Affidavit Required)

Coverage Selected

Please indicate which eligible coverage(s) you are choosing:	<input type="checkbox"/> Medical:	<input type="checkbox"/> Employee	<input type="checkbox"/> Employee/Spouse	<input type="checkbox"/> Employee/Child(ren)	<input type="checkbox"/> Employee/Spouse/Child(ren)
		<input type="checkbox"/> HMO	<input type="checkbox"/> PPO	<input type="checkbox"/> POS	<input type="checkbox"/> HDHP
		<input type="checkbox"/> Other, define: _____			
	<input type="checkbox"/> Dental:	<input type="checkbox"/> Employee	<input type="checkbox"/> Employee/Spouse	<input type="checkbox"/> Employee/Child(ren)	<input type="checkbox"/> Employee/Spouse/Child(ren)
	<input type="checkbox"/> Life:	<input type="checkbox"/> Employee	<input type="checkbox"/> Employee/Spouse	<input type="checkbox"/> Employee/Child(ren)	<input type="checkbox"/> Employee/Spouse/Child(ren)
<input type="checkbox"/> Vision	<input type="checkbox"/> Employee	<input type="checkbox"/> Employee/Spouse	<input type="checkbox"/> Employee/Child(ren)	<input type="checkbox"/> Employee/Spouse/Child(ren)	
<input type="checkbox"/> Disability:	<input type="checkbox"/> Employee/Short Term	<input type="checkbox"/> Employee/Long Term			

Dependent Data

Name (First, MI, Last)	Sex	Height	Weight	Birthdate	Social Security Number	Primary Care Physician	Full-time student?	Medicare enrolled?	Soc. Sec. enrolled?
Spouse	<input type="checkbox"/> M <input type="checkbox"/> F						<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Dependent	<input type="checkbox"/> M <input type="checkbox"/> F						<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Dependent	<input type="checkbox"/> M <input type="checkbox"/> F						<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Dependent	<input type="checkbox"/> M <input type="checkbox"/> F						<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Other Coverage

Medicare Coverage: Name _____ ID# _____ Effective Date (Part A) _____ (Part B) _____ (Part D) _____		Previous Coverage: Within last 18 months, did you have health insurance coverage? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, please complete the following:	
Concurrent Coverage: Will you, your spouse or your dependents keep other health coverage in addition to this coverage? <input type="checkbox"/> Yes <input type="checkbox"/> No		Name of covered person (s) _____	
Name of covered person(s) _____		Name of covered person (s) _____	
Employer (if applicable) _____		Employer (if applicable) _____	
Insurance Company/HMO Name and address _____		Insurance Company Name/Address _____	
Policy No. _____	<input type="checkbox"/> Employee <input type="checkbox"/> Employee/Spouse <input type="checkbox"/> Employee/Children <input type="checkbox"/> Employee/Spouse/Children	Effective Date _____ End Date _____	Policy No. _____ <input type="checkbox"/> Employee <input type="checkbox"/> Employee/Spouse <input type="checkbox"/> Employee/Children <input type="checkbox"/> Employee/Spouse/Children
Reason for Enrollment/Change: Name of Affected Party _____ Date of Event _____ <input type="checkbox"/> New Hire <input type="checkbox"/> Late Enrollee <input type="checkbox"/> Special Enrollee <input type="checkbox"/> Loss of Coverage <input type="checkbox"/> Marriage <input type="checkbox"/> Birth/Adoption <input type="checkbox"/> Death <input type="checkbox"/> Divorce <input type="checkbox"/> Employment Termination <input type="checkbox"/> COBRA <input type="checkbox"/> Cancel Coverage (reason) _____ <input type="checkbox"/> Other: _____			

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Authorization and Certification

I understand and agree with the following statements with regard to my application for coverage through an insurance Carrier:

- My dependents are not eligible for coverages I don't have. My dependents, including step and foster children and any over the maximum age, are eligible based on plan provisions but those over the maximum age will be verified when a claim is filed. I have read and understand the Preexisting Condition Exclusion and the Special Enrollment Rights and know if I refuse medical coverage, I and my dependents must wait for the next open enrollment unless I become eligible during a Special Enrollment. If I refuse dental coverage, I and my dependents may enroll later but this will affect the level of benefits. If I refuse life or disability coverage, I may apply later but I must show proof of good health and coverage will be subject to approval by the Carrier. If I refuse coverage, I cannot enroll after retirement.
- I understand that the coverages applied for will not start until after this application and the appropriate coverage rates are received and accepted by the Carrier and an effective date of coverage is established by the Carrier. I further agree that the Carrier is not liable for a claim before the effective date of coverage and all policy provisions apply. During the first two years coverage for life or disability is in force, false statements, omissions or material misrepresentations can cause changes in that coverage, including cancellation back to the effective date.
- Any person who, with intent to defraud or knowingly is facilitating a fraud against an insurer, submits an application or files a claim with false or deceptive statements, may be guilty of insurance fraud.
- For life and disability coverages, I authorize any health care provider who has personal information, including physical, mental, drug or alcohol use history, regarding me or a dependent, to give such data to the life or disability carrier agents and employees of the Life or Disability Carrier and I authorize the Life or Disability Carrier to release data as required by law. If signed in connection with an application, reinstatement or a change in benefits, this form will be valid two years from the date below. I may revoke authorization for information not yet obtained. I understand data obtained will be used by the Life or Disability Carrier for determining eligibility for life and disability coverage. Information will not be used for any purposes prohibited by law.
- I also understand collection of social security numbers for myself and my dependents will be used by the Carrier only as allowed by law.
- For life coverage, I understand that as the employee, the insurance I and my dependents have applied for will begin on the effective date of coverage provided I am at work on that date. If I am not actively at work on such date, subject to the terms of the group policy, coverage may not go into effect until after my return to work. Furthermore, I understand that no insurance may become effective for any member of my family while he/she is in a period of limited activity.
- For medical coverage, I authorize pharmacy benefit managers, "health care providers", including but not limited to, surgeons, physicians, psychologists, nurses, social workers, health care facilities and other entities covered under the HIPAA Privacy Rule and their agents and employees, to release and disclose my personal health information, including but not limited to, all health & mental records, including those records protected by Federal or State law relating to the diagnosis or treatment of AIDS or AIDS related complex, Human Immunodeficiency Virus (HIV) infection, sexually transmitted diseases, mental health and substance abuse, the use of alcohol, drugs, and tobacco, and the past, present, or future treatments or conditions for myself or for my dependents eligible for health care coverage to the Carrier, its agents, and employees, for purposes of underwriting my application for coverage, and making eligibility, premium rating, and enrollment decisions, relating to any coverage I have, have applied for, or may in the future apply for with the Carrier or other entities covered under the HIPAA Privacy Rule. I further understand that the personal health information described above may be disclosed to and/or received by persons or organizations that are not health plans, covered health care providers or health care clearinghouses subject to federal health information privacy laws. They may further disclose the protected health information, and it may no longer be protected by federal health information privacy laws. This authorization shall remain in force for two years following the date of my signature. I may revoke this authorization in writing at any time by sending the request for revocation to the Carrier. I understand that a revocation is not effective until received by the Carrier and that any revocation is not effective to the extent that the Carrier or Providers have relied on the protected health information disclosed to them. This Authorization and Certification does not authorize the redisclosure of medical information except as otherwise stated herein. Federal and State regulations do not allow further disclosure of mental health, substance abuse and AIDS/HIV related information. The Carrier maintains the confidentiality of all information received and it will not be released to any person or facility unless you apply for life and/or disability coverage underwritten by the Life or Disability Carrier in which case the application, without any further health records or Attending Physician Statements (APS) received, will be released to the Life or Disability Carrier. I understand that if I refuse this authorization, the Carrier may not make an eligibility determination, and I will not be considered for coverage with the Carrier.

I hereby authorize the following Carriers, their reinsurers, and their legal representatives to receive, use, and disclose my, my spouse and my dependent child(ren)'s Protected Health Information for the purpose of insurance coverage. I authorize the Carriers to disclose my, my spouse and my dependent child(ren)'s Protected Health Information between themselves, to reinsuring companies, and to the plan administrator or plan sponsor (if other than the employer), insurance intermediaries, or other persons or organizations performing business or legal services in connection with the purpose of insurance coverage: *(Either you or your broker must list all Carriers that are to receive this application for insurance.)*

Carrier _____ Carrier _____ Carrier _____

Carrier _____ Carrier _____ Carrier _____

I certify that I am legally authorized to apply for coverage for myself and all other persons named in this application. I further certify that, after this application was completed, I carefully and fully read it, that the statements and answers set forth are full, true, and correct to the best of my knowledge and belief, and that no information required to be given, either expressly or by implication, has been knowingly withheld. I understand that the Carrier will rely on the completeness and truthfulness of the information given and the statements made, and that if I have made any false statements or misrepresentations, or have failed to disclose or concealed any material fact, the Carrier will be entitled to declare any contract or coverage issued pursuant to this application void and to refuse allowance on benefits to any person thereunder, which means that any claims incurred will become my liability. If the group policy does not require my contribution, I understand that I cannot decline any coverage unless the policy indicates otherwise. If the group policy requires my contribution, I authorize my employer to deduct from my pay. I understand an agent or broker cannot guarantee coverage, revise rates, benefits, or provisions without written approval from the Carrier.

Your signature X _____ Date signed _____

INSURANCE DIVISION[191](cont'd)

Designated Beneficiaries

<p>Group Term Life and/or Voluntary Term Life Beneficiary Designation (NOTE: The same beneficiary will be used for both Group Term Life and Voluntary Term Life. If you wish to name different beneficiaries for each coverage, please ask your employer for a beneficiary change form to complete in addition to the information shown below). All primary and contingent beneficiaries, whether adults or minors, should be included in the beneficiary designation below.</p>			
Primary Beneficiaries:			
<i>Name and Address</i>	<i>Percentage</i>	<i>Relationship</i>	<i>Social Security#</i>
Contingent Beneficiaries:			
<i>Name and Address</i>	<i>Percentage</i>	<i>Relationship</i>	<i>Social Security#</i>
<p>The right to make future changes is reserved. If two or more beneficiaries are named, the proceeds shall be paid to the named beneficiaries, or to the survivor or survivors, in equal shares, unless specified otherwise.</p>			
<p>If any beneficiary is designated as trustee, it is understood and agreed that the Plan shall not be a party to nor bound by the conditions of any trust and payment of the net proceeds of said policy on the death of the insured to the then designated beneficiary shall be a complete discharge as to the Plan.</p>			
<p>If you have designated a minor child(ren) as your beneficiary, you must complete the Uniform Transfers to Minors Act form.</p>			

Waiver of Coverage

<p>I decline coverage for:</p> <p>Medical <input type="checkbox"/> Employee <input type="checkbox"/> Employee/Spouse <input type="checkbox"/> Employee/Child(ren) <input type="checkbox"/> Employee/Spouse/Child(ren)</p> <p>Dental <input type="checkbox"/> Employee <input type="checkbox"/> Employee/Spouse <input type="checkbox"/> Employee/Child(ren) <input type="checkbox"/> Employee/Spouse/Child(ren)</p> <p>Life <input type="checkbox"/> Employee <input type="checkbox"/> Employee/Spouse <input type="checkbox"/> Employee/Child(ren) <input type="checkbox"/> Employee/Spouse/Child(ren)</p> <p>Vision <input type="checkbox"/> Employee <input type="checkbox"/> Employee/Spouse <input type="checkbox"/> Employee/Child(ren) <input type="checkbox"/> Employee/Spouse/Child(ren)</p> <p>Disability <input type="checkbox"/> Employee/Short Term <input type="checkbox"/> Employee/Long Term</p>	<p>Declining coverage due to existence of other coverage:</p> <p><input type="checkbox"/> Spouse's Employer's Plan <input type="checkbox"/> Covered by Medicare <input type="checkbox"/> COBRA from prior employer <input type="checkbox"/> Individual Plan <input type="checkbox"/> Medicaid <input type="checkbox"/> VA Eligibility <input type="checkbox"/> Tri-Care <input type="checkbox"/> Other, Explain: _____</p> <hr/> <p><input type="checkbox"/> I (we) have no other coverage at this time.</p>
<p>I understand that by waiving coverage at this time, I will not be allowed to participate unless I experience a life change event, at the next open enrollment period or as a late enrollee, if applicable. I also understand that pre-existing limitations may apply as explained in the Rights and Responsibilities brochure which I have received with this form.</p>	

ARC 6444B**NATURAL RESOURCE
COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission gives Notice of Intended Action to amend Chapter 30, “Water Recreation Access Cost-Share Program,” Iowa Administrative Code.

The proposed amendments will supplement the current chapter with a Water Trails Development Program and Low-Head Dam Safety Program and rename the chapter “Waters Cost-Share and Grant Programs.”

Any interested person may make written comments on these proposed amendments on or before January 2, 2008. Such written materials should be directed to Nate Hoogeveen, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034.

A public hearing will be held on Wednesday, January 2, 2008, at 3 p.m. in the Fourth Floor Conference Room of the Wallace State Office Building, 502 E. Ninth Street, Des Moines, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code chapters 455A, 461A, and 462A.

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

The following amendments are proposed.

ITEM 1. Amend **571—Chapter 30**, title, as follows:

WATER RECREATION ACCESS
COST-SHARE PROGRAM

WATERS COST-SHARE AND GRANT PROGRAMS

ITEM 2. Amend **571—Chapter 30** by adding the following **new** title before rule 571—30.1(452A):

DIVISION I

WATER RECREATION ACCESS COST-SHARE PROGRAM

ITEM 3. Amend rule 571—30.1(452A) as follows:

571—30.1(452A) Purpose Title and purpose. *This division shall provide rules for the water recreation access cost-share program.* The purpose of this rule division is to define procedures for cost sharing between state and local public agencies to provide for the acquisition or development of public recreational boating accesses to Iowa waters.

ITEM 4. Amend 571—Chapter 30 by adopting the following **new** Division II:

DIVISION II

WATER TRAILS DEVELOPMENT PROGRAM
AND LOW-HEAD DAM SAFETY PROGRAM

571—30.51(455A,461A,462A) Definitions. For purposes of this division, the following definitions shall apply:

“Advisory committee” means the water trails advisory committee.

“Commission” means the natural resource commission.

“Coordinator” means the staff person of the department responsible for implementing this division.

“Department” means the department of natural resources.

“Director” means the director of the department of natural resources.

“Low-head dam” means a uniform structure across a river or stream that causes an impoundment upstream, with a recirculating current downstream.

“Navigable waters” means all lakes, rivers, and streams, which can support a vessel capable of carrying one or more persons during a total of six months period in one out of every ten years.

“Scoring committee” means the water trails scoring committee, which consists of the coordinator, two other department staff members appointed by the director, and two representatives of the water recreation community selected by the director.

“Sponsor” means an eligible applicant, as described in these rules.

“Water trail” means a point-to-point travel system on a navigable water and a recommended route connecting the points.

571—30.52(455A,461A,462A) Purpose and intent. The water trails development program and the low-head dam safety program provide funds to assist development of local water trails on navigable waters of the state of Iowa and to support safety projects for low-head dams in the state of Iowa. The programs will be available to fund two types of projects: those that enhance water trails development and recreation and those that are limited to enhancing only dam safety efforts.

571—30.53(455A,461A,462A) Program descriptions.

30.53(1) Water trails development program. The department will provide funds to cities, counties and nonprofit organizations in the state of Iowa to develop water trails eligible for designation throughout the state. The goal of the water trails development program is to assist and encourage the development of community-driven water trails that provide features described herein and appropriate river management through the design and spacing of accesses. At the same time, the program shall discourage unnecessary impacts to natural resources through construction. Water trails development program projects may be eligible to become designated water trails, as determined by the department, and may be eligible for inclusion in the department’s marketing materials.

30.53(2) Low-head dam safety program. The department will provide funds to cities and counties within Iowa to undertake projects that warn the general public about drowning hazards related to low-head dams or that remove or otherwise modify low-head dams to create a safer experience on Iowa’s navigable waters.

571—30.54(455A,461A,462A) Announcement of funding opportunity. The coordinator shall announce, at least annually, the availability of funds for the programs, designate a

NATURAL RESOURCE COMMISSION[571](cont'd)

time and place for receiving proposals, identify any additional requirements to those enumerated in this division for successful applications, and provide at least 90 days for sponsors to submit such proposals. Not more than quarterly, the department shall provide for additional application cycles if additional funds are made available or otherwise become available.

571—30.55(455A,461A,462A) Grant requirements. By submitting a proposal pursuant to this division, a sponsor will agree to the following terms and conditions:

30.55(1) Maintenance and ownership. The sponsor will assume the overall maintenance of the integrity of the project or shall otherwise make agreements with landowners and other interested parties for such long-term maintenance as may be required.

30.55(2) Agreements. Before funds are disbursed, the sponsor will enter into a project agreement with the department. The agreement shall detail and further define the relationship of the parties.

30.55(3) Resource impacts. The sponsor will install safeguards and otherwise ensure that the proposed project will have minimum or negligible impacts on natural resources.

30.55(4) Timely commencement of projects. Funds must be completely expended within two years of the award. If the sponsor is not able to complete a project within the original time period, the sponsor must seek and receive an extension from the department to be eligible for funds beyond the original time period for completion.

30.55(5) Reports. The sponsor shall be responsible for the filing of quarterly reports about the status of the project. The reports shall include a description of funds expended and any issues encountered or problems that may delay or otherwise cause the project not to be completed. The sponsor shall submit a final report, which shall include the complete budget outlay for the completed project; samples of the completed project, if applicable; and a narrative of the project.

30.55(6) Expenditures. The sponsor shall expend all funds in accordance with the sponsor's governance documents, which may include applicable provisions of the Code of Iowa.

30.55(7) Record keeping. The sponsor shall keep all project records for three years after the final report is completed. These records are to be available for audit by the state.

30.55(8) Grant amendments. For any deviation from the project outlined in the original application, the sponsor must receive approval from the coordinator in advance via electronic mail or in writing.

30.55(9) Permits and licenses. The sponsor must obtain any and all required licenses and permits from federal, state, and local authorities before commencing any activity pursuant to a grant award.

30.55(10) Control of project site. The sponsor must demonstrate that the project site or sites are under the physical control of the sponsor or its partners, either by fee title, lease, management agreement, or easement. The term of a lease, management agreement, or easement must be commensurate with the life expectancy of the proposed improvements.

571—30.56(455A,461A,462A) Application procedures. For proposals to be considered for funding, the sponsor shall submit them in the following manner:

30.56(1) The sponsor will submit an application on the forms provided by the department postmarked by the date provided in the grant opportunity announcement. The forms shall include in the project narrative a statement of grounds for eligibility.

30.56(2) The sponsor will support any claim of cost share through a signed letter from the organization providing the cost share.

571—30.57(455A,461A,462A) Proposal evaluation. Proposals will be evaluated by the scoring committee. The scoring committee shall evaluate both water trails development program proposals and low-head dam safety program proposals.

571—30.58(455A,461A,462A) Sponsor eligibility.

30.58(1) Water trails development program. The water trails development program is limited to local divisions of Iowa government and to nonprofit organizations recognized and incorporated pursuant to the laws of Iowa.

30.58(2) Low-head safety program. The low-head dam safety program is limited to cities and counties for structures and land owned or proposed to be owned by those cities or counties or other entities, including but not limited to cooperatives, state or federal agencies, and private individuals or corporations.

571—30.59(455A,461A,462A) Project eligibility.

30.59(1) Water trails development program. The scoring committee will evaluate proposals for water trails development projects to determine whether the projects will achieve, or achieve progress related to, the goal of creating water trails that may ultimately be eligible for designation on navigable waters in the state of Iowa. The following types of projects may be eligible:

a. **Accesses.** Construction of low-impact water access points or other conveyances by which recreational users are provided a means of legally placing vessels in the water and removing them.

b. **Land acquisition for water trail development.** Purchases of easements or fee title lands that will be used for water trail navigation, such as access, portage, camping, or other uses related to navigation on a water trail.

c. **Dam warning signage.** Warning signs, supporting structures, and navigational aids such as buoys at and near low-head dams.

d. **Navigation and interpretive signage.** Various water trail signs and markers, as needed, to instruct recreational users about safe uses, regulations of access areas, and surrounding area characteristics.

e. **Portages.** Construction of portage trails where a portage would aid navigation or around dangerous water areas, such as dams, unnavigable waters, or any other sections of water that are potentially dangerous or life-threatening.

f. **Related construction and development.** Construction and development of items related to water trail navigation, including dam modification/removal; and amenities such as access roads or parking areas, canoe racks or bike racks for shuttling purposes, and restrooms, picnic areas, and campsites that are easily accessible from waterways of primary use by water travelers; and contracted costs of developing any of the water trails navigational amenities listed. Direct labor costs to the sponsor may count toward in-kind match according to prevailing local wages, up to \$10.50 per hour.

g. **Promotion.** Informational publications of water trails for public access and online materials available to the public.

h. **Education.** Education projects related to water safety and appropriate etiquette, with a primary focus on water trails recreation.

i. **Materials and equipment.** Actual material cost of trail maintenance tools, gravel, fencing supplies, gates, bridges, culverts, riprap, and other materials necessary for trail, portage and access maintenance.

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30.59(2) Low-head dam safety program. The scoring committee will evaluate proposals for projects that enhance safety at low-head dams on or adjacent to navigable waters in Iowa. The scoring committee will evaluate the following three categories of proposals:

a. Small projects. Small projects shall include proposal requests of up to \$20,000. Eligible projects for consideration for award as small projects shall include: warning signage and supporting infrastructure; feasibility, environmental, or preliminary design or engineering studies related to removal of hazardous structures; and construction costs related to portage trails and modification or removal of hazardous dams.

b. Medium-sized projects. Medium-sized projects shall include proposal requests of \$20,001 to \$50,000. Eligible projects for consideration of award as medium-sized projects shall include: warning signage and supporting infrastructure; and construction and engineering costs related to portage trails and modification or removal of hazardous dams.

c. Large projects. Large projects shall include proposal requests of more than \$50,000. Eligible projects for consideration of award as large projects shall include construction and engineering costs related to modification or removal of hazardous dams.

571—30.60(455A,461A,462A) Cost-share requirements.

30.60(1) Water trails development program. Grant proposals for water trails development projects do not require cost share; however, cost sharing is strongly encouraged through the selection criteria. Any claim of cost share shall be supported through a signed letter from the organization providing the cost share.

30.60(2) Low-head dam safety program. Grant proposals for low-head dam safety projects shall provide at least 50 percent of the funds required to complete small, medium-sized, and large projects. Cost-share funds may include local, private, federal or other state funds. Any claim of cost share required by this subrule shall be supported through a signed letter from the organization providing the cost share. The department strongly encourages sponsors to provide more cost share than is required by these rules, and the scoring committee will provide additional consideration to those proposals that exceed cost-share requirements.

571—30.61(455A,461A,462A) Evaluation criteria.

30.61(1) Water trails development program.

a. The scoring committee shall evaluate grant proposals for the water trails development program projects based on the following criteria:

- (1) Feasibility of the proposed project;
- (2) Level of private resources or local resources or both available to the project; and
- (3) The project's contribution to developing a designated water trail or designated wilderness water trail.

b. The scoring committee shall publish its ranking system, which shall be based on the criteria described above, with the application forms. The department shall post this ranking system on its Web site, www.iowadnr.gov, at least 30 days prior to proposal due dates.

c. Designated water trails.

(1) For purposes of this rule, designated water trails shall include those bodies of water with the following minimum treatment:

1. Provide signs to users about possible dangers and portages;
2. Possess adequate portage around obstructions and dams, or have modified obstructions and dams to make them safe to navigate, or the water trail begins or ends a safe distance upstream and downstream from the obstruction or dam;

3. Have accesses spaced and developed appropriately to the natural resource integrity of the water body from public roadways to the water trails;

4. Provide periodic kiosks with information for users;

5. Identify access to camping, lodging or other overnight accommodations; and

6. Have adequate promotion through maps, brochures and other media, which include information about the access points, difficult areas, distance between accesses, nearby cities, ADA amenity information, safety information, and other information related to use of the water trail.

(2) For purposes of this rule, designated wilderness water trails, because they are located in areas of special scenic, ecological, geological, habitat or wildlife value, shall be a type of designated water trail that encourages only low-impact human uses and keeps signage and accesses to a minimum, but still provides critical information and access.

30.61(2) Low-head dam safety program. The scoring committee shall consider the following criteria when evaluating cost-share proposals for low-head dam safety program projects:

a. Improvements to public safety;

b. Demonstrated beneficial impacts to the overall stream health, fish migration and habitat, aesthetics, and recreational impacts; and

c. Contribution of private resources or local resources or both beyond the minimum requirements provided by these rules.

571—30.62(455A,461A,462A) Disbursement of awards.

30.62(1) Water trails development program. Grants for water trails development projects will be announced not later than 90 days after the grant proposals are due. The earliest disbursement date is July 1 of the following state fiscal year.

30.62(2) Low-head dam safety program. Grants for low-head dam safety projects will be announced no later than 90 days after the grant proposals are due. All funds shall be obligated by not later than July 1 of the next fiscal year.

571—30.63(455A,461A,462A) Water trails advisory committee. The advisory committee shall provide input to the water trails development program and the low-head dam safety program. The advisory committee appointed by the director shall be comprised of a minimum of six members of the water recreation community, including canoe and kayak enthusiasts and club leaders, interested conservation associations, canoe and kayak livery owners, and county conservation board staff in Iowa. Members of the advisory committee shall serve for two years.

The meetings of the advisory committee shall be held at least four times per calendar year and shall be arranged by the coordinator. The advisory committee will provide expertise to the scoring committee and assist the department in the development of any water trails or low-head dam safety master planning that the department may undertake.

These rules are intended to implement Iowa Code chapters 455A, 461A, and 462A.

ARC 6442B**NATURAL RESOURCE
COMMISSION[571]****Notice of Intended Action**

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

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

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

Chapter 94 gives the regulations for nonresident deer hunting and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking, and transportation and reporting requirements. The proposed amendments restrict the optional antlerless-only licenses to one of the two regular shotgun seasons when the reported harvest rates for deer are two to three times higher than during the archery or muzzleloader seasons. The shotgun seasons are also when many former residents prefer to come back and hunt with their families and traditional parties. These changes should allow for more deer to be killed in those counties where deer populations are higher than the Department’s goals. The proposed amendments also add the requirement that ground blinds exhibit blaze orange markings, in order to make the rules consistent for resident and nonresident hunters alike.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 2, 2008. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)281-5918 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on January 2, 2008, at 1 p.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

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

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

The following amendments are proposed.

ITEM 1. Amend subrule **94.1(1)**, paragraph “c,” as follows:

c. Optional antlerless-only licenses. A hunter who is not successful in drawing an any-deer license may purchase

an antlerless-only license as described in rule 571—94.8(483A). ~~This antlerless-only license shall be valid in the county and season designated by the hunter at the time it is purchased.~~

ITEM 2. Amend rule 571—94.7(483A) by adopting the following **new** subrule:

94.7(6) Ground blinds. No person shall use a ground blind for hunting deer during the regular gun deer seasons unless such blind exhibits a solid blaze orange marking visible in all directions with a minimum height of 12 inches and a minimum width of 12 inches. As used in this subrule, “ground blind” means a constructed place of concealment. A ground blind is not a naturally occurring feature that a hunter merely uses for concealment.

ITEM 3. Amend subrule 94.8(1) as follows:

94.8(1) Any-deer licenses. Applications for any-deer and mandatory antlerless-only licenses will be accepted from the first Saturday in May through the first Sunday in June. No one may submit more than one application during the application period. Hunters may apply as individuals or as a group of up to 15 applicants. All members of a group will be accepted or rejected together in the drawing. If applications have been sold in excess of the license quota for any zone or season, a drawing will be held to determine which applicants receive licenses. Licenses or refunds of license fees will be mailed to applicants after the drawing is completed. License agent writing fees, department administrative fees and telephone order charges will not be refunded. If any zone’s license quota for any-deer and mandatory antlerless-only licenses has not been filled, the excess any-deer and mandatory antlerless-only licenses will be sold on a first-come, first-served basis through the telephone ordering system or the Internet license sales Web site. Excess any-deer and mandatory antlerless-only licenses will be sold beginning the ~~fourth last~~ **fourth last** Saturday ~~after the close of the application period in July~~ until the quota has been filled or the last day of the hunting period for which the license is valid, whichever occurs first. Members of a group that is rejected may purchase licenses individually if excess any-deer and mandatory antlerless-only licenses or optional antlerless-only licenses are available.

ITEM 4. Amend subrule 94.8(2) as follows:

94.8(2) Optional antlerless-only licenses. Optional antlerless-only licenses must be purchased through the ELSI telephone ordering system or the ELSI Internet license sales Web site. Licenses for taking only antlerless deer will be available on the same date as excess any-deer licenses are sold as explained in 94.8(1). Optional antlerless-only licenses ~~will only be issued for one of the two regular gun seasons.~~ **They** will be sold first-come, first-served until the county quota is filled, or until the last day of the season for which a license is valid. If optional antlerless-only licenses are still available on December 15, they may be purchased by nonresidents to hunt during the period from December 24 through January 2. These licenses will be available to nonresidents who have not purchased a nonresident deer license during one of the current deer seasons. The hunter must have in possession a valid nonresident small game hunting license and proof of having paid the current year’s wildlife habitat fee. ~~Optional antlerless-only licenses will be issued by season and county and will be valid only in the season and county designated by the hunter at the time the license is purchased.~~

a. Nonresident landowners. Nonresidents who own land in Iowa will have preference in obtaining optional antlerless-only licenses. Nonresidents must qualify as landowners fol-

NATURAL RESOURCE COMMISSION[571](cont'd)

lowing the criteria stated in 571—subrule 106.12(1) and 571—subrules 106.12(3) through 106.12(6), except that nonresident tenants and family members of nonresident landowners and tenants do not qualify and nonresident optional antlerless-only licenses will not be free of charge. If a farm unit is owned jointly by more than one nonresident, only one owner may claim landowner preference in the same year. Nonresidents who own land jointly with a resident do not qualify for preference. Nonresidents who have provided proof to the department that they own land in Iowa and meet the qualifying criteria may ~~exclusively purchase an optional antlerless-only licenses for the first 14 days of the sale period license for one of the two regular gun seasons when excess any-deer licenses go on sale or for the holiday season beginning December 15.~~ Such proof must be provided before an optional antlerless-only license can be purchased and must be resubmitted each year in which an optional antlerless-only license is purchased. *These licenses do not count against the county quota.*

b. No change.

~~c. Nonresidents who do not own land in Iowa. Nonresidents who are not Iowa landowners may purchase optional antlerless-only licenses beginning the fifteenth day after they are available to landowners.~~

ARC 6438B**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 6, “General Pharmacy Practice,” Chapter 7, “Hospital Pharmacy Practice,” and Chapter 20, “Pharmacy Compounding Practices,” Iowa Administrative Code.

The amendments were approved at the November 13, 2007, regular meeting of the Board of Pharmacy.

The proposed amendments delete incorrect references to previously rescinded rule 657—8.30(126,155A) and correct those references to 657—Chapter 13. Chapter 13 was previously adopted in place of the rescinded rule.

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

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on December 28, 2007. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 126.10, 155A.13, and 155A.28.

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

The following amendments are proposed.

ITEM 1. Amend subrule 6.10(2) as follows:

6.10(2) Exceptions. The requirements of subrule 6.10(1) do not apply to unit dose dispensing systems, 657—22.1(155A); sterile products, 657—8.30(126,155A) 657—Chapter 13; and patient med paks, 657—22.5(126,155A).

ITEM 2. Amend subrule **7.8(1)**, paragraph “b,” as follows:

b. Pharmacy personnel shall, except as specified in policies and procedures, prepare all sterile products in conformance with ~~rule 657—8.30(126,155A)~~ 657—Chapter 13.

ITEM 3. Amend subrule 20.6(1) as follows:

20.6(1) Sterile products. If sterile products are being compounded, the requirements of 657—8.30(126,155A) 657—Chapter 13, in addition to the requirements of this chapter, shall be met.

ITEM 4. Amend subrule 20.8(1), as follows:

20.8(1) Equipment maintenance. Equipment and utensils used for compounding shall be cleaned and sanitized prior to use to prevent contamination that would alter the safety, identity, strength, quality, or purity of the drug product beyond that desired. In the case of equipment, utensils, and containers or closures used in the compounding of sterile drug products, cleaning, sterilization, and maintenance procedures as set forth in 657—8.30(126,155A) 657—Chapter 13 shall be followed.

ITEM 5. Amend subrule 20.9(2) as follows:

20.9(2) Sterile product containers and closures. Drug product containers and closures intended for use in the compounding of sterile products shall be handled, sterilized, and stored in compliance with the requirements of 657—8.30(126,155A) 657—Chapter 13. Procedures shall be written, implemented, and followed for cleaning, sterilizing, and processing drug product containers and closures to remove pyrogenic properties.

ITEM 6. Amend subrule 20.10(6), introductory paragraph, as follows:

20.10(6) Label information required. The label affixed to or on the dispensing container of any compounded drug product dispensed by a pharmacy pursuant to a prescription drug order, excluding a sterile product compounded pursuant to 657—8.30(126,155A) 657—Chapter 13, shall bear the following:

NOTICE—USURY

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

December 1, 2006 — December 31, 2006	6.75%
January 1, 2007 — January 31, 2007	6.50%
February 1, 2007 — February 28, 2007	6.50%
March 1, 2007 — March 31, 2007	6.75%
April 1, 2007 — April 30, 2007	6.75%
May 1, 2007 — May 31, 2007	6.50%
June 1, 2007 — June 30, 2007	6.75%
July 1, 2007 — July 31, 2007	6.75%
August 1, 2007 — August 31, 2007	7.00%
September 1, 2007 — September 30, 2007	7.00%
October 1, 2007 — October 31, 2007	6.75%
November 1, 2007 — November 30, 2007	6.50%
December 1, 2007 — December 31, 2007	6.50%

ARC 6452B

HUMAN SERVICES
DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4 and 2007 Iowa Acts, House File 911, section 39, the Department of Human Services amends Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments provide two methods of increasing Medicaid reimbursement to nursing facilities related to the cost of renovation or construction for the purpose of rectifying a violation of Life Safety Code requirements or developing home- and community-based waiver program services.

Currently, nursing facilities are reimbursed based on a modified price-based system with quarterly adjustments to reflect changes in case mix of Medicaid members within the facility. Nursing facility rates are rebased on a biennial basis to reflect more current cost information, with an effective date for new rates of July 1 of each odd-numbered year. Based on the timing of the facility's fiscal year reporting, this methodology may result in a delay of two to three years before capital costs that a facility incurs are reflected in its reimbursement rate.

These amendments allow a qualifying facility to apply for a capital cost per diem instant relief add-on to the facility's per patient day amount or to request an enhanced non-direct care rate component limit. Either option allows additional costs associated with specific renovation or construction to be recognized in the facility's Medicaid reimbursement rate before the next rebasing.

The capital cost per diem instant relief add-on provides reimbursement to facilities for property costs, such as depreciation and interest expense, that are associated with a complete replacement, major renovations, or new construction and are not included in the nursing facility's base-year cost report. The add-on allows a facility to begin receiving reimbursement for incurred property costs as soon as the assets are put into place, without having to wait until the costs are reported on a base-year cost report. The capital cost per diem instant relief add-on is limited to two years. When the property costs associated with a project are included in the base-year cost report, the add-on is no longer needed and is terminated.

The enhanced non-direct care rate component limit increases the limit on the non-direct care component of a facility's reimbursement rate from 110 percent to 120 percent of the non-direct care patient-day-weighted median. Without this provision, the effect of the capital cost per diem instant relief add-on would be eliminated if it put the facility's non-direct care costs over 110 percent of the statewide median. The enhanced limit may be granted for up to two years per request, but a facility may request renewal of the enhanced limit up to a total of ten years.

A facility may request both the capital cost per diem instant relief add-on and the enhanced non-direct care rate component limit. As directed in the authorizing statute, facilities must meet several other criteria to participate, including a substantial Medicaid population, satisfactory ratings in licensing surveys, and commitment to quality care and improved or expanded services.

Implementation of these amendments is contingent upon approval from the federal Centers for Medicare and Medicaid Services. The Department is requesting an effective

date of October 1, 2007. Additional reimbursement may be awarded only to the extent that funding is appropriated by the Iowa General Assembly. The appropriation for state fiscal year 2008 is \$1 million.

These amendments do not provide for waivers in specified situations. A facility may request a waiver under the Department's general rule on exceptions at rule 441—1.8(17A,217). However, the Department has no authority to waive statutory provisions.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on September 26, 2007, as **ARC 6268B**. The Department received one comment in support of the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on November 14, 2007.

The Department finds that these amendments confer a benefit on nursing facilities by allowing them to access additional reimbursement to offset the cost of renovations. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 249A.4 and 2007 Iowa Acts, House File 911, sections 35 through 39.

These amendments became effective on November 15, 2007.

The following amendments are adopted.

ITEM 1. Amend rule **441—81.1(249A)** by adopting the following **new** definitions in alphabetical order:

"Complete replacement" means completed construction on a new nursing facility to replace an existing licensed and certified nursing facility. The replacement facility shall have no more licensed beds than the facility being replaced and shall be located either in the same county as the facility being replaced or within 30 miles from the facility being replaced.

"Major renovations" means new construction or facility improvements to an existing licensed and certified nursing facility in which the total depreciable asset value of the new construction or facility improvements exceeds \$1.5 million. The \$1.5 million threshold shall be calculated based on the total depreciable asset value of new construction or facility improvements placed into service during a two-year period ending on the date the last asset was placed into service. When the property costs of an asset have been included in a facility's financial and statistical report that has already been used in a biennial rebasing, the costs of that asset shall not be considered in determining whether the facility meets the \$1.5 million threshold.

"New construction" means the construction of a new nursing facility that does not replace an existing licensed and certified facility and that requires the provider to obtain a certificate of need pursuant to Iowa Code chapter 135, division VI.

"Rate determination letter" means the letter that is distributed quarterly by the Iowa Medicaid enterprise to each nursing facility notifying the facility of the facility's Medicaid reimbursement rate calculated in accordance with this rule and of the effective date of the reimbursement rate.

ITEM 2. Amend subrule 81.6(16) as follows:

Amend the introductory paragraph and the first unnumbered paragraph as follows:

81.6(16) Establishment of the direct care and non-direct care patient-day-weighted medians and modified price-based reimbursement rate. This subrule provides for the es-

HUMAN SERVICES DEPARTMENT[441](cont'd)

establishment of the modified price-based reimbursement rate. Paragraphs “a” through “g” describe the calculations presented in sequential order. The first step in the rate calculation (paragraph “a”) determines the per diem direct care and non-direct care component costs. The second step (paragraph “b”) normalizes the per diem direct care component costs to remove cost variations associated with different levels of resident case mix. The third step (paragraph “c”) calculates the patient-day-weighted medians for the direct care and non-direct care components that are used in subsequent steps to establish rate component limits and excess payment allowances, if any. The fourth step (paragraph “d”) calculates the potential excess payment allowance. The fifth step (paragraph “e”) calculates the reimbursement rate, including any applicable capital cost per diem instant relief add-on described in paragraph “h,” that is further subjected to the rate component limits, including any applicable enhanced non-direct care rate component limit described in paragraph “h,” in step six (paragraph “f”). The seventh step (paragraph “g”) calculates the additional reimbursement based on accountability measures available beginning July 1, 2002.

The Medicaid payment rate for services rendered from July 1, 2001, through June 30, 2003, includes a portion of the modified price-based reimbursement rate plus a portion of the Medicaid rate effective June 30, 2001, more fully described in paragraph 81.6(4)“a.” Payment rates for services rendered from July 1, 2003, and thereafter will be 100 percent of the modified price-based rate pursuant to subparagraph 81.6(4)“a”(3).

Amend paragraph “e,” subparagraph (1), numbered paragraph “2,” as follows:

2. The non-direct care component is equal to the provider’s allowable per patient day costs, plus the allowable excess payment allowance as determined by the methodology in paragraph “d,” and the allowable capital cost per diem instant relief add-on as determined by the methodology in paragraph “h.”

Amend paragraph “f” as follows:

Amend subparagraph (1), numbered paragraph “2,” as follows:

2. The non-direct care rate component limit is the non-direct care non-state-operated nursing facility patient-day-weighted median times multiplied by the percentage of the median specified in 441—subrule 79.1(2); or is 120 percent of the median if the facility qualifies for the enhanced non-direct care rate component limit pursuant to paragraph “h.”

Amend subparagraph (2), numbered paragraph “2,” as follows:

2. The non-direct care rate component limit is the non-direct care non-state-operated nursing facility patient-day-weighted median times multiplied by the percentage of the median specified in 441—subrule 79.1(2); or is 120 percent of the median if the facility qualifies for the enhanced non-direct care rate component limit pursuant to paragraph “h.”

Amend subparagraph (3), numbered paragraph “2,” as follows:

2. The non-direct care rate component limit is the non-direct care Medicare-certified hospital-based nursing facility patient-day-weighted median times multiplied by the percentage of the median specified in 441—subrule 79.1(2); or is 120 percent of the median if the facility qualifies for the enhanced non-direct care rate component limit pursuant to paragraph “h.”

Amend subparagraph (4), numbered paragraph “2,” as follows:

2. The non-direct care Medicare-certified hospital-based nursing facility patient-day-weighted median times multiplied by the percentage of the median specified in 441—subrule 79.1(2); or 120 percent of the median if the facility qualifies for the enhanced non-direct care rate component limit pursuant to paragraph “h.”

Adopt new paragraph “h” as follows:

h. Capital cost per diem instant relief add-on and enhanced non-direct care rate component limit. Contingent upon approval from the Centers for Medicare and Medicaid Services (CMS) and to the extent that funding is appropriated by the Iowa general assembly, additional reimbursement is available for nursing facilities that have completed a complete replacement, new construction, or major renovations. Additional reimbursement under this paragraph is available for services rendered beginning on October 1, 2007, or beginning on the effective date of CMS approval if CMS approval is effective on a later date.

(1) Types of additional reimbursement. Two types of additional reimbursement are available:

1. The capital cost per diem instant relief add-on is an amount per patient day to be added to the non-direct care component of the reimbursement rate and is subject to the non-direct care rate component limit as determined in paragraph “f.”

2. The enhanced non-direct care rate component limit provides an increase in the percentage of the median that is applied when calculating the non-direct care rate component limit as defined in paragraph “f.” The percentage of the median is increased to 120 percent when the enhanced non-direct care rate component limit is granted.

(2) Eligible projects. To qualify for either the capital cost per diem instant relief add-on or the enhanced non-direct care rate component limit, a facility must have undertaken a complete replacement, new construction, or major renovations for the purpose of:

1. Rectification of a violation of Life Safety Code requirements; or

2. Development of home- and community-based waiver program services.

(3) Additional requirements for all requests. To qualify for additional reimbursement, a facility with an eligible project must also meet the following requirements:

1. The facility has Medicaid utilization at or above 40 percent for the two-month period before the request for additional reimbursement is submitted. Medicaid utilization for this purpose is calculated as total nursing facility Medicaid patient days divided by total licensed bed capacity as reported on the facility’s most current financial and statistical report.

2. The facility meets the accountability measure criteria set forth in paragraph “g,” subparagraph (1), deficiency-free survey, or subparagraph (2), regulatory compliance with survey, based on the most current information available when the request for additional reimbursement is submitted.

3. The facility has documented active participation in a quality of care program.

4. The facility has documented plans to facilitate person-directed care, dementia units, or specialty post-acute services.

(4) Additional requirements for waiver services. To qualify for additional reimbursement for the development of home- and community-based waiver services, the facility shall also meet the following requirements:

1. Services shall be provided in an underserved area, which may include a rural area.

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2. Services shall be provided on the direct site of the facility but not as a nursing facility service.

3. Services shall meet all federal and state requirements for Medicaid reimbursement.

4. Services shall include one or more of the following: adult day care as defined by 441—subrule 78.37(1), consumer-directed attendant care as defined by 441—subrule 78.37(15) provided in an assisted living setting, day habilitation as defined by 441—subrule 78.41(14), home-delivered meals as defined by 441—subrule 78.37(8), emergency response system as defined by 441—subrule 78.37(2), and respite care as defined by 441—subrule 78.37(6).

(5) Submission of request. A facility shall submit a written request for the capital cost per diem instant relief add-on, the enhanced non-direct care rate component limit, or a preliminary evaluation of whether a project may qualify for additional reimbursement to the Iowa Medicaid Enterprise, Provider Cost Audit and Rate Setting Unit, 100 Army Post Road, Des Moines, Iowa 50315. A qualifying facility may request one or both types of additional reimbursement.

1. A request for the capital cost per diem instant relief add-on may be submitted no earlier than 30 days before the complete replacement, new construction, or major renovations are placed in service.

2. A request for the enhanced non-direct care rate component limit may be submitted with a request for a capital cost per diem instant relief add-on or within 60 days after the release of a rate determination letter reflecting a change in the non-direct care rate component limit.

3. A request for a preliminary evaluation may be submitted when a facility is preparing a feasibility projection for a construction or renovation project. A preliminary evaluation does not guarantee approval of the capital cost per diem instant relief add-on or enhanced non-direct care rate component limit upon submission of a formal request.

(6) Content of request for add-on. A facility's request for the capital cost per diem instant relief add-on shall include:

1. A description of the project for which the add-on is requested, including a list of goals for the project and a time line of the project that spans the life of the project.

2. Documentation that the facility meets the qualifications in subparagraphs (2) and (3) and, if applicable, in subparagraph (4).

3. The period during which the add-on is requested (no more than two years).

4. Whether the facility is also requesting the enhanced non-direct care rate component limit. (See subparagraph (7) for requirements.)

5. A copy of the facility's most current depreciation schedule which clearly identifies the cost of the project for which the add-on is requested if assets placed in service by that project are included on the schedule. Any removal of assets shall be clearly identifiable either on the depreciation schedule or on a separate detailed schedule, and that schedule shall include the amount of depreciation expense for removed assets that is included in the current reimbursement rate.

6. If the cost of the project is not reported on the submitted depreciation schedule, a detailed schedule of the assets to be placed in service by the project, including:

- The estimated date the assets will be placed into service;
- The total estimated depreciable value of the assets;
- The estimated useful life of the assets based upon existing Medicaid and Medicare provisions; and

- The estimated annual depreciation expense of the assets using the straight-line method in accordance with generally accepted accounting principles.

7. The facility's estimated annual licensed bed capacity and estimated annual total patient days. If this information is not provided, estimated annual total patient days shall be determined using the most current submitted financial and statistical report.

8. If interest expense has been or will be incurred and is related to the project for which the add-on is requested, a copy of the general terms of the debt service and the estimated annual amount of interest expense shall be submitted.

9. If any debt service has been retired, a copy of the general terms of the debt service and the amount of interest expense for debt service retired that is included in the current reimbursement rate.

(7) Content of request for enhanced limit. A facility's request for the enhanced non-direct care rate component limit shall include:

1. A description of the project for which the enhanced non-direct care rate component limit is requested, including a list of goals for the project and a time line of the project that spans the life of the project.

2. Documentation that the facility meets the qualifications in subparagraphs (2) and (3) and, if applicable, in subparagraph (4).

3. Identification of any period in which the capital cost per diem instant relief add-on was previously granted and the number of times the capital cost per diem instant relief add-on and the enhanced non-direct care rate component limit have previously been granted.

(8) Content of request for preliminary evaluation. A facility's request for a preliminary evaluation of a proposed project shall include:

1. The estimated completion date of the project.

2. The estimated date when a formal request for an add-on or enhanced limit will be submitted.

3. For a preliminary evaluation for a capital cost per diem instant relief add-on, all information required in subparagraph (6).

4. For a preliminary evaluation for the enhanced non-direct care rate component limit, all information required in subparagraph (7).

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

1. Total patient days shall be determined using the most current submitted financial and statistical report or using the estimated total patient days as reported in the request for the add-on. For purposes of calculating the add-on, total patient days shall be the greater of the estimated annual total patient days or 85 percent of the facility's estimated licensed capacity.

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

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

(10) Effective date of capital cost per diem instant relief add-on. Subject to available funding and previously approved requests for capital cost per diem instant relief add-ons and enhanced non-direct care rate component limits, a capital cost per diem instant relief add-on shall be effective the first day of the calendar quarter following the placement in service of the assets associated with the add-on and receipt of all required information. The capital cost per diem instant relief add-on shall be added to the non-direct care component of the reimbursement rate, not to exceed the non-direct care rate component limit as determined in paragraph "f."

(11) Term of capital cost per diem instant relief add-on. The period for which a facility may be granted the capital cost per diem instant relief add-on shall not exceed two years. The capital cost per diem instant relief add-on shall terminate at the time of the subsequent biennial rebasing. If the facility's submitted annual financial and statistical report used in the subsequent biennial rebasing does not include 12 months of property costs for the assets with which the capital cost per diem instant relief add-on is associated, including interest expense, if applicable, the facility may submit a new request for the capital cost per diem instant relief add-on.

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

1. For purposes of recalculating the capital cost per diem instant relief add-on, total patient days shall be based on the greater of the number of actual patient days during the period in which the add-on was paid or 85 percent of the facility's actual licensed bed capacity during the period in which the add-on was paid.

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

(13) Effective date of enhanced non-direct care rate component limit. Subject to available funding and previously approved requests for capital cost per diem instant relief add-ons and enhanced non-direct care rate component limits, an enhanced non-direct care rate component limit shall be effective:

1. With a capital cost per diem instant relief add-on (if requested at the same time); or

2. Retroactive to the first day of the quarter in which the revised non-direct care rate component limit amount is effective. All claims with dates of service from the effective date shall be repriced.

(14) Term of enhanced non-direct care rate component limit. The period for which a facility may be granted an enhanced non-direct care rate component limit without reapplication shall not exceed two years. The total period for which a facility may be granted enhanced non-direct care rate component limits shall not exceed ten years. If the amount of the non-direct care rate component limit is revised during the period for which a facility is granted the enhanced limit, the approval shall be terminated effective the first day of the quarter in which the revised non-direct care rate component limit is effective. The facility may submit a new request for the enhanced non-direct care rate component limit.

(15) Ongoing conditions. Any capital cost per diem instant relief add-on or enhanced non-direct care rate component limit granted by the Iowa Medicaid enterprise is temporary. Additional reimbursement shall be immediately terminated if:

1. The facility does not continue to meet all of the initial qualifications for additional reimbursement; or

2. The facility does not make reasonable progress on any plans required for initial qualification; or

3. The facility's medical assistance program or Medicare certification is revoked. A facility whose certification is revoked is not eligible to submit a subsequent request for a capital cost per diem instant relief add-on or the enhanced non-direct care rate component limit.

(16) Change of ownership. Following a change in nursing facility ownership, any capital cost per diem instant relief add-on or enhanced non-direct care rate component limit that was granted before the change in ownership shall continue under the new owner. Future reimbursement rates shall be determined pursuant to subrules 81.6(15) and 81.6(16).

[Filed Emergency After Notice 11/14/07, effective 11/15/07]
[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6456B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 172, "Family-Centered Child Welfare Services," Iowa Administrative Code.

These amendments remove requirements for purchasing legal services for permanency through a statewide formal competitive selection process. The Department is not required to purchase legal services through a competitive process. (See Iowa Department of Administrative Services' rule 11—106.7(8A).) Because of the uniquely local nature of legal services and the limited budget available, the Department has decided to adopt the process used for legal services in the adoption and guardianship subsidy programs. Under these amendments, a family who is receiving child welfare services and is in need of legal services to modify a child custody order or to create a guardianship or adoptive relationship will hire a local attorney and submit the expenses to the Department for reimbursement, up to the limits currently applied in adoption and guardianship subsidies. This change

HUMAN SERVICES DEPARTMENT[441](cont'd)

will allow families who do not qualify for those subsidies to have equivalent access to legal services.

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

The Council on Human Services adopted these amendments November 14, 2007.

The Department finds that notice and public participation are impracticable and contrary to public interest in that, in the absence of a request for proposals, the current rules provide that legal services for permanency are a covered service but offer no means to pay for the service. Without an amendment to the rules, funds allocated for these services cannot be spent. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

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

These amendments are also published herein under Notice of Intended Action as **ARC 6458B** to allow for public comment.

These amendments are intended to implement Iowa Code section 234.6.

These amendments became effective on November 15, 2007.

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

The following amendments are adopted.

ITEM 1. Amend rule 441—172.31(234), introductory paragraph, as follows:

441—172.31(234) Provider selection. *Family-centered* With the exception of legal services for permanency, family-centered supportive services shall be purchased through a formal competitive selection process according to the requirements of 11—Chapters 106 and 107. With the exception of service-area-specific services, family-centered supportive services shall be available on a statewide basis.

ITEM 2. Amend subrule 172.34(3) as follows:

172.34(3) Legal services for permanency. The unit of service for legal services shall be a variable amount per client, based on the actual costs of legal services and related court costs necessary to achieve the desired legal result, *up to the limits applicable to nonrecurring expenses for adoption subsidy as described in 441—subparagraph 201.6(1)“a”(7).*

[Filed Emergency 11/14/07, effective 11/15/07]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6443B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission amends Chapter 15, “General License Regulations,” Iowa Administrative Code.

The Department of Natural Resources has been directed, pursuant to Iowa Code section 481A.134 as amended by 2007 Iowa Acts, Senate File 78, section 17, to amend rule 571—15.6(481A) pertaining to revocation of hunting, fishing and trapping privileges. Senate File 78, section 17, requires the Department to establish a violation point value for a violation and conviction, pursuant to Iowa Code section 716.7, in which the violator is convicted of trespass while hunting deer.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because the benefits provided to both private landowners and the Department are noncontroversial.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing because they confer a benefit upon the public by providing for enforcement of criminal trespass on private property prior to the opening of the deer gun seasons in Iowa.

The Natural Resource Commission approved these amendments on November 8, 2007.

These amendments are intended to implement Iowa Code section 456A.24.

These amendments became effective on November 14, 2007.

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

The following amendments are adopted.

ITEM 1. Amend subrule **15.6(1)**, definitions of “license” and “multiple offender,” as follows:

“License” means any paid or free license, permit, or certificate to hunt, fish or trap listed in Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B, and 716, including the authorization to hunt, fish or trap pursuant to any reciprocity agreements with neighboring states.

“Multiple offender” means any person who has equaled or exceeded five points for convictions in Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B, and 716 during a consecutive three-year period as provided in 15.6(3).

ITEM 2. Amend subrule 15.6(2), introductory paragraph, as follows:

15.6(2) Record-keeping procedures. For the purpose of administering this rule it shall be the responsibility of the clerk of district court for each county to deliver, on a weekly basis, disposition reports of each charge filed under Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B and 716 to the department. Dispositions and orders of the court of all cases filed on the chapters listed in this subrule shall be sent to the department regardless of the jurisdiction or the department of the initiating officer.

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ITEM 3. Amend subrule **15.6(3)**, paragraph **“a,”** by adding the following **new** subparagraph **(22)**:

(22) Any violation of Iowa Code section 716.7 while hunting deer.

[Filed Emergency 11/14/07, effective 11/14/07]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6436B

PHARMACY BOARD[657]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 124.301, 124B.11, and 147.76, the Board of Pharmacy hereby amends Chapter 2, “Pharmacist Licenses,” Chapter 3, “Pharmacy Technicians,” Chapter 8, “Universal Practice Standards,” Chapter 10, “Controlled Substances,” Chapter 12, “Precursor Substances,” and Chapter 17, “Wholesale Drug Licenses,” Iowa Administrative Code.

The amendments eliminate the term “examiners” from the name of the Board and change references to the Board’s chief administrative officer from “executive secretary” or “executive secretary/director” to “executive director.” These amendments implement legislative changes enacted in 2007 Iowa Acts, Senate File 74. The amendments also correct the name of the Iowa Board of Medicine, including changing the acronym from “IBME” to “IBM,” as a result of legislative changes enacted in the same Act.

The amendments also increase fees related to the issuance of new and renewed pharmacist licenses, including examination, reexamination, and license transfer processing fees. The amendments increase fees related to the issuance of new and renewed pharmacy and wholesale drug licenses, new and renewed pharmacy technician and controlled substances registrations, and new and renewed precursor substances permits. The amendments change all fee amounts to the amounts that have been charged since fiscal year 2005 for the various licenses, permits, and registrations.

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

Notice of Intended Action was published in the August 29, 2007, Iowa Administrative Bulletin as **ARC 6179B**. The Board received no comments regarding the amendments. The adopted amendments differ from those published under Notice. Item 16 changes the acronym for the Iowa Board of Medicine to “IBM” and new Item 17 amends instances within subrule 8.34(2) where the acronym is used. Items 17 through 28 in the Notice of Intended Action have been renumbered Items 18 through 29 herein.

The amendments were approved during the November 13, 2007, meeting of the Board of Pharmacy.

The Board finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments should be made effective upon filing with the Administrative Rules Coordinator on November 13, 2007. These amendments confer a benefit to the Board, to the regulated community, and to the public. The fee increases effectuated by these amendments are the same fees that have been in effect since fiscal year 2005 and the name and title changes became effective in the Iowa Code on July 1, 2007.

These amendments became effective November 13, 2007.

These amendments are intended to implement Iowa Code sections 124.301, 124B.11, 147.94, 155A.6, 155A.11, 155A.13, 155A.13A, 155A.14, and 155A.17.

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 2, 3, 8, 10, 12, 17] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 6179B**, IAB 8/29/07.

[Filed Emergency After Notice 11/13/07, effective 11/13/07]
[Published 12/5/07]

[For replacement pages for IAC, see IAC Supplement 12/5/07.]

ARC 6439B

ADMINISTRATIVE SERVICES
DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8A.311, the Department of Administrative Services hereby amends Chapter 105, "Procurement of Goods and Services of General Use," Iowa Administrative Code.

This amendment implements changes to Iowa Code chapter 8A brought about by 2007 Iowa Acts, House File 849, relating to preferences and tied bids.

Notice of Intended Action was published in the October 10, 2007, Iowa Administrative Bulletin as **ARC 6299B**. No comments were received. The adopted amendment is identical to that published under Notice.

This amendment will become effective on January 9, 2008.

This amendment is intended to implement Iowa Code chapter 8A as amended by 2007 Iowa Acts, House File 849. The following amendment is adopted.

Amend subrule 105.12(4) as follows:

105.12(4) Tied bids. ~~An award shall be determined by a drawing when responses are received that are equal in all respects and tied in price. Whenever it is practical to do so, the drawing will be held in the presence of the vendors who are tied in price. Otherwise the drawing will be made in front of at least three noninterested parties. All drawings shall be documented.~~

a. Whenever a tie involves an Iowa vendor and a vendor outside the state of Iowa, the Iowa vendor will receive preference. Whenever a tie involves one or more Iowa vendors and one or more vendors outside the state of Iowa, the drawing will be held among the Iowa vendors only. Tied bids involving Iowa-produced or Iowa-manufactured products and items produced or manufactured outside the state of Iowa will be resolved in favor of the Iowa product.

b. *In the event of a tied bid between Iowa vendors, the department shall contact the Iowa Employer Support of the Guard and Reserve (ESGR) committee for confirmation and verification as to whether the vendors have complied with ESGR standards. Preference, in the case of a tied bid, shall be given to Iowa vendors complying with ESGR standards.*

c. *An award shall be determined by a drawing when responses are received that are equal in all respects and tied in price. Whenever it is practical to do so, the drawing will be held in the presence of the vendors who are tied in price. Otherwise the drawing will be made in front of at least three noninterested parties. All drawings shall be documented.*

[Filed 11/14/07, effective 1/9/08]
[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6460B

CULTURAL AFFAIRS
DEPARTMENT[221]

Adopted and Filed

Pursuant to the authority of Iowa Code section 303.1A, the Department of Cultural Affairs hereby amends Chapter 6, "Iowa Community Cultural Grants (ICCG) Program," Iowa Administrative Code.

These amendments delete program details that are unnecessarily specific and limiting at the administrative rules level.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 10, 2007, as **ARC 6315B**.

The Department of Cultural Affairs sought input regarding these amendments by holding a public hearing. No members of the public provided comments. These amendments are identical to those published under Notice.

The Department Director adopted these amendments on November 14, 2007.

These amendments are intended to implement Iowa Code chapter 303.

These amendments will become effective January 9, 2008.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [6.3 to 6.12] is being omitted. These amendments are identical to those published under Notice as **ARC 6315B**, IAB 10/10/07.

[Filed 11/14/07, effective 1/9/08]
[Published 12/5/07]

[For replacement pages for IAC, see IAC Supplement 12/5/07.]

ARC 6462B

CULTURAL AFFAIRS
DEPARTMENT[221]

Adopted and Filed

Pursuant to the authority of Iowa Code section 303.1A, the Department of Cultural Affairs hereby amends Chapter 8, "Cultural Enrichment Grant (CEG) Program," Iowa Administrative Code.

These amendments rename the grant program, redefine its structure, and delete program details that are unnecessarily specific and limiting at the administrative rules level.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 10, 2007, as **ARC 6316B**.

The Department of Cultural Affairs sought input regarding these amendments by holding a public hearing. No members of the public provided comments. These amendments are identical to those published under Notice.

The Department Director adopted these rules on November 14, 2007.

These amendments are intended to implement Iowa Code chapter 303.

These amendments will become effective January 9, 2008.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of

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these amendments [8.1 to 8.10] is being omitted. These amendments are identical to those published under Notice as **ARC 6316B**, IAB 10/10/07.

[Filed 11/14/07, effective 1/9/08]
[Published 12/5/07]

[For replacement pages for IAC, see IAC Supplement 12/5/07.]

ARC 6449B

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 11, "Complaints, Investigations, Contested Case Hearings," Iowa Administrative Code.

This amendment reflects changes made in legislation to Iowa Code section 272.15 as amended by 2007 Iowa Acts, Senate File 588, section 33. The statute has been amended to expand who may initiate a complaint and also the duties of the Executive Director when reports of misconduct and inappropriate assignment are received.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 12, 2007, as **ARC 6246B**. A public hearing on the amendment was held on October 3, 2007. No one attended the public hearing, and no written comments were received. One nonsubstantive change from the Notice has been made: The word "or" before the words "local school district" was removed from subparagraph 11.4(1)"d"(2).

This amendment is intended to implement Iowa Code section 272.15 as amended by 2007 Iowa Acts, Senate File 588, section 33.

This amendment will become effective January 9, 2008. The following amendment is adopted.

Amend subrule 11.4(1) as follows:

11.4(1) Who may initiate. The following entities may initiate a complaint:

a. to c. No change.

d. The executive director of the board of educational examiners if the following circumstances have been met:

(1) The executive director receives information that a practitioner:

1. Has been convicted of a felony criminal offense, or a misdemeanor criminal offense wherein the victim of the crime was 18 years of age or younger, and the executive director expressly determines within the complaint that the nature of the offense clearly and directly impacts the practitioner's fitness or ability to retain the specific license(s) or authorization(s) which the practitioner holds; or

2. Has been the subject of a founded report of child abuse placed upon the central registry maintained by the department of human services pursuant to Iowa Code section 232.71D and the executive director expressly determines within the complaint that the nature of the offense clearly and directly impacts the practitioner's fitness or ability to retain the specific license(s) or authorization(s) which the practitioner holds; or

3. *Has not met a reporting requirement stipulated by Iowa Code section 272.15 as amended by 2007 Iowa Acts,*

Senate File 588, section 33, Iowa Code section 279.43, 281—subrule 102.11(2), 282—Chapter 11, or 282—Chapter 25; or
3 4. Has falsified a license or authorization issued by the board; or

4 5. Has submitted false information on a license or authorization application filed with the board; ~~and~~ or

6. *Does not hold the appropriate license for the assignment for which the practitioner is currently employed; or*

7. *Has assigned another practitioner to perform services for which the practitioner is not properly licensed; and*

(2) The executive director verifies the information or the alleged misconduct through review of official records maintained by a court, ~~or~~ the department of human services registry of founded child abuse reports, ~~or~~ the practitioner licensing authority of another state, *the department of education, the local school district, area education agency, or authorities in charge of the nonpublic school,* or the executive director is presented with the falsified license; and

(3) No other complaint has been filed.

e. The department of transportation if the licensee named in the complaint holds a behind-the-wheel instructor's certification issued by the department and the complaint relates to an incident or incidents arising during the course of driver's education instruction.

f. *An employee of the department of education who, while performing official duties, becomes aware of any alleged misconduct by an individual licensed under Iowa Code section 272.2.*

[Filed 11/14/07, effective 1/9/08]
[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6447B

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 reflects changes made in legislation to Iowa Code section 272.9A as amended by 2007 Iowa Acts, Senate File 277, section 10. The length of the initial administrator license was changed to shorten the time an administrator has an initial license from two years to one year.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 12, 2007, as **ARC 6237B**. A public hearing on the amendment was held on October 3, 2007. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code section 272.9A as amended by 2007 Iowa Acts, Senate File 277, section 10.

This amendment will become effective January 9, 2008. The following amendment is adopted.

Amend rule 282—14.114(272) as follows:

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

282—14.114(272) Requirements for an administrator license.

14.114(1) Requirements for an initial administrator license. An initial administrator license valid for two years one year may be issued to an applicant who:

- a. Is the holder of or eligible for a standard license; and
- b. Has three years of teaching experience; and
- c. Has completed a state-approved administrator education program at a college or university approved by the state board of education or the state board of educational examiners in the individual's preparation state; and
- d. Is assuming a position as a school district administrator for the first time or has one year of out-of-state or nonpublic administrative experience; and
- e. Has completed an approved human relations component; and
- f. Has completed an exceptional learner component; and
- g. Has completed an evaluator approval program.

Renewal requirements for this license are set out in rule ~~282—17.7(272)~~ 282—17.13(272).

14.114(2) No change.

[Filed 11/14/07, effective 1/9/08]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6448B

**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 17, "Renewal of Licenses," Iowa Administrative Code.

This amendment is needed to make subrule 17.7(3) consistent with changes made to rule 282—20.57(272) and will give practitioners a clearer understanding of the requirements to renew an administrator license.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 12, 2007, as **ARC 6238B**. A public hearing on the amendment was held on October 3, 2007. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective January 9, 2008.

The following amendment is adopted.

Amend subrule 17.7(3) as follows:

17.7(3) An applicant renewing an administrator license must submit documentation of completion of the evaluator training required in Iowa Code section 284.10.

A waiver of the evaluator training may apply under the following conditions with appropriate documentation of any of the following:

- a. The person is engaged in active duty in the military service of this state or of the United States.
- b. The application of the evaluator training would impose an undue hardship on the person for whom the waiver is requested.

~~e. The person is an administrator in an accredited non-public school.~~

~~d c.~~ The person is practicing in a licensed profession outside this state.

~~e. The person is practicing in a nonadministrative or nonevaluative position.~~

[Filed 11/14/07, effective 1/9/08]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6472B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education amends Chapter 12, "General Accreditation Standards," Iowa Administrative Code.

These amendments incorporate into rule a number of statutory amendments from 2007 Iowa Acts, Senate Files 61 and 427 and House File 877: adding two additional protected classes to those already listed in Iowa Code chapter 216; clarifying that a preschool program established pursuant to 2007 Iowa Acts, House File 877, section 2, must meet accreditation standards on the same basis as any prekindergarten program offered by a school district; defining the new school antiharassment and antibullying policy created in 2007 Iowa Acts, Senate File 61, section 2; and adding a new duty to those previously enumerated for school improvement advisory committees.

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

Notice of Intended Action was published in the August 15, 2007, Iowa Administrative Bulletin as **ARC 6161B**. A public hearing was held on September 11, 2007, and public comments were allowed until 4:30 p.m. September 11, 2007. No one appeared at the public hearing (which was narrowcast by way of the Iowa Communications Network to 15 remote sites in addition to the origination site); no written comments were received by the agency.

Since the Notice of Intended Action was published, some items have been changed. Those changes are as follows:

Chapter 12 Preamble: Insertion of sexual orientation and gender identity were inadvertently omitted from the preamble to Chapter 12 in the third unnumbered paragraph thereof. This was an oversight discovered by agency staff.

Subrule 12.3(13), paragraph "b": At the request of a member of the Administrative Rules Review Committee, a sentence was added as follows: "The local board policy must set forth all 17 of the above enumerated traits or characteristics, but does not need to be limited to the 17 enumerated traits or characteristics."

Subparagraph 12.8(1)"a"(2): The reference to enabling statute was corrected after this error was pointed out by House caucus staff.

These amendments are intended to implement 2007 Iowa Acts, Senate Files 427 and 61 and House File 877.

These amendments shall become effective January 9, 2008.

The following amendments are adopted.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 1. Amend the third unnumbered paragraph of the Preamble to **281—Chapter 12** as follows:

General accreditation standards are intended to fulfill the state's responsibility for making available an appropriate educational program that has high expectations for all students in Iowa. The accreditation standards ensure that each child has access to an educational program that meets the needs and abilities of the child regardless of race, color, national origin, gender, disability, religion, creed, marital status, geographic location, *sexual orientation*, *gender identity*, or socioeconomic ~~background~~ *status*.

ITEM 2. Amend subrule 12.1(1) as follows:

12.1(1) Schools and school districts governed by general accreditation standards. These standards govern the accreditation of all prekindergarten, if offered, or kindergarten through grade 12 school districts operated by public school corporations and the accreditation, if requested, of prekindergarten or kindergarten through grade 12 schools operated under nonpublic auspices. Each school district shall take affirmative steps to integrate students in attendance centers and courses. Schools and school districts shall collect and annually review district, attendance center, and course enrollment data on the basis of race, national origin, gender, and disability. Equal opportunity in programs shall be provided to all students regardless of race, color, national origin, gender, *sexual orientation as defined in Iowa Code section 216.2 as amended by 2007 Iowa Acts, Senate File 427, section 1, gender identity as defined in Iowa Code section 216.2 as amended by 2007 Iowa Acts, Senate File 427, section 1, socioeconomic status*, disability, religion, or creed. Nothing in this rule shall be construed as prohibiting any bona fide religious institution from imposing qualifications based upon religion when such qualifications are related to a bona fide religious purpose.

ITEM 3. Amend rule **281—12.2(256)** by adding the following **new** definition in alphabetical order:

"Prekindergarten program" includes a school district's implementation of the preschool program established pursuant to 2007 Iowa Acts, House File 877, section 2, and is otherwise described herein in subrule 12.5(1).

ITEM 4. Amend subrule 12.3(6) as follows:

12.3(6) Student responsibility and discipline. The board shall adopt student responsibility and discipline policies as required by Iowa Code section 279.8. The board shall involve parents, students, instructional and noninstructional professional staff, and community members in the development and revision of those policies where practicable or unless specific policy is mandated by legislation. The policies shall relate to the educational purposes of the school or school district. The policies shall include, but are not limited to, the following: attendance; use of tobacco; the use or possession of alcoholic beverages or any controlled substance; harassment of or by students and staff *as detailed in subrule 12.3(13)*; violent, destructive, and seriously disruptive behavior; suspension, expulsion, emergency removal, weapons, and physical restraint; out-of-school behavior; participation in extracurricular activities; academic progress; and citizenship.

The policies shall ensure due process rights for students and parents, including consideration for students who have been identified as requiring special education programs and services.

The board shall also consider the potential, disparate impact of the policies on students because of race, color, national origin, gender, *sexual orientation as defined in Iowa Code*

section 216.2 as amended by 2007 Iowa Acts, Senate File 427, section 1, gender identity as defined in Iowa Code section 216.2 as amended by 2007 Iowa Acts, Senate File 427, section 1, disability, religion, creed, or socioeconomic background status.

The board shall publicize its support of these policies, its support of the staff in enforcing them, and the staff's accountability for implementing them.

ITEM 5. Adopt **new** subrule 12.3(13) as follows:

12.3(13) Policy declaring harassment and bullying against state and school policy. The policy adopted by the board regarding harassment of or by students and staff shall declare harassment and bullying in schools, on school property, and at any school function or school-sponsored activity regardless of its location to be against state and school policy. The board shall make a copy of the policy available to all school employees, volunteers, students, and parents or guardians and shall take all appropriate steps to bring the policy against harassment and bullying and the responsibilities set forth in the policy to the attention of school employees, volunteers, students, and parents or guardians. Each policy shall, at a minimum, include all of the following components:

a. A statement declaring harassment and bullying to be against state and school policy. The statement shall include but not be limited to the following provisions:

(1) School employees, volunteers, and students in school, on school property, or at any school function or school-sponsored activity shall not engage in harassing and bullying behavior.

(2) School employees, volunteers, and students shall not engage in reprisal, retaliation, or false accusation against a victim, a witness, or an individual who has reliable information about such an act of harassment or bullying.

b. A definition of harassment and bullying consistent with the following: Harassment and bullying shall be construed to mean any electronic, written, verbal, or physical act or conduct toward a student which is based on the student's actual or perceived age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status, and which creates an objectively hostile school environment that meets one or more of the following conditions:

(1) Places the student in reasonable fear of harm to the student's person or property.

(2) Has a substantially detrimental effect on the student's physical or mental health.

(3) Has the effect of substantially interfering with a student's academic performance.

(4) Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.

The local board policy must set forth all 17 of the above-enumerated traits or characteristics, but does not need to be limited to the 17 enumerated traits or characteristics.

c. A description of the type of behavior expected from school employees, volunteers, parents or guardians, and students relative to prevention, reporting, and investigation of harassment or bullying.

d. The consequences and appropriate remedial action for a person who violates the antiharassment and antibullying policy.

e. A procedure for reporting an act of harassment or bullying, including the identification by job title of the school

EDUCATION DEPARTMENT[281](cont'd)

official responsible for ensuring that the policy is implemented, and the identification of the person or persons responsible for receiving reports of harassment or bullying.

f. A procedure for the prompt investigation of complaints, identifying either the school superintendent or the superintendent's designee as the individual responsible for conducting the investigation, including a statement that investigators will consider the totality of circumstances presented in determining whether conduct objectively constitutes harassment or bullying under this subrule.

g. A statement of the manner in which the policy will be publicized.

The board shall integrate its policy into its comprehensive school improvement plan. The board shall develop and maintain a system to collect harassment and bullying incidence data, and report such data, on forms specified by the department, to the local community and to the department.

ITEM 6. Amend subparagraph **12.8(1)“a”(2)** as follows:

(2) School improvement advisory committee. To meet requirements of Iowa Code section 280.12(2) *as amended by 2007 Iowa Acts, Senate File 61, section 1*, the board shall appoint and charge a school improvement advisory committee to make recommendations to the board. Based on the committee members' analysis of the needs assessment data, they shall make recommendations to the board about the following components:

1. Major educational needs;
2. Student learning goals; and
3. Long-range goals that include, but are not limited to, the state indicators that address reading, mathematics, and science achievement; and
4. *Harassment or bullying prevention goals, programs, training, and other initiatives.*

[Filed 11/14/07, effective 1/9/08]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6469B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education amends Chapter 12, "General Accreditation Standards," Iowa Administrative Code.

The amendments are in compliance with 2007 Iowa Acts, Senate File 277, which (in section 4 thereof) creates new accreditation statutes requiring that each school district have a school nurse and a qualified (i.e., licensed by the Board of Educational Examiners) guidance counselor. The new legislation also requires that the State Board establish in rule a definition of and standards for an articulated sequential kindergarten through grade 12 school counseling program.

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

Notice of Intended Action was published in the October 10, 2007, Iowa Administrative Bulletin as **ARC 6293B**. A public hearing was held on November 2, 2007, and public comments were allowed until 4:30 p.m. November 2, 2007. No one appeared at the public hearing. Thirty-three written

comments were received by the agency, all of which were wholly favorable to the amendments.

Since the Notice of Intended Action was published, one item has been changed, though not because of any public comment. The definition of "at-risk student" was inadvertently omitted from the Notice of Intended Action. New Item 1 includes that amendment. The purpose of the amendment is to clarify that students with disabilities may also be considered "at-risk," and may have access to programming for at-risk students.

These amendments are intended to implement 2007 Iowa Acts, Senate File 277.

These amendments shall become effective January 9, 2008.

The following amendments are adopted.

ITEM 1. Amend rule **281—12.2(256)**, definition of "at-risk student," as follows:

"At-risk student" means any identified student who needs additional support and who is not meeting or not expected to meet the established goals of the educational program (academic, personal/social, career/vocational). At-risk students, ~~other than students with disabilities~~, include but are not limited to students in the following groups: homeless children and youth, dropouts, returning dropouts, and potential dropouts.

ITEM 2. Amend rule **281—12.2(256)** by adding the following **new** definition in alphabetical order:

"School counseling program" means an articulated sequential kindergarten through grade 12 program that is comprehensive in scope, preventive in design, developmental in nature, driven by data, and integral to the school district's curricula and instructional program. The program is implemented by at least one school counselor, appropriately licensed by the board of educational examiners, who works collaboratively with the district's administration and instructional staff. The program standards are described in subrule 12.3(11). The program's delivery system components shall include the following:

1. School guidance curriculum;
2. Support of the overall school curriculum;
3. Individual student planning;
4. Responsive services; and
5. System support.

ITEM 3. Rescind subrule 12.3(11) and adopt the following **new** subrule in lieu thereof:

12.3(11) Standards for school counseling programs. The board of directors of each school district shall establish a K-12 comprehensive school counseling program, driven by student data and based on standards in academic, career, personal, and social areas, which supports the student achievement goals of the total school curriculum and to which all students have equitable access.

a. A qualified school counselor, licensed by the board of educational examiners, who works collaboratively with students, teachers, support staff and administrators shall direct the program and provide services and instruction in support of the curricular goals of each attendance center. The school counselor shall be the member of the attendance center instructional team with special expertise in identifying resources and technologies to support teaching and learning. The school counselor and classroom teachers shall collaborate to develop, teach, and evaluate attendance center curricular goals with emphasis on the following:

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(1) Sequentially presented curriculum, programs, and responsive services that address growth and development of all students; and

(2) Attainment of student competencies in academic, career, personal, and social areas.

b. The program shall be regularly reviewed and revised and shall be designed to provide all of the following:

(1) Curriculum that is embedded throughout the district's overall curriculum and systemically delivered by the school counselor in collaboration with instructional staff through classroom and group activities and that consists of structured lessons to help students achieve desired competencies and to provide all students with the knowledge and skills appropriate for their developmental levels;

(2) Individual student planning through ongoing systemic activities designed to help students establish educational and career goals to develop future plans;

(3) Responsive services through intervention and curriculum that meet students' immediate and future needs as occasioned by events and conditions in students' lives and that may require any of the following: individual or group counseling; consultation with parents, teachers, and other educators; referrals to other school support services or community resources; peer helping; and information; and

(4) Systemic support through management activities that establish, maintain, and enhance the total school counseling program, including professional development, consultation, collaboration, program management, and operations.

ITEM 4. Amend subrule 12.4(12) as follows:

12.4(12) Nurses. ~~Each~~ *The board that employs of each school district shall employ a school nurse and shall require a current license to be filed with the superintendent or other designated administrator as specified in subrule 12.4(10).*

[Filed 11/14/07, effective 1/9/08]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6473B

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 12, "General Accreditation Standards," Iowa Administrative Code.

The amendments in Items 1 through 4 delete subjects that no longer exist in statute (Items 3 and 4) and requirements that are not accreditation-related (Items 1 and 2).

The amendments in Item 6 implement core content standards for all kindergarten through twelfth grade students in reading, math, and science as mandated in 2007 Iowa Acts, Senate File 588, section 17. The legislation states that the core content standards shall be identical to those in Iowa's standards and assessment system that was approved by the federal Department of Education.

The amendment in Item 7 implements 2007 Iowa Acts, House File 317, which amends Iowa Code section 256.11, subsection 10, to authorize a phase II accreditation visit upon the recommendation of the school budget review committee for a school district that exceeds its authorized budget or carries a negative unspent balance for two or more consecutive

years. The amendment in Item 5 amends the title of Division VIII of Chapter 12 in which phase II visits are discussed to reflect that districts are accountable for more than student achievement.

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

Notice of Intended Action was published in the August 15, 2007, Iowa Administrative Bulletin as **ARC 6156B**. A public hearing was held on September 14, 2007, and public comments were allowed until 4:30 p.m. September 14, 2007. No one appeared at the public hearing; no written comments were received by the agency.

These amendments are identical to those published under Notice.

These amendments are intended to implement 2007 Iowa Acts, Senate File 588 and House File 317.

These amendments will become effective January 9, 2008.

The following amendments are adopted.

ITEM 1. Rescind and reserve subrules **12.3(7)** and **12.3(10)**.

ITEM 2. Amend subrule 12.4(11) as follows:

12.4(11) Record required regarding teacher and administrative assignments. The board shall require its superintendent or other designated administrator to maintain a file for all regularly employed members of the instructional professional staff, including substitute teachers. The file shall consist of ~~complete official transcripts of the preparation of these staff members and their legal licenses/certificates or copies thereof for all members of the instructional professional staff, including substitute teachers,~~ showing that they are eligible for the position in which employed. The official shall also maintain on file a legal license/certificate or statement of professional recognition as defined in subrule 12.4(2) for each member of the noninstructional professional staff. These records shall be on file at the beginning of and throughout each school year and shall be updated annually to reflect all professional growth.

On December 1 of each year, the official shall verify to the department of education the licensure/certification and endorsement status of each member of the instructional and administrative staff. This report shall be on forms provided by the department of education and shall identify all persons holding ~~conditional~~ authorizations and their specific assignment(s) with the ~~conditional~~ authorization(s).

ITEM 3. Amend subrule 12.5(10) as follows:

12.5(10) Technology integration. Each school or school district shall incorporate into its comprehensive school improvement plan demonstrated use of technology to meet its student learning goals. ~~As described in Iowa Code section 295.3, progress with the use of technology shall be included in the school district's annual progress report.~~

ITEM 4. Rescind and reserve subrule **12.5(17)**.

ITEM 5. Amend **281—Chapter 12, Division VIII**, title, as follows:

ACCOUNTABILITY FOR STUDENT ACHIEVEMENT

ITEM 6. Amend subrule **12.8(1)**, paragraphs "c" and "f," as follows:

c. Content standards and benchmarks.

(1) No change.

(2) Content standards and benchmarks. The board shall adopt clear, rigorous, and challenging content standards and benchmarks in reading, mathematics, and science to guide

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the learning of students from the date of school entrance until high school graduation. *Included in the local standards and benchmarks shall be the core content standards from Iowa's approved standards and assessment system under the applicable provisions of the federal Elementary and Secondary Education Act.* Standards and benchmarks may be adopted for other curriculum areas defined in 281—Chapter 12, Division V. The comprehensive school improvement plan submitted to the department shall contain, at a minimum, *the core content standards for reading, mathematics, and science.* The educational program as defined in 281—Chapter 12, Division II, shall incorporate career education, multicultural and gender fair education, technology integration, global education, higher-order thinking skills, learning skills, and communication skills as outlined in subrules 12.5(7), 12.5(8), 12.5(10), and 12.5(11), and subparagraph 12.8(1)“c”(1).

f. Assessment of student progress. Each school or school district shall include in its comprehensive school improvement plan provisions for districtwide assessment of student progress for all students. The plan shall identify valid and reliable student assessments aligned with local content standards, *which include the core content standards referenced in subparagraph 12.8(1)“c”(2).* These assessments are not limited to commercially developed measures. School districts receiving early intervention funding described in subrule 12.5(18) shall provide for diagnostic reading assessments for kindergarten through grade 3 students as described in 1999 Iowa Acts, House File 743.

(1) and (2) No change.

ITEM 7. Adopt **new** subparagraph **12.8(4)“b”(5)** as follows:

(5) Upon recommendation of the school budget review committee for a district that exceeds its authorized budget or carries a negative unspent balance for at least two consecutive years.

[Filed 11/14/07, effective 1/9/08]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6471B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education amends Chapter 21, “Community Colleges,” Iowa Administrative Code.

This amendment facilitates the allocation of \$2 million to the Department to be distributed to all 15 community colleges to supplement faculty salaries as directed in 2007 Iowa Acts, Senate File 601. The Department was directed by the legislation to base the allocation on the proportional share of each community college's total salary expenditures in the instructional and instructional part-time categories in the education functions of liberal arts and sciences and vocational-technical compared with the total salary expenditures for all community colleges in the education functions of liberal arts and sciences and vocational-technical in the fiscal year prior to the base year.

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

Notice of Intended Action was published in the August 15, 2007, Iowa Administrative Bulletin as **ARC 6154B**. A public hearing was held on September 7, 2007, and public comments were allowed until September 7, 2007. No one appeared at the public hearing. One written comment was received pursuant to the rule-making process. This was a letter from Iowa Central Community College, stressing the need for clarity regarding the definition of adjunct faculty. In addition, the Department sought and received comments from Iowa's community college presidents.

Since the Notice of Intended Action was published, and based on input from ARRC members and from community college administrators, changes were made to the definition of “adjunct faculty” and to paragraphs “d” and “e.” These changes all reflect the need of community colleges to have a common definition of adjunct faculty.

These amendments are intended to implement 2007 Iowa Acts, Senate File 601.

These amendments shall become effective January 9, 2008.

The following amendments are adopted.

ITEM 1. Amend rule 281—21.3(260C) by adopting the following **new** subrule:

21.3(7) Faculty salary allocation plan. Pursuant to the appropriation of funds from the state general fund to the department for the purpose of supplementing community college faculty salaries, the department follows the formula herein when distributing such funds to community colleges.

a. For purposes of this subrule, the following definitions apply.

(1) “Full-time faculty” means those nonadministrative instructors, counselors, and librarians who are classified as full-time employees as defined in the college's collective bargaining agreement or written policy.

(2) “Part-time faculty” means those nonadministrative instructors, counselors, and librarians who are employed less than full-time as defined in the college's collective bargaining agreement or written policy.

(3) “Temporary/seasonal faculty” means those nonadministrative instructors, counselors, and librarians who are employed, full-time or part-time, by the college for short periods of time for specific purposes.

(4) “Adjunct faculty” means those nonadministrative instructors, counselors, and librarians who are employed without a continuing contract, whose teaching load does not exceed one-half time for two full semesters or three full quarters per calendar year.

b. The appropriation shall be distributed to the community colleges based on their proportional share of salary expenditures recorded in the instructional and instructional part-time categories and incurred in the liberal arts and sciences and vocational-technical functions. Salary expenditures for staff classified by the college as temporary/seasonal or as adjunct shall not be included in the eligible expenditures when calculating the distribution.

c. Moneys distributed to each community college hereunder shall be rolled into the funding allocation for all future years. The use of the funds shall remain as described herein for all future years. The appropriation will be distributed to the community colleges in equal monthly payments made on or about the fifteenth of each month.

d. Moneys appropriated and distributed to community colleges herein shall be used to supplement and not supplant any approved faculty salary increases or negotiated agreements, excluding the distribution of the funds herein. Eligible expenditures for the moneys appropriated are for

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salary expenditures and the required college contribution to FICA and IPERS or alternative retirement benefits system. These moneys shall then be considered as part of the instructor's salary in future years.

e. Moneys distributed to a community college hereunder shall be allocated to all full-time faculty and shall include part-time faculty covered by a collective bargaining agreement. The moneys shall be allocated pursuant to any existing negotiated agreements according to Iowa Code chapter 20. If no language exists to specify the method of allocation, the moneys shall be allocated equally to all full-time faculty with part-time faculty who are covered by a collective bargaining agreement receiving a prorated share.

ITEM 2. Amend **281—Chapter 21** by adopting the following **new** implementation sentence at the end of Division I:

The rules in this division are intended to implement Iowa Code chapter 260C and 2007 Iowa Acts, Senate File 601.

[Filed 11/14/07, effective 1/9/08]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6470B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education amends Chapter 21, "Community Colleges," Iowa Administrative Code.

2007 Iowa Acts, Senate File 358, established prelicensing and continuing education requirements for used motor vehicle dealers. The legislation amended provisions in Iowa Code chapter 322. The primary regulatory authority for Iowa Code chapter 322 resides with the Department of Transportation. However, one sentence in Senate File 358 directed the Department of Education to "adopt rules establishing reasonable fees to be charged for the prelicensing education courses and the continuing education courses." This amendment complies with the directive contained in 2007 Iowa Acts, Senate File 358, by setting a maximum fee for the required coursework.

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

Notice of Intended Action was published in the August 15, 2007, Iowa Administrative Bulletin as **ARC 6155B**. A public hearing was held on September 7, 2007, and public comments were allowed until September 7, 2007. No written or oral comments were received.

This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 260C and 2007 Iowa Acts, Senate File 358.

This amendment will become effective January 9, 2008.

The following amendment is adopted.

Amend **281—Chapter 21** by adopting the following **new** division:

DIVISION X
MISCELLANEOUS PROVISIONS

281—21.75(260C,82GA,SF358) Used motor vehicle dealer education program. An applicant for a license from the department of transportation as a used motor vehicle dealer shall complete a minimum of eight hours of prelicensing education program courses pursuant to 2007 Iowa Acts, Senate File 358, prior to submitting the application. The education program courses are provided by community colleges or by the Iowa Independent Automobile Dealers Association in conjunction with a community college. The fee for both the prelicensing education program courses and continuing education courses shall not exceed \$50 per contact hour of instruction, which shall include course materials and administrative costs.

This rule is intended to implement Iowa Code chapter 260C and 2007 Iowa Acts, Senate File 358.

[Filed 11/14/07, effective 1/9/08]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6474B**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.

2007 Iowa Acts, Senate File 447 and Senate File 588, section 20, amending sections of Iowa Code chapter 257, created new opportunities for school districts and area education agencies (AEAs) to request supplementary weighting. Pursuant to the new legislation, revisions to the Chapter 97 administrative rules are as follows: Whole-grade sharing arrangements will be eligible for supplementary weighting for three years under certain circumstances and can be carried forward another three years. Classes taught using the ICN video network will now be eligible for supplementary weighting, and the teacher providing the ICN class will receive a portion of the supplementary weighting funding. Operational function sharing will be eligible for supplementary weighting for up to five years with an annual 20 percent phase-out. AEAs, as well as school districts, will be eligible for supplementary weighting under this plan, and the potential sharing partners are expanded. The last opportunity to request supplementary weighting for a regional academy was on the certified enrollment due October 15, 2007.

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

Notice of Intended Action was published in the October 10, 2007, Iowa Administrative Bulletin as **ARC 6290B**. A public hearing was held on October 30, 2007, and public comments were allowed until 4:30 p.m. October 30, 2007. No one appeared at the public hearing; five written comments were received by the agency. Other than the comment from the Iowa Association of School Boards (IASB), the comments questioned the policy underlying the legislation and were not directed at the rules per se. The comment from IASB primarily raised questions about the restrictions in 97.7(2), shared operational functions. The agency believes that its interpretation of Senate File 447 in subrule 97.7(2), that supplementary weighted dollars are intended for mana-

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gerial duties within the five discrete operational functions, is the correct interpretation of the legislation.

Since the Notice of Intended Action was published, the following items have been changed:

In 97.1(257), the definition of "political subdivision" was modified to strike the word "only," thereby making the definition consistent with the statutory definition. This change was made in direct response to IASB's comment.

In 97.7(2), the introductory paragraph includes an additional sentence to clarify that "operational function sharing" excludes clerical personnel as well as librarians, counselors, nurses, and curriculum directors. The exclusion of curriculum directors is explicitly added to 97.7(2)"c"(2); school bus mechanics and school bus drivers are added as an exclusion in 97.7(2)"d"(2); and custodians are added as an exclusion in 97.7(2)"e"(2).

These amendments are intended to implement 2007 Iowa Acts, Senate File 447 and Senate File 588, section 20.

These amendments will become effective January 9, 2008. The following amendments are adopted.

ITEM 1. Amend rule 281—97.1(257) as follows:

Amend the definitions of "class" and "supplementary weighting plan" as follows:

"Class" means *shall mean* a course for academic credit which applies toward a high school or community college diploma.

"Supplementary weighting plan" shall mean a plan as defined in this chapter to add a weighting for each resident student eligible ~~that~~ *who* is enrolled in an eligible class taught by a teacher employed by another school district or taught by a teacher employed jointly with another school district or sent to and enrolled in an eligible class in another school district or sent to and enrolled in an eligible community college class. The supplementary weighting for each eligible class shall be calculated by multiplying the fraction of a school year that class represents times the number of eligible resident students enrolled in that class times the weighting factor ~~of forty-eight hundredths~~.

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

"Actual enrollment" shall mean the enrollment determined annually on October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, pursuant to Iowa Code section 257.6.

"Political subdivision" shall mean a political subdivision in the state of Iowa and shall include a city, a township, a county, a public school district, a community college, an area education agency, or an institution governed by the state board of regents (Malcolm Price Laboratory School, Iowa Braille and Sight Saving School, Iowa School for the Deaf, Iowa State University, University of Iowa, and University of Northern Iowa).

"Superintendent" shall be defined pursuant to Iowa Code section 272.1.

ITEM 2. Amend rule 281—97.2(257) as follows:

281—97.2(257) Supplementary weighting plan.

97.2(1) Eligibility. Except if listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if one of the following conditions is met pursuant to Iowa Code section 257.11:

a. to d. No change.

Other than as listed in paragraphs "a" to "d" above and in rules 281—97.3(257) and 281—97.4(257), and 281—97.7(257), no other sharing arrangement shall be eligible for supplementary weighting.

97.2(2) and **97.2(3)** No change.

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~~ *teacher professional development* plan.

c. One single salary schedule.

Except for joint employment contracts which meet the requirements of paragraphs "a" to "c" above, no two or more school districts shall list each other for the same classes and grade levels.

97.2(5) Attend class in a community college. All of the following conditions must be met for any student attending a community college-offered class to be eligible for supplementary weighting under paragraph 97.2(1)"d."

a. to d. No change.

e. The course must be taught by a teacher ~~meeting community college licensing requirements for whose services the community college has contracted to specifically teach the class~~.

f. and g. No change.

97.2(6) Ineligibility. The following students are ineligible for supplementary weighting:

a. Nonresident students attending the school district under any arrangement *except open enrolled in students, non-public shared-time students, or dual enrolled competent private instruction students in grades 9 through 12*.

b. Students taking courses taught via the ~~Iowa Communications Network (ICN) or any other television or electronic medium pursuant to Iowa Code section 257.11~~ *except the Iowa Communications Network (ICN) video services*.

c. No change.

d. Students in whole-grade sharing arrangements *except under sharing pursuant to subrule 97.2(5) or subrule 97.2(7)*.

e. Students open enrolled ~~in or out~~ *except under sharing pursuant to subrule 97.2(5) or subrule 97.6(1), paragraph "c."*

~~f. Students enrolled in nonpublic schools.~~

~~g. Students participating in a home school assistance program or dual enrollment.~~

f. Students open enrolled in except under sharing pursuant to subrule 97.2(5) or subrule 97.6(1), paragraph "c," when the students are under competent private instruction and are dual enrolled in grades 9 through 12.

~~h g. Students participating in shared services rather than shared classes except under sharing pursuant to rule 97.7(257).~~

~~i h. Students taking postsecondary enrollment options (PSEO) courses authorized under Iowa Code chapter 261C are ineligible for supplementary weighting for the PSEO courses.~~

~~j i. Students enrolled in courses or programs offered by their resident school districts unless those courses meet the conditions for attending classes in a community college under subrule 97.2(5) or if the teacher is employed by another school district pursuant to subrule 97.2(3) or if a teacher is jointly employed with another school district pursuant to subrule 97.2(4) or if the courses are included in the curriculum of an in-district regional academy pursuant to subrule 97.4(1) or if the courses are in-district virtual classes pro-~~

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vided via Iowa Communications Network (ICN) video services to other districts pursuant to subrule 97.6(1).

¶ j. Students enrolled in courses or programs taught by teachers employed by their resident school districts unless the employment meets the criteria of joint employment with another school district under subrule 97.2(4) or if the criteria in subrule 97.2(5) are met for students attending class in a community college or if the courses are included in the curriculum of an in-district regional academy pursuant to subrule 97.4(1) or if the courses are in-district virtual classes provided via Iowa Communications Network (ICN) video services to other districts pursuant to subrule 97.6(1).

¶ k. Students enrolled in an at-risk program or alternative school program.

¶ l. Students enrolled in summer school courses.

97.2(7) No change.

97.2(8) Due date. Supplementary weighting shall be included with the certified enrollment which is due ~~October 1~~ following the third Friday in September *October 15 following the October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday*, on which the enrollment was taken.

ITEM 3. Amend rule 281—97.4(257) as follows:

281—97.4(257) Supplementary weighting plan for a regional academy.

97.4(1) No change.

97.4(2) Weighting. Resident students eligible for supplementary weighting pursuant to subrule 97.4(1) shall be eligible for a weighting of one-tenth of the ~~percent of the pupil's school day~~ *fraction of a school year* during which the pupil attends courses at the regional academy in which nonresident students are enrolled pursuant to subrule 97.4(1), paragraph "a." Pursuant to Iowa Code Supplement section 257.11, subsection 6, the portion of time a course utilizes ICN-delivered coursework shall not be eligible for supplementary weighting.

97.4(3) and **97.4(4)** No change.

97.4(5) Additional programs. If all of the criteria in subrule 97.4(1) are met, the regional academy may also include in its curriculum vocational-technical courses or a virtual academy. ~~Notwithstanding subrule 97.4(2), if~~ *If* the Internet connection for a qualified virtual academy is provided through the ICN, that Internet connection shall be deemed ~~not to be a violation of a regional academy class and not an ICN video class pursuant to Iowa Code Supplement section 257.11, subsection 6, for purposes of this subrule.~~

97.4(6) No change.

97.4(7) *October 1, 2007, is the final date that any students may be included for supplementary weighting for an in-district regional academy.*

ITEM 4. Amend rule 281—97.5(257) as follows:

281—97.5(257) Supplementary weighting plan for whole-grade sharing.

97.5(1) Whole-grade sharing. A school district which participates in a whole-grade sharing arrangement executed pursuant to Iowa Code sections 282.10 to 282.12 and which has adopted a board resolution to study dissolution or has adopted a board resolution jointly with all other affected boards to study reorganization to take effect on or before July 1, ~~2006~~ *2014*, is eligible to assign a weighting of one-tenth of the ~~percentage of the pupil's day~~ *fraction of the school year* during which resident pupils attend classes pursuant to subrule 97.2(1), paragraph "a," "b," or "c."

a.—A school district that was participating in a whole-grade sharing arrangement during the budget year beginning July 1, 2000, shall be eligible for supplementary weighting under this subrule for a maximum of two years. Receipt of supplementary weighting for a second year shall be conditioned upon submission of information resulting from the study to the school budget review committee indicating progress toward the objective of dissolution or reorganization on or before July 1, 2006.

b. A school district that was not participating in a whole-grade sharing arrangement during the budget year beginning July 1, 2000, shall be eligible for supplementary weighting under this subrule for a maximum of three years. Receipt of supplementary weighting for the second year and for the third year shall be conditioned upon submission of information resulting from the study to the school budget review committee indicating progress or continued progress toward the objective of dissolution or reorganization on or before July 1, ~~2006~~ *2014*.

97.5(2) No change.

97.5(3) Consecutive years. A school district that is eligible to add a supplementary weighting for resident students attending classes under a whole-grade sharing arrangement pursuant to subrule 97.5(1) is not required to utilize consecutive years. However, the final year in which a supplementary weighting may be added on the ~~third Friday in September October 1~~ for this purpose shall not be later than the school year that begins July 1, ~~2005~~ *2013*.

97.5(4) No change.

97.5(5) Filing board resolutions. Each school district that adopts a board resolution to study dissolution or has adopted a board resolution jointly with all other affected boards to study reorganization shall file a copy of the board resolution with the department of education not later than the ~~third Friday in September October 1~~ on which date the district intends to request supplementary weighting for whole-grade sharing.

97.5(6) Filing progress reports. Each school district that assigned a supplementary weighting to resident students attending class in a whole-grade sharing arrangement and that intends to assign a supplementary weighting to resident students attending class in a whole-grade sharing arrangement in the following year shall file a ~~progress report~~ *report of progress toward reorganization* with the school budget review committee, on forms developed by the department of education, no later than August 1 preceding the ~~third Friday in September October 1~~ on which date the district intends to request supplementary weighting for whole-grade sharing.

a. No change.

b. *The report must indicate progress toward a reorganization or dissolution to occur on or before July 1, 2014. Indicators of progress may include, but are not limited to:*

(1) *Establishing substantially similar salary schedules or a plan by which the sharing districts will be able to develop a single salary schedule upon reorganization.*

(2) *Establishing a joint teacher evaluation process and instruments.*

(3) *Developing a substantially similar continuous school improvement plan (CSIP) with aligned goals including a district professional development plan.*

(4) *Increasing the number of grades involved in the whole-grade sharing arrangement.*

(5) *Increasing the number of shared teaching or educator positions.*

(6) *Increasing the number or extent of operational sharing arrangements.*

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(7) *Increasing the number of shared programs such as career, at risk, gifted and talented, curricular, or cocurricular.*

(8) *Increasing the number of joint board meetings or planning retreats.*

(9) *Holding regular or frequent public meetings to inform the public of progress toward reorganization and to receive comments from the public regarding the proposed reorganization.*

(10) *Adopting a reorganization or dissolution proposal.*

(11) *Setting proposed boundaries.*

(12) *Setting a date for an election on the reorganization or dissolution proposal.*

b c. The school budget review committee shall consider each progress report at its first regular meeting of the fiscal year and shall accept the progress report or shall reject the progress report with comments. The reports will be evaluated on demonstrated progress within the past year toward reorganization or dissolution.

e d. A school district whose progress report is not accepted shall be allowed to submit a revised progress report at the second regular meeting of the school budget review committee. The committee shall accept or reject the revised progress report.

d e. If the school budget review committee rejects the progress report and the district does not submit a revised progress report or if the school budget review committee rejects the revised progress report, the school district shall not be eligible for supplementary weighting for whole-grade sharing.

ITEM 5. Adopt **new** rules 281—97.6(257) and 281—97.7(257) as follows:

281—97.6(257) Supplementary weighting plan for ICN video services.

97.6(1) Eligibility. Except for students listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment, is not eligible for supplementary weighting for the same course under another supplementary weighting plan, and meets any of the criteria in “a,” “b,” or “c” below. For purposes of this subrule, the portion of a course offered via ICN video services shall be considered separately from the portion of the course not offered via ICN video services. Eligible students include:

a. Resident students who receive a virtual class provided by another school district via ICN video services.

b. Resident students who attend a virtual class that the resident district is providing to students in one or more other school districts via ICN video services.

c. Resident students who receive a virtual community college class via ICN video services. The community college class must be a course eligible for supplementary weighting under the criteria listed in subrule 97.2(5).

97.6(2) Weighting. Resident students eligible for supplementary weighting pursuant to subrule 97.6(1) shall be eligible for a weighting of one-twentieth of the fraction of the school year during which the pupil attends the virtual class.

97.6(3) Payment to teachers. A school district that includes students in a virtual class for supplementary weighting shall reserve 50 percent of the supplementary weighting funding the district will receive as a result of including the resident students in the virtual class for supplementary weighting as additional pay for the virtual class teacher.

a. The employer of the virtual class teacher will make the payment.

b. The additional pay includes salary and the employer’s share of FICA and IPERS.

c. The employer shall pay the virtual class teacher during the same school year in which the virtual class is provided.

d. The employer may pay the virtual class teacher at the conclusion of the virtual class or may pay the teacher periodic payments that represent the portion of the virtual class that has been provided. The employer may not pay the teacher prior to services being rendered.

e. The additional pay shall be calculated as 0.5 multiplied by the supplementary weighting for the virtual class multiplied by the district cost per pupil in the subsequent budget year.

f. If the teacher’s contract includes additional pay for teaching the virtual class, the teacher shall receive the higher amount of the additional pay in the contract or the amount of the additional pay calculated pursuant to paragraphs “b” and “e” above. For purposes of this comparison, the employer shall compare the salary portions only.

g. The contract between the agencies shall provide for the additional pay for the teacher of the virtual class. That 50 percent of the supplementary weighting funding would be paid in addition to the tuition sent to the providing district or community college to be paid as additional pay to its teacher employee.

281—97.7(257) Supplementary weighting plan for operational services.

97.7(1) Eligibility. Except for students listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if all of the following criteria are met:

a. The district shares a discrete operational function with one or more other political subdivisions pursuant to an Iowa Code chapter 28E agreement.

b. The district shares the operational function for at least 20 percent of the contract time period during the fiscal year that is customary for a full-time employee in the operational function being shared, and at least one of the sharing partners also shares the operational function for at least 20 percent of the contract time period during the fiscal year. The 20 percent is measured each fiscal year and for each discrete operational function.

c. Personnel shared as part of the operational function are employees of one of the sharing partners but are not employees of more than one of the sharing partners.

d. If the district shares an operational function with more than one political subdivision, the sharing arrangement is listed only once for purposes of supplementary weighting.

e. If the district shares more than one individual in the same operational function, that operational function shall be listed only once for the purposes of supplementary weighting.

f. No individual personnel shall be included for operational function sharing more than once for supplementary weighting in the same fiscal year.

g. If more than one sharing arrangement is implemented in any one operational function area and the services shared are substantially similar as determined by the department of education, only the sharing arrangement implemented first will be eligible for supplementary weighting.

h. The operational function areas shared include one or more of the areas listed in subrule 97.7(2).

97.7(2) Operational function area eligibility. “Operational function sharing” means sharing of managerial personnel

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in the discrete operational function areas of superintendent management, business management, human resources management, student transportation management, or facility operation or maintenance management. "Operational function sharing" does not mean sharing of clerical personnel, librarians, counselors, nurses, and curriculum directors. The operational function sharing arrangement does not need to be a newly implemented sharing arrangement in order to be eligible for supplementary weighting.

a. Superintendent management.

(1) Shared personnel must perform the services of a superintendent, in the case of a school district, or chief administrator, in the case of an area education agency, or executive administrator, in the case of other political subdivisions, for each of the sharing partners. An individual performing the function of a superintendent or chief administrator must be properly licensed for that position.

(2) If the services of a superintendent are shared in any of the five eligible years, the district may not also share an assistant superintendent in any year for purposes of supplementary weighting.

(3) Clerical or other support services personnel in the superintendent function area or executive administrator function area shall not be considered shared superintendent management under this subrule.

(4) Shared superintendent services or executive administrator services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

b. Business management.

(1) Shared personnel must perform the services of managing the business operations for each of the sharing partners. Managing business operations would include personnel performing the duties of a business manager or personnel performing the duties listed in the Iowa Code for a board secretary including, but not limited to, board secretary duties listed in Iowa Code chapter 291, or personnel performing the duties listed in the Iowa Code for a board treasurer including, but not limited to, board treasurer duties listed in Iowa Code chapter 291, in each of the sharing partners.

(2) Services of clerical personnel, superintendents, principals, teachers, board officers except those listed in subparagraph (1), or any other nonbusiness administration personnel shall not be considered shared business management under this subrule.

(3) Shared business management shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

c. Human resources management.

(1) Shared personnel must perform the services of managing human resources for each of the sharing partners.

(2) Services of clerical personnel, superintendents, principals, curriculum directors, teachers, or board officers shall not be considered shared human resources management under this subrule.

(3) Shared human resources management shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

d. Student transportation management.

(1) Shared personnel shall include transportation directors or supervisors. Shared personnel must perform services related to transportation for each of the sharing partners, but may perform different transportation services for each of the sharing partners.

(2) Services of clerical or paraprofessional personnel, school bus mechanics, and school bus drivers shall not be considered shared student transportation management under this subrule.

(3) Shared transportation shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

e. Facility operations and maintenance.

(1) Shared personnel shall include facility managers and supervisors of buildings or grounds. Shared personnel must perform services related to facility operations and maintenance for each of the sharing partners, but may perform different facility operations and maintenance services for each of the sharing partners.

(2) Services of clerical personnel or custodians shall not be considered shared facility operations and maintenance management for supplementary weighting under this subrule.

(3) Shared facility operations and maintenance shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

97.7(3) Years of eligibility. A school district participating in an operational function sharing arrangement shall be eligible for supplementary weighting under this rule for a maximum of five years. The five years of eligibility shall include each year in which any shared operational function is included for supplementary weighting. The supplementary weighting for eligible shared operational functions may be included beginning on October 1, 2007.

a. Receipt of supplementary weighting after the first year shall be conditioned upon the submission of cost information provided in the format prescribed by the department of education as part of the certified annual report documenting cost savings directly attributable to the shared operational functions.

b. The documentation shall be filed no later than September 15 preceding the October 1 on which the second, third, fourth, or fifth year of operational function sharing is included for supplementary weighting.

97.7(4) Contiguous districts. School districts that share operational functions with other school districts must be contiguous school districts. If two or more sharing partner districts are not contiguous to each other, all districts separating those districts must be a party to the operational function sharing arrangement.

97.7(5) Consecutive years. A school district that is eligible to add a supplementary weighting for resident students for a shared operational function is not required to utilize consecutive years. However, the final year in which a supplementary weighting may be added on October 1 for this purpose shall not be later than the school year that begins July 1, 2012, and the total of all years in which a supplementary weighting may be added on October 1 for this purpose shall not exceed five years.

97.7(6) Change in sharing partners. A school district that is eligible to add a supplementary weighting for resident students for a shared operational function may enter into an operational function sharing arrangement with one or more different sharing partners for its second, third, fourth or fifth year of eligible weighting. Establishing a new operational function sharing arrangement in a substantially similar function does not extend the maximum number of years for which a school district is eligible.

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97.7(7) Change in shared personnel. A school district that is eligible to add a supplementary weighting for resident students for a shared operational function may enter into an operational function arrangement for a different individual in a substantially similar position. Implementing a change of the individual or individuals shared does not extend the maximum number of years for which a school district is eligible.

97.7(8) Multiple shared operational functions. A school district that implements more than one sharing arrangement within any discrete operational function area shall be eligible for supplementary weighting for only one sharing arrangement in that discrete operational function.

97.7(9) Weighting. Resident students eligible for supplementary weighting pursuant to rule 97.7(257) shall be eligible for a weighting of two-hundredths per pupil included in the actual enrollment in the district. The supplementary weighting shall be assigned to each discrete operational function shared. The maximum number of years for which a supplementary weighting shall be assigned for all operational functions shared is five years.

a. The supplementary weighting for operational functions shared is decreased each year based on the following schedule:

(1) The total supplementary weighting calculated for all operational function sharing in the second year of any operational function sharing, after application of minimum and maximum supplementary weighting, shall be reduced by 20 percent of the total supplementary weighting for all operational function sharing in the first year of any operational function sharing, but not reduced to less than zero.

(2) The total supplementary weighting calculated for all operational function sharing in the third year of any operational function sharing, after application of minimum and maximum supplementary weighting, shall be reduced by 40 percent of the total supplementary weighting for all operational function sharing in the first year of any operational function sharing, but not reduced to less than zero.

(3) The total supplementary weighting calculated for all operational function sharing in the fourth year of any operational function sharing, after application of minimum and maximum supplementary weighting, shall be reduced by 60 percent of the total supplementary weighting for all operational function sharing in the first year of any operational function sharing, but not reduced to less than zero.

(4) The total supplementary weighting calculated for all operational function sharing in the fifth year of any operational function sharing, after application of minimum and maximum supplementary weighting, shall be reduced by 80 percent of the total supplementary weighting for all operational function sharing in the first year of any operational function sharing, but not reduced to less than zero.

b. The department shall reserve the authority to determine if an operational sharing arrangement constitutes a discrete arrangement, new arrangement, or continuing arrangement if the circumstances have not been clearly described in the Iowa Code or the Iowa Administrative Code.

97.7(10) Maximum weighting. The maximum amount of additional weighting for which a school district participating in operational function sharing shall be eligible is an amount corresponding to 40 full-time equivalent pupils prior to any reduction pursuant to subrule 97.7(9). The maximum additional weighting applies to the total of all operational function sharing rather than to each discrete operational function.

97.7(11) Minimum weighting. The minimum amount of additional weighting for which a school district participating in operational function sharing shall be eligible is an amount

corresponding to ten additional pupils prior to any reduction pursuant to subrule 97.7(9). The minimum additional weighting applies to the total of all operational function sharing rather than each discrete operational function.

97.7(12) Filing cost-savings documentation. Each school district that receives supplementary weighting for sharing one or more operational functions shall file with the department of education documentation of cost savings directly attributable to the shared operational functions. This documentation shall be submitted in the format prescribed by the department of education as part of the certified annual report. The documentation shall be filed no later than September 15 preceding the October 1 on which the second, third, fourth, or fifth year of operational function sharing is included for supplementary weighting.

97.7(13) Determining cost savings. The criteria considered by the department of education in determining shared operational function cost savings and increased student opportunities shall include, but not be limited to, the following:

a. The percent of costs calculated as the total of general fund expenditures for all operational functions that could be shared divided by the total of all general fund expenditures, multiplied by 100, in the current year compared to the previous year. The current year is the fiscal year ending on June 30 that includes the October 1 on which the district included any operational function shared for supplementary weighting. The decrease in percent shall be a measurable decrease of at least one-tenth of one percent in the first fiscal year for which cost savings are determined. In a year after the first fiscal year for which cost savings are determined, the percent of costs shall not be greater than the percent in the previous fiscal year.

b. The percent of costs calculated as the total of general fund expenditures for all instruction, student support, and instructional staff support functions divided by the total of all general fund expenditures, multiplied by 100, in the current year compared to the previous year. The current year is the fiscal year ending on June 30 that includes the October 1 on which the district included any operational function shared for supplementary weighting. The increase in percent must be a measurable increase of at least one-tenth of 1 percent in the first fiscal year for which increased student opportunities are determined. In a year after the first fiscal year for which increased student opportunities are determined, the percent of costs shall not be less than the percent in the previous fiscal year.

c. The department of education will adjust the total expenditures to exclude distorting financial transactions such as energy costs, large equipment purchases, or interagency financial transactions.

d. If the district cannot demonstrate cost savings directly attributable to the shared operational function and increased student opportunities, the district will not be eligible for supplementary weighting for operational function sharing for that fiscal year.

97.7(14) Area education agency maximum funding. The provisions of rule 97.7(257) also apply to an area education agency except for per-pupil weightings, minimum weightings, and maximum weightings.

a. In lieu of minimum weightings, an area education agency shall be eligible for a minimum amount of additional funding of \$50,000 for the total of all operational function sharing arrangements. The dollar amount calculated in the first year of any operational function sharing will be used to determine the annual reductions.

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b. In lieu of maximum weightings, an area education agency shall be eligible for a maximum amount of additional funding of \$200,000 for the total of all operational function sharing arrangements. The dollar amount calculated in the first year of any operational function sharing will be used to determine the annual reductions.

c. In lieu of supplementary weighting of students, the department of management shall annually set a weighting for each area education agency to generate the approved operational function sharing dollars using each area education agency's special education cost-per-pupil amount and foundation level.

ITEM 6. Amend **281—Chapter 97**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~section 257.6, section 257.11 as amended by 2007 Iowa Acts, Senate File 447 and Senate File 588, section 20, and section 257.12.~~

[Filed 11/14/07, effective 1/9/08]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6432B

EMPLOYMENT APPEAL BOARD[486]

Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.601, the Employment Appeal Board hereby rescinds Chapter 10, "Elevator Appeals," Iowa Administrative Code.

This amendment is being adopted because the Board's authority to hear appeals related to elevators has been rescinded.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 1, 2007, as **ARC 6096B**. No public comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code section 10A.601.

The Employment Appeal Board adopted this amendment on November 5, 2007.

This amendment will become effective on January 9, 2008.

The following amendment is adopted.

Rescind and reserve **486—Chapter 10**.

[Filed 11/13/07, effective 1/9/08]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6433B

EMPLOYMENT APPEAL BOARD[486]

Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.601, the Employment Appeal Board hereby rescinds Chapter 11, "Boilers and Unfired Steam Pressure Vessels Appeals," Iowa Administrative Code.

This amendment is being adopted because the Board's authority to hear appeals related to boilers and unfired steam pressure vessels has been rescinded.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 1, 2007, as **ARC 6105B**. No public comments were received. This amendment is identical to that published under Notice.

The Employment Appeal Board adopted this amendment on November 5, 2007.

This amendment will become effective on January 9, 2008.

This amendment is intended to implement Iowa Code section 10A.601.

The following amendment is adopted.

Rescind and reserve **486—Chapter 11**.

[Filed 11/13/07, effective 1/9/08]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6441B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 60, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limits or Prohibitions," and Chapter 63, "Monitoring, Analytical and Reporting Requirements," Iowa Administrative Code.

The purpose of the 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 567—62.4(455B) and 567—62.5(455B) are amended to reflect updates to 40 Code of Federal Regulations (CFR). The change to rule 567—60.2(455B) updates the definition of "Act" to include amendments to the Water Pollution Control Act through July 1, 2007. The change to subrule 63.1(1) updates the reference to the latest federally approved methods for the analysis of wastewater samples.

Since these rules were last updated in 2006, there have been no amendments to the Clean Water Act or to federal toxic effluent standards adopted by reference in rule 567—62.5(455B). On March 12, 2007, the Environmental Protection Agency (EPA) updated the approved analytical test methods in 40 Code of Federal Regulations (CFR) Part 136. This update included methods for bacterial monitoring and

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

removed tables from specific federal effluent guidelines and replaced them with references to the methods in 40 CFR Part 136.

In accordance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary. Under rule 567—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 EPA approval 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 promulgated federal standards. In accordance with Iowa Code section 17A.4(2), the Commission also finds that notice and public participation are unnecessary when references to approved methods for analysis are updated, because these methods are required by EPA to be used to implement federal effluent and pretreatment standards.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

These amendments may have an impact upon small businesses.

These amendments shall become effective on January 9, 2008.

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

The following amendments are adopted.

ITEM 1. Amend rule **567—60.2(455B)**, definition of "Act," as follows:

"Act" means the Federal Water Pollution Control Act as amended through July 1, ~~2006~~ 2007, 33 U.S.C. §1251 et seq.

ITEM 2. Amend rule 567—62.4(455B), introductory paragraph, as follows:

567—62.4(455B) Federal effluent and pretreatment standards. The federal standards, 40 Code of Federal Regulations (CFR), revised as of July 1, ~~2006~~ 2007, are applicable to the following categories:

ITEM 3. Amend rule 567—62.5(455B) as follows:

567—62.5(455B) Federal toxic effluent standards. The following is adopted by reference: 40 CFR Part 129, revised as of July 1, ~~2006~~ 2007.

ITEM 4. Amend subrule **63.1(1)**, paragraph "a," as follows:

a. The following is adopted by reference: 40 Code of Federal Regulations (CFR) Part 136, revised as of July 1, ~~2006~~ 2007.

[Filed Without Notice 11/14/07, effective 1/9/08]
[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6451B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8, the Homeland Security and Emergency Management Division amends Chapter 9, "Iowa Comprehensive Plan," Iowa Administrative Code.

Iowa Code section 29C.8(3) requires the Administrator of the Homeland Security and Emergency Management Division to prepare a comprehensive plan for homeland security, disaster response, recovery, mitigation, and emergency resource management for the state. This amendment formally adopts the updated Part B: Iowa Hazard Mitigation Plan, which is part of the Iowa Comprehensive Plan.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 10, 2007, as **ARC 6296B**. In addition, this amendment was simultaneously Adopted and Filed Emergency as **ARC 6295B**. No public comments were received regarding this amendment. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

This amendment was adopted by the Iowa Homeland Security and Emergency Management Division on September 17, 2007.

This amendment shall become effective January 9, 2008, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

This amendment is intended to implement Iowa Code chapter 29C.

The following amendment is adopted.

Amend rule 605—9.3(29C), introductory paragraph, as follows:

605—9.3(29C) Part B: Iowa Hazard Mitigation Plan. The Part B: Iowa Hazard Mitigation Plan is developed in accordance with Iowa Code section 29C.8, and has been adopted on ~~September 10, 2004~~ *September 17, 2007*, published, and maintained by the division. Part B details the state government goals, objectives, and strategies to mitigate a wide range of natural, technological or human-caused disasters in accordance with Section 322 of the Stafford Act, 42 U.S.C. 5165.

[Filed 11/14/07, effective 1/9/08]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6461B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 76, "Application and Investigation," Iowa Administrative Code.

The amendment updates the rule on the health insurance data match program required by 2004 Iowa Acts, chapter

HUMAN SERVICES DEPARTMENT[441](cont'd)

1175, section 119(1)(c). The program matches coverage data from Iowa-based insurance carriers with Department files on Medicaid members to ensure that Medicaid is the payer of last resort.

The amendment allows greater flexibility and efficiency in securing the data-sharing agreements. As part of the Iowa Medicaid Enterprise, the Department has a contract with Health Management Systems, Inc. for revenue collection services, which designates the contractor as responsible for performing the insurance data match on the Department's behalf. The contractor has existing agreements with insurers to share data. The amendment provides that the contractor's existing agreement with a carrier will suffice as a data match agreement with the Department, rather than requiring the carrier to enter into a separate agreement.

The amendment provides that an agreement entered into with the Department's designee may be in the format approved by the designee. The Department's data use agreement has been formalized as Form 470-4415, Agreement for Use of Data, so the language of that agreement is removed from the rule and the form number is referenced.

The amendment also clarifies that after the initial submission of two years' data on insureds, carriers are required to submit only changes to the initial data provided. This report would include any new insured persons and changes to coverage for insured persons that were previously reported.

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

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on August 29, 2007, as **ARC 6208B**. The Department received one comment on the Notice of Intended Action, expressing concerns about the privacy of the data shared. In response to this comment, the Department has made one change to the amendment as published in the Notice of Intended Action. Paragraph 76.13(2)“b” now reads, “An agreement with the department's designee shall be in a form approved by the designee, which shall include privacy protections equivalent to those provided in Form 470-4415, Agreement for Use of Data.”

The Council on Human Services adopted this amendment on November 14, 2007.

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

This amendment shall become effective on February 1, 2008.

The following amendment is adopted.

Amend rule 441—76.13(249A) as follows:

Amend subrule 76.13(1) as follows:

76.13(1) Agreement required. Any insurance carrier providing a health benefit plan in Iowa subject to regulation by the Iowa commissioner of insurance shall enter into and maintain an agreement with the department *or its designee* to provide the data necessary to enable the department to match insureds against ~~medical assistance recipients~~ *Medicaid members* and identify third-party payers for ~~medical assistance recipients~~ *members*.

a. ~~A carrier that is providing a health insurance benefit plan in Iowa as of July 1, 2004, shall enter into an agreement in accordance with subrule 76.13(2) by August 1, 2004, to provide data as described in paragraph 76.13(1)“b” beginning September 1, 2004.~~

b. The *initial provision of data provided* shall include the data necessary to enable the department to match insureds

and identify third-party payers for the two-year period before the *initial* provision of the data.

b. *Ongoing monthly matches may be limited to changes in the data previously provided, including additional insureds, with the effective dates of the changes.*

Rescind subrule 76.13(2) and adopt the following **new** subrule in lieu thereof:

76.13(2) Agreement form.

a. An agreement with the department shall be in substantially the same form as Form 470-4415, Agreement for Use of Data.

b. An agreement with the department's designee shall be in a form approved by the designee, which shall include privacy protections equivalent to those provided in Form 470-4415, Agreement for Use of Data.

[Filed 11/14/07, effective 2/1/08]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6459B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 235B.5, the Department of Human Services amends Chapter 176, “Dependent Adult Abuse,” Iowa Administrative Code.

These amendments reflect the implementation of statutory amendments relating to the treatment of some reports of dependent adult abuse. Legislation in 2007 Iowa Acts, House File 925, amended Iowa Code chapter 235B to add a new category, “confirmed, not registered,” which applies to reports of physical abuse or denial of critical care by a caretaker that are determined to be minor, isolated, and unlikely to reoccur. These reports will be considered “assessments” and will not be placed on the Central Abuse Registry. The reports will be kept in the local office for five years and then sealed unless there is a subsequent founded report of dependent adult abuse on the same caretaker. If there is a subsequent report within five years, the original report will be kept in the local office for ten years from the date of the subsequent report and then sealed.

Advocates have argued that it is unfair for adult abuse findings to be placed on the Registry for ten years when the abuse is minor, isolated, and unlikely to reoccur, since placement on the Registry affects a caretaker's employability. Child abuse assessments already employ the “confirmed, not registered” finding, so this change will result in consistency across programs.

These amendments do not provide for waivers in specified situations. The Department does not have the authority to waive statutory provisions. Department findings are subject to appeal.

The Council on Human Services adopted these amendments on November 14, 2007.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments merely make the rule conform to statutory language. A large group of advocates and representatives from provider agencies and state agencies worked on the exact wording of the legislation.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code sections 235B.3(1) and 235B.9 as amended by 2007 Iowa Acts, House File 925, sections 15 and 16, respectively.

These amendments shall become effective on January 9, 2008.

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

The following amendments are adopted.

ITEM 1. Amend rule 441—176.3(235B) by adopting the following **new** subrule:

176.3(4) Confirmed, not registered. Reports of physical abuse or denial of critical care by a caretaker that would otherwise be founded reports shall be considered confirmed, not registered reports if the abuse is determined to be minor, isolated, and unlikely to reoccur. These reports shall be assessments and shall not be included on the central abuse registry. The assessment shall be maintained in the local office as directed in subrule 176.13(4).

ITEM 2. Amend subrule 176.13(4) as follows:

176.13(4) Assessments. *Reports classified as assessments shall not be included in the central registry but shall be maintained in the local office. The central registry shall be notified of the disposition of the assessment report.*

a. *Self-denial of critical care.* Reports involving abuse as a result of the acts or omissions of the dependent adult will be assessments. These reports shall be retained in the dependent adult's case file in the ~~county~~ local office for five years and then destroyed. ~~These reports shall not be included in the central registry.~~

b. *Confirmed, not registered. Reports of dependent adult abuse where physical abuse or denial of critical care committed by a caretaker is confirmed but is determined to be minor, isolated, and unlikely to reoccur shall be assessments. These reports shall be maintained in the local office for five years and then destroyed unless a subsequent report of dependent adult abuse on the same caretaker is founded. If a subsequent report on the same caretaker is founded within the five-year period, the confirmed, not registered report shall be maintained in the local office for ten years from the date of the subsequent report and then sealed.*

[Filed Without Notice 11/14/07, effective 1/9/08]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6467B**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 57, "Residential Care Facilities," Iowa Administrative Code.

Iowa law requires that every rule for which a residential care facility may be cited must be annotated as to the class of violation. During the rewrite of the Department's administrative rules governing service plans, the notations in rule

481—57.22(135C) were inadvertently omitted. The adopted amendment simply reinserts the missing notations.

The State Board of Health initially reviewed the amendment at its September 12, 2007, meeting. The Board approved the amendment at its November 14, 2007, meeting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 10, 2007, as **ARC 6275B**. No public comment was received, and the adopted amendment is identical to that published under Notice of Intended Action.

This amendment will become effective January 9, 2008.

The following amendment is adopted.

Amend rule 481—57.22(135C) as follows:

481—57.22(135C) Service plan.

57.22(1) Prior to admission of a resident, the administrator or the administrator's designee shall develop a written and organized orientation plan. The plan shall be designed to assist the resident in adapting to the facility and to assist the facility staff in becoming knowledgeable of the resident and the resident's needs. *(III)*

57.22(2) Within 30 days of admission, the administrator or the administrator's designee shall, in conjunction with the resident, other facility staff or any organization that works with or serves the resident, develop a written, individualized, and integrated program of ongoing services for the resident. *(III)*

a. The program shall be planned and implemented to address the resident's priorities and assessed needs, such as living, rehabilitation, activity, behavioral, emotional, mental health and social, and shall take into consideration the resident's personal goals and preferences, including the resident's preferred living situation. *(III)*

b. The service plan shall include specific goals and objectives with regular documentation of each. *(III)*

c. The service plan shall be reviewed at least quarterly, or more often as necessary. *(III)*

57.22(3) Communications related to service plan changes or changes in the resident's condition shall occur within five working days of the change, and shall be conveyed to all individuals inside and outside the residential care facility who work with the resident, as well as to the resident's family members or responsible party. *(III)*

[Filed 11/14/07, effective 1/9/08]

[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6440B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 455A.5, the Natural Resource Commission of the Department of Natural Resources hereby rescinds Chapter 7, "Rules of Practice in Contested Cases," Iowa Administrative Code, and adopts a new Chapter 7 with the same title.

Chapter 7 contains the procedural rules for contested cases. Notice of Intended Action to rescind and adopt new 571—Chapter 7 was published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 6004B**. No public com-

NATURAL RESOURCE COMMISSION[571](cont'd)

ments were received regarding the proposed rule making, and no changes have been made since the Notice of Intended Action was published.

This rule making adopts by reference the new version of 561—Chapter 7 that became effective March 7, 2007. On September 27, 2006, a Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 5385B** to rescind 561—Chapter 7 and to adopt a new version of Chapter 7. No comments were received, and the Adopted and Filed rule making was published in the Iowa Administrative Bulletin on January 31, 2007, as **ARC 5693B**.

The new version of 561—Chapter 7 addresses procedural issues that have arisen in the past on a recurring basis. It also clarifies the procedural practices of the Department. The new version of Chapter 7 was reviewed by an administrative law judge from the Department of Inspections and Appeals and by a group of volunteer attorneys who are members of the Iowa State Bar Association.

This amendment is intended to implement Iowa Code sections 17A.3, 17A.12 to 17A.18 and 455A.5.

This amendment shall become effective January 9, 2008. The following amendment is adopted.

Rescind 571—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7

RULES OF PRACTICE IN CONTESTED CASES

571—7.1(17A) Adoption by reference. The commission adopts by reference 561—Chapter 7, Iowa Administrative Code.

This rule is intended to implement Iowa Code sections 17A.3 and 17A.12 to 17A.18.

[Filed 11/14/07, effective 1/9/08]
[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6437B**PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendment provides that a prescriber may authorize no more than 12 refills of a noncontrolled prescription drug or device to be filled within 18 months of the original date of the prescription drug order and clarifies the meaning of the term "refill."

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

Notice of Intended Action was published in the August 29, 2007, Iowa Administrative Bulletin as **ARC 6178B**. The Board received no comments regarding the amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the November 13, 2007, meeting of the Board of Pharmacy.

This amendment will become effective on January 9, 2008.

This amendment is intended to implement Iowa Code section 155A.29 as amended by 2007 Iowa Acts, Senate File 67, section 5.

The following amendment is adopted.

Amend rule 657—8.19(124,126,155A) by adopting **new** subrule 8.19(5) as follows:

8.19(5) Refills. A prescription for a prescription drug or device that is not a controlled substance may authorize no more than 12 refills within 18 months following the date on which the prescription is issued. A refill is one or more dispensings of a prescription drug or device that results in the patient's receipt of the quantity authorized by the prescriber for a single fill as indicated on the prescription drug order.

[Filed 11/13/07, effective 1/9/08]
[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6464B**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 139A.4, the Department of Public Health hereby amends Chapter 1, "Notification and Surveillance of Reportable Communicable and Infectious Diseases, Poisonings and Conditions," Iowa Administrative Code.

In addition to reportable diseases and conditions, Chapter 1 contains rules regarding quarantine. These amendments add information relating to area quarantine. Item 1 adds a new definition and Item 2 amends Chapter 1 by adding a new rule for area quarantine.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 10, 2007, as **ARC 6283B**. No public comment was received on these amendments. These amendments are identical to the amendments published under Notice of Intended Action.

These amendments were adopted by the State Board of Health on November 14, 2007.

These amendments shall become effective January 9, 2008.

These amendments are intended to implement Iowa Code chapter 139A.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.1, 1.13] is being omitted. These amendments are identical to those published under Notice as **ARC 6283B**, IAB 10/10/07.

[Filed 11/14/07, effective 1/9/08]
[Published 12/5/07]

[For replacement pages for IAC, see IAC Supplement 12/5/07.]

ARC 6463B**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 135.19 and 135.20, the Department of Public Health hereby adopts new Chapter 2, "Hepatitis Programs," Iowa Administrative Code.

The rules in Chapter 2 describe two programs related to hepatitis. The Iowa Department of Public Health shall distribute information, offer HCV testing, and offer hepatitis A and B vaccinations to the citizens and veterans of this state who are at an increased risk of viral hepatitis exposure.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 10, 2007, as **ARC 6284B**. No public comment was received on these rules. These rules are identical to the rules published under Notice of Intended Action.

These rules were adopted by the State Board of Health on November 14, 2007.

These rules shall become effective January 9, 2008.

These rules are intended to implement Iowa Code sections 135.19 and 135.20.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 2] is being omitted. These rules are identical to those published under Notice as **ARC 6284B**, IAB 10/10/07.

[Filed 11/14/07, effective 1/9/08]
[Published 12/5/07]

[For replacement pages for IAC, see IAC Supplement 12/5/07.]

ARC 6466B**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby rescinds Chapter 111, "Financial Assistance to Eligible End-Stage Renal Disease Patients," Iowa Administrative Code.

This amendment rescinds the rules that pertained to the Financial Assistance to Eligible End-Stage Renal Disease Patients Program under Iowa Code sections 135.45 to 135.48. The legislature repealed these sections of the Code in 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because the legislature has repealed the Iowa Code sections related to this program, and the program no longer exists.

This amendment was adopted by the State Board of Health on November 14, 2007.

This amendment shall become effective January 9, 2008.

This amendment is intended to implement Iowa Code section 135.11.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)

281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Rescind and reserve **641—Chapter 111**.

[Filed Without Notice 11/14/07, effective 1/9/08]
[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6465B**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby rescinds Chapter 194, "Scope of Practice Review Committees," Iowa Administrative Code.

This amendment rescinds the rules that pertained to the Scope of Practice Review Committees under Iowa Code section 147.28A. This section had a repeal date of July 1, 2007.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because the legislature has repealed the Iowa Code section related to this program, and the program no longer exists.

This amendment was adopted by the State Board of Health on November 14, 2007.

This amendment shall become effective January 9, 2008.

This amendment is intended to implement Iowa Code section 147.28A.

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

The following amendment is adopted.

Rescind and reserve **641—Chapter 194**.

[Filed Without Notice 11/14/07, effective 1/9/08]
[Published 12/5/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6455B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby adopts amendments to Chapter 15, "Determination of a Sale and Sale Price," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXX, No. 7, p. 575, on September 26, 2007, as **ARC 6264B**.

These amendments are necessary to bring Iowa into compliance with the Streamlined Sales and Use Tax Agreement to which Iowa is a signatory. The specific change to subrule 15.3(1) involves the fact that, in the past, if an exemption cer-

REVENUE DEPARTMENT[701](cont'd)

tificate was not taken “in good faith” by a retailer, both the seller and the buyer who presented the certificate could be held liable for the tax if that buyer used the purchased good or service for a purpose which was not exempt. When the Streamlined Sales and Use Tax Agreement became a part of Iowa law (July 1, 2004), a different standard of behavior for retailers was adopted. This is a relaxed “good faith” standard which means that the seller can accept a properly completed exemption certificate, but the seller does not need to follow up with the purchaser to ensure that the claimed exemption applies to the purchaser. The retailer who accepts a properly completed exemption certificate with an absence of fraudulent intent and who has not solicited a purchaser to unlawfully claim an exemption is protected by the certificate in the event that a purchaser makes a taxable use of a purchase.

These amendments are identical to those published as Notice of Intended Action.

These amendments will become effective January 9, 2008, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement the Streamlined Sales and Use Tax Agreement and Iowa Code chapter 423.

The following amendments are adopted.

ITEM 1. Amend subrule **15.3(1)**, paragraph “a,” as follows:

a. ~~The~~ *Prior to July 1, 2004, the* sales tax liability for all sales of tangible personal property ~~is was~~ upon the seller ~~(and on and after March 13, 1986, the purchaser as well)~~ unless the seller ~~takes~~ *took* in good faith from the purchaser a valid exemption certificate stating that the purchase ~~is was~~ for an exempt purpose or the tax ~~will~~ *would be* remitted directly to the department by the purchaser under a valid direct pay permit issued by the department. In addition to the provisions and requirements set forth in subrule 15.3(2), to be valid an exemption certificate issued by a purchaser to a seller in good faith under a direct pay permit must ~~include~~ *have included* the purchaser’s name, direct pay permit number, and date the direct pay permit was issued by the department. A seller who has taken a valid exemption certificate under a direct pay permit must keep records of sales made in accordance with rule 701—11.4(422,423). For more information regarding direct pay permits, see rule 701—12.3(422). Where tangible personal property or services ~~are~~ *have been* purchased tax-free pursuant to a valid exemption certificate which ~~is was~~ taken in good faith by the seller, and the tangible personal property or services ~~are were~~ used or disposed of by the purchaser in a nonexempt manner, or the purchaser ~~fails~~ *failed* to pay tax to the department under a direct pay permit issued by the department, the purchaser ~~is was~~ solely liable for the taxes and must remit the taxes directly to the department.

When a processor or fabricator purchases tangible personal property exempt from the sales or use tax and subsequently withdraws the tangible personal property from inventory for its own taxable use or consumption, the tax shall be reported in the period when the tangible personal property was withdrawn from inventory.

ITEM 2. Amend subrule **15.3(1)** by relettering paragraph “b” as paragraph “c” and adopting new paragraph “b” as follows:

b. As of July 1, 2004, the requirement of “good faith” on the part of a seller is replaced by a different standard. For sales occurring on and after that date, the sales tax liability for all sales of tangible personal property and all sales of services is upon the seller and the purchaser unless the seller takes from the purchaser a valid exemption certificate stating under penalty of perjury that the purchase is for a nontaxable purpose and is not a retail sale, or the seller is not obligated to collect tax due, or unless the seller takes a fuel exemption certificate. If the tangible personal property or services are purchased tax-free pursuant to a valid exemption certificate and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department. The protection afforded a seller by this paragraph does not apply to a seller who fraudulently fails to collect tax or to a seller who solicits purchasers to participate in the unlawful claiming of an exemption.

[Filed 11/14/07, effective 1/9/08]

[Published 12/5/07]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/07.

ARC 6453B

STATE PUBLIC DEFENDER[493]

Adopted and Filed

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender amends Chapter 11, “Attorney Fee Contracts,” Iowa Administrative Code.

These amendments revise the manner by which attorney fee contracts are awarded, renewed, and terminated by the State Public Defender.

Notice of Intended Action to solicit public comment on these amendments was published in the October 10, 2007, Iowa Administrative Bulletin as **ARC 6303B**. A public hearing was held, and no comments were received.

These amendments, adopted by the State Public Defender on November 14, 2007, are identical to the amendments contained in the Notice of Intended Action.

These amendments will become effective January 9, 2008.

These amendments are intended to implement Iowa Code chapters 13B, 814 and 815.

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 [11.2(2), 11.4, 11.5(8), 11.6 to 11.11] is being omitted. These amendments are identical to those published under Notice as **ARC 6303B**, IAB 10/10/07.

[Filed 11/14/07, effective 1/9/08]

[Published 12/5/07]

[For replacement pages for IAC, see IAC Supplement 12/5/07.]



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA
 *EXECUTIVE ORDER NUMBER FOUR

WHEREAS, it is a goal of this administration to achieve and maintain a diverse workforce in state government; and

WHEREAS, a "diverse workforce" includes employees with differences in age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability; and

WHEREAS, it is a further goal of this administration to raise awareness of diversity issues among state employees; and

WHEREAS, the hiring practices of the executive branch and their effect on the state's workforce have been the subject of recent study and administrative review; and

WHEREAS, Iowa Code section 19B.2 provides that it is the policy of this state to provide equal opportunity in employment to all persons, and to apply affirmative action measures to correct deficiencies in the state employment system where those remedies are appropriate; and

WHEREAS, Iowa Code section 19B.3(1)(a) requires the Department of Administrative Services (DAS), in carrying out its responsibility to administer and promote equal opportunity and affirmative action efforts in the recruitment, appointment, assignment, and advancement of personnel by all state agencies (except the state board of regents and the institutions under its jurisdiction), to designate a position as the state affirmative action administrator.

NOW, THEREFORE, I, Chester J. Culver, Governor of the State of Iowa, by the power vested in me by the laws and the constitution of the State of Iowa, do hereby order as follows:

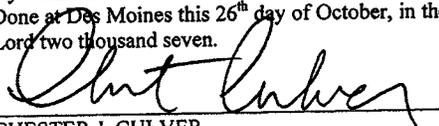
- I. All executive branch agencies shall implement such hiring and management practices that reflect the merit principles of Iowa Code sections 8A.411-.412 and that will enhance the diversity of the State's workforce under Iowa Code chapter 19B. Each executive branch agency (not including Board of Regents) shall:
 - A. Assure uniform hiring practices are applied throughout the agency. A written summary of the agency's hiring practices shall be submitted to the director of DAS for approval by February 1, 2008. In evaluating the hiring practices, the Department of Administrative Services-Human Resources Enterprise (DAS-HRE) shall use best practices models. The agency shall work with DAS-HRE to make any necessary changes to the agency's hiring practices, and implement those changes.
 - B. Develop a recruitment and retention plan that includes a timetable and achievement milestones.
 - C. Work with Iowa Vocational Rehabilitation Services to determine ways to increase employment of persons with disabilities.
 - D. Submit a Diversity Plan to the Diversity Council created by this executive order annually no later than July 31, with the initial plan due on July 31, 2008. These plans shall be used by DAS to develop the State's Affirmative Action Plan and Report, as required by Iowa Code section 19B.5(2). The Diversity Plan shall:

1. provide information on the agency's hiring and promotion practices, outlining any changes to those practices during the reporting period;
 2. outline the steps taken by the agency to increase diversity in the department by recruiting and retaining a diverse workforce;
 3. outline the steps taken by the agency to train employees on diversity-related issues;
 4. outline how the agency intends to increase diversity among its staff in the next year, based upon the number of anticipated hiring opportunities and current workforce composition; and
 5. describe any other efforts undertaken by the agency during the reporting period to encourage workplace diversity and celebrate diversity.
- II. DAS, in consultation with the Iowa Civil Rights Commission and the Department of Human Rights, shall annually monitor the application of the screening methods used by state agencies, assess their impact on employee groups in the selection process and counsel departments with regard to selection processes that pose barriers to any applicant group. Where systems and methods to gather such selection data are inadequate, efforts to improve them shall be made.
- III. Diversity training shall be required on an annual basis for all state employees making hiring and promotion decisions within their respective agency, including agency directors and deputy directors. The training shall be provided or approved by DAS-HRE.
- IV. A DIVERSITY COUNCIL shall be created.
- A. Membership in the Council shall include:
1. The Governor, or the Governor's designee;
 2. Director of the Department of Administrative Services (DAS), or the director's designee;
 3. the DAS state affirmative action administrator;
 4. the DAS recruitment coordinator;
 5. the executive director of the Iowa Civil Rights Commission, or the executive director's designee;
 6. the director of the Department of Human Rights, or the director's designee;
 7. two additional representatives from the Executive Branch with experience in addressing diversity issues, appointed by the Governor;
 8. one representative from a collective bargaining unit that represents state employees in law enforcement, appointed by the Governor;
 9. one representative from a collective bargaining unit that represents state employees, appointed by the Governor;
 10. three members from the private sector with experience in addressing diversity issues, appointed by the Governor; and
 11. three members from non-profit organizations focusing on diversity issues, appointed by the Governor.
- Members from the private sector and non-profit organizations shall be appointed to three-year staggered terms.
- B. The Diversity Council shall:
1. Engage with private businesses and other governmental entities to recommend and actively promote best practices for optimizing diversity throughout state government.

2. Review the state's policies, procedures and practices related to the hiring of a diverse workforce and recommend methods to insure these are implemented and followed throughout state government. The Council shall include this information in the annual report required in paragraph (5), below.
3. Develop a plan, including suggestions and a timeline for implementation and estimated costs, for training all state employees with respect to diversity. The plan shall be submitted to the Governor no later than March 31, 2008.
4. Develop a state-government referral system, whereby candidates who interview with one agency and are not hired, but may be a good candidate for another agency are referred to that agency for consideration. The system should be in place no later than December 1, 2008.
5. Submit a written report outlining its activities and progress to the Governor's Office no later than June 30 of each year. The first report is due no later than June 30, 2008.

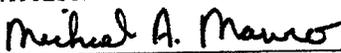


IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 26th day of October, in the year of our Lord two thousand seven.



CHESTER J. CULVER
GOVERNOR

ATTEST:



MICHAEL A. MAURO
SECRETARY OF STATE



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA
 * EXECUTIVE ORDER NUMBER FIVE

WHEREAS, this administration is dedicated to demonstrating Iowa's commitment to reduce the number of minority youth detained in detention centers and ultimately decrease the number of minorities in Iowa's correction system; and

WHEREAS, section 223 (A) (22) of the Federal Juvenile Justice and Delinquency Prevention Act (42 USC § 5633(a)(22)) requires that in order for the State to receive grants pursuant to the Act, the State must submit a plan that "address[es] juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups, who come into contact with the juvenile justice system"; and

WHEREAS, Iowa Code chapter 216A, subchapter 9 establishes the Criminal and Juvenile Justice Planning Division of the Department of Human Rights, and requires the division's advisory council to administer federal funds available for the study, research, investigation, planning and implementation in the areas of criminal and juvenile justice; and

WHEREAS, minority youth are significantly overrepresented in Iowa's juvenile detention facilities; and

WHEREAS, a study conducted in the summer of 2006 concluded that African American youth in three Iowa counties studied are less likely than white youth to receive a diversion from formal court processing, and more likely to receive the harsher outcome of the filing of a delinquency petition; and

WHEREAS, the majority of youth held in juvenile detention facilities are detained for misdemeanor offenses; and

WHEREAS, research by the Justice Policy Institute has found that the experience of incarceration is one of the most significant factors in increasing the odds of recidivism.

NOW, THEREFORE, I, Chester J. Culver, Governor of the State of Iowa, by the power vested in me by the laws and the constitution of the State of Iowa do hereby order the creation of the YOUTH RACE AND DETENTION TASK FORCE.

- I. **Purpose.** The Youth Race and Detention Task Force shall consider the importance of public safety and its relevance in the use of juvenile detention. Task Force discussions shall include, but are not limited to, the inappropriate or unnecessary use of secure detention; re-arrest and failure-to-appear-pending-adjudication rates for minority youth; the appropriate conditions of confinement in secure facilities; the overrepresentation of minority youth in detention facilities; and public finances necessary to sustain successful reforms regarding the overrepresentation of minority youth in detention facilities.
- II. **Organization.** The Task Force shall be composed of thirty to forty members appointed by the Governor. Representatives shall have an interest, knowledge, and investment in state and local juvenile justice system practices, including detention. The voting membership of the Task Force shall include the following representatives, or their respective designees:

- Director of the Iowa Department of Human Rights
- Director of the Iowa Department of Human Services
- Director of the Iowa Department of Public Safety
- Director of the Iowa Department of Education
- The State Public Defender
- The Attorney General
- The State Court Administrator
- Executive Director of the Foster Care Review Board
- Administrator of the Iowa Division on the Status of African Americans
- Administrator of the Iowa Division on the Status of Latino Affairs
- Administrator of the Iowa Division on the Status of Asian and Pacific Islanders
- Administrator of the Iowa Division of Criminal and Juvenile Justice Planning
- A representative from the American Civil Liberties Union
- Representatives of the federal Senatorial Delegation
- A representative from the Prosecuting Attorney's Training Council
- A university researcher in the area of juvenile justice
- A representative from the Iowa State Sheriffs and Deputies Association
- A representative from the Iowa Juvenile Detention Association
- A representative from the Iowa Police Executive Forum
- A representative from the Iowa State Association of Counties
- Representatives from the following select communities: juvenile court services, judges, local elected officials, agencies serving youth, concerned citizens, and ex-youth offenders

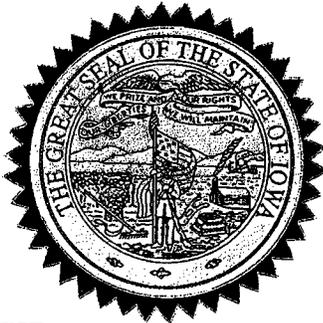
The Iowa Department of Human Rights shall provide staff support to the Task Force, as needed, to enable the Task Force to fulfill its responsibilities. The Task Force shall hold quarterly meetings at a central location.

- II. Goals. The Task Force shall study and make recommendations including, but not limited to, the following:
1. The use of detention and related public safety issues, including the potential of youth to re-offend.
 2. The use of detention for youth who violate conditions of their probation.
 3. The appropriateness and use of secure detention for low-level/low-risk offenders.
 4. The exploration of community-based alternatives to juvenile detention and the effectiveness of those alternatives.
 5. The causes and recommended solutions related to the overrepresentation of minority youth in detention facilities.
 6. The use of public and private finances to sustain successful juvenile detention reforms.
 7. The assurance of appropriate conditions of confinement in juvenile detention facilities.
- V. Activities. Task Force activities shall include:
1. The collaboration of effort by the entities participating on the Task Force and various officials involved at the local level with interest, knowledge, and investment in state and local juvenile justice system practices.
 2. The use of data to diagnose the system's problems and proclivities and to assess the impact of various juvenile detention related reforms.
 3. The development and recommended implementation of objective admissions criteria and instruments for the detention of juveniles.
 4. The utilization of appropriate non-secure alternatives for the detention of juveniles.
 5. The study of overall system processing as it relates to juvenile detention.

6. The suggestion of solutions to the juvenile detention community to reduce racial disparity.

V. Report. The Task Force shall prepare a comprehensive report on the status of the State's juvenile detention policies, for review by the Governor, within two (2) years following the date that the Task Force first convenes. The report shall contain the recommendations of the Task Force regarding the policies, procedures, potential tools, and service alternatives related to juvenile detention reform. The report shall also define the suggested future role of the Task Force in regard to implementing its recommendations. The comprehensive report shall assess the following items:

1. The number and usage of detention beds in the State of Iowa.
2. A projection of arrests in Iowa and its potential effects on the juvenile detention population.
3. A projection of Iowa's juvenile delinquency population over the next five years and its relevance to juvenile detention.
4. The demographic characteristics of youth held in detention, analyzed by race/ethnicity, including, but not limited to, severity of offense, risk level, length of hold, disposition from detention, and family situation.
5. A projection of juvenile detention holds by race/ethnicity over the next five years.
6. A projection of the number of youth held in juvenile detention facilities that will end up under supervision of the Iowa Department of Corrections over the next five years.
7. Any additional information that the task force deems important and relevant.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 30th day of October, in the year of our Lord two thousand seven.

Chester J. Culver

 CHESTER J. CULVER
 GOVERNOR

ATTEST:

Michael A. Mauro

 MICHAEL A. MAURO
 SECRETARY OF STATE

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