



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

Subscriptions and Distribution	Telephone: (515)242-5120 Fax: (515)242-5974
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KATHLEEN K. BATES, Administrative Code Editor ROSEMARY DRAKE, Deputy Editor	Telephone: (515)281-3355 (515)281-7252 Fax: (515)281-4424
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Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly.

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SCHOOL BUDGET REVIEW COMMITTEE[289]

EDUCATION DEPARTMENT[281]"umbrella"

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INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Filed, Indigent defense contracts; claims for
indigent defense legal services; court-
appointed counsel—eligibility guidelines,
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CITATION of Administrative Rules

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

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

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

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

Schedule for Rule Making 1999

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. 25 '98	Jan. 13 '99	Feb. 2 '99	Feb. 17 '99	Feb. 19 '99	Mar. 10 '99	Apr. 14 '99	July 12 '99
Jan. 8	Jan. 27	Feb. 16	Mar. 3	Mar. 5	Mar. 24	Apr. 28	July 26
Jan. 22	Feb. 10	Mar. 2	Mar. 17	Mar. 19	Apr. 7	May 12	Aug. 9
Feb. 5	Feb. 24	Mar. 16	Mar. 31	Apr. 2	Apr. 21	May 26	Aug. 23
Feb. 19	Mar. 10	Mar. 30	Apr. 14	Apr. 16	May 5	June 9	Sept. 6
Mar. 5	Mar. 24	Apr. 13	Apr. 28	Apr. 30	May 19	June 23	Sept. 20
Mar. 19	Apr. 7	Apr. 27	May 12	May 14	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	May 28	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	June 25	July 14	Aug. 18	Nov. 15
May 14	June 2	June 22	July 7	July 9	July 28	Sept. 1	Nov. 29
May 28	June 16	July 6	July 21	July 23	Aug. 11	Sept. 15	Dec. 13
June 11	June 30	July 20	Aug. 4	Aug. 6	Aug. 25	Sept. 29	Dec. 27
June 25	July 14	Aug. 3	Aug. 18	Aug. 20	Sept. 8	Oct. 13	Jan. 10 '00
July 9	July 28	Aug. 17	Sept. 1	Sept. 3	Sept. 22	Oct. 27	Jan. 24 '00
July 23	Aug. 11	Aug. 31	Sept. 15	Sept. 17	Oct. 6	Nov. 10	Feb. 7 '00
Aug. 6	Aug. 25	Sept. 14	Sept. 29	Oct. 1	Oct. 20	Nov. 24	Feb. 21 '00
Aug. 20	Sept. 8	Sept. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 6 '00
Sept. 3	Sept. 22	Oct. 12	Oct. 27	Oct. 29	Nov. 17	Dec. 22	Mar. 20 '00
Sept. 17	Oct. 6	Oct. 26	Nov. 10	Nov. 12	Dec. 1	Jan. 5 '00	Apr. 3 '00
Oct. 1	Oct. 20	Nov. 9	Nov. 24	Nov. 26	Dec. 15	Jan. 19 '00	Apr. 17 '00
Oct. 15	Nov. 3	Nov. 23	Dec. 8	Dec. 10	Dec. 29	Feb. 2 '00	May 1 '00
Oct. 29	Nov. 17	Dec. 7	Dec. 22	Dec. 24	Jan. 12 '00	Feb. 16 '00	May 15 '00
Nov. 12	Dec. 1	Dec. 21	Jan. 5 '00	Jan. 7 '00	Jan. 26 '00	Mar. 1 '00	May 29 '00
Nov. 26	Dec. 15	Jan. 4 '00	Jan. 19 '00	Jan. 21 '00	Feb. 9 '00	Mar. 15 '00	June 12 '00
Dec. 10	Dec. 29	Jan. 18 '00	Feb. 2 '00	Feb. 4 '00	Feb. 23 '00	Mar. 29 '00	June 26 '00
Dec. 24	Jan. 12 '00	Feb. 1 '00	Feb. 16 '00	Feb. 18 '00	Mar. 8 '00	Apr. 12 '00	July 10 '00
Jan. 7 '00	Jan. 26 '00	Feb. 15 '00	Mar. 1 '00	Mar. 3 '00	Mar. 22 '00	Apr. 26 '00	July 24 '00

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
12	Friday, November 26, 1999	December 15, 1999
13	Friday, December 10, 1999	December 29, 1999
14	Friday, December 24, 1999	January 12, 2000

PLEASE NOTE:

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

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

PUBLICATION PROCEDURES

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

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

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

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

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

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, December 14, 1999, at 9:00 a.m. in House Committee Room 1, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the December 1, 1999, Iowa Administrative Bulletin.

Bulletin

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

- Rural revitalization program; apple grading; pilot lamb and wool management education project;
multiflora rose eradication program for cost reimbursement; contracts for dairy inspection services;
 production and sale of eggs, rescind chs 10, 11, 15, 21, 70 and 75, Notice ARC 9463A 11/3/99
- Prohibit movement of infested bees from designated states; inspection required for the sale of bees,
 comb, or used equipment, 22.10, 22.11, Notice ARC 9462A 11/3/99
- Grade A or Grade B dairy permit, 68.1, 68.11, 68.15, 68.36(8), 68.36(9), Filed ARC 9464A 11/3/99

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

- Self-employment loan program, 51.3(3), 51.3(7), 51.3(8)"e"(3), Notice ARC 9474A,
 also Filed Emergency ARC 9475A 11/17/99

EDUCATION DEPARTMENT[281]

- Educational programs and services for pupils in juvenile homes, ch 63,
Notice ARC 9062A Terminated, also Notice ARC 9465A 11/17/99
- Standards for practitioner preparation programs, ch 79, Filed ARC 9470A 11/17/99
- Beginning teacher induction program, ch 83, Filed ARC 9469A 11/17/99
- Financial incentives for national board certification, 84.1 to 84.4, Filed ARC 9468A 11/17/99
- Supplementary weighting, ch 97, Filed ARC 9466A 11/17/99

ENVIRONMENTAL PROTECTION COMMISSION[567]

- NATURAL RESOURCES DEPARTMENT[561]"umbrella"
 Update of references to federal effluent limits and associated analytical methods, 60.2, 62.4, 62.5, 63.1(1)"a,"
Filed Without Notice ARC 9479A 11/17/99
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- Fees paid to newspapers, 5.21, Notice ARC 9471A 11/17/99

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- Food stamp households—reporting changes, 65.10, Filed Emergency After Notice ARC 9445A 11/3/99
- Valuation of life estates and remainder interests, 75.13(2), Notice ARC 9444A 11/3/99
- Medicaid—drug prior authorization, 78.1(2)"a"(3), 78.28(1)"d"(1), (7) and (14) to (19), Filed ARC 9446A 11/3/99
- Maximum monthly maintenance payment for a child in an independent living situation, 156.12(1),
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- PUBLIC HEALTH DEPARTMENT[641]"umbrella"
 License fees, 11.31, Notice ARC 9448A 11/3/99

NATURAL RESOURCE COMMISSION[571]

- NATURAL RESOURCES DEPARTMENT[561]"umbrella"
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PERSONNEL DEPARTMENT[581]

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 Health flexible spending account, 15.13, Filed Emergency After Notice ARC 9484A 11/17/99

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

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 Remedial or insurance claims, 11.1(3)"n"(13), 11.1(5)"g," Filed ARC 9473A 11/17/99

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PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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 Administration; motor fuel and undyed special fuel; liquefied petroleum gas—compressed natural gas,
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SCHOOL BUDGET REVIEW COMMITTEE[289]

EDUCATION DEPARTMENT[281]"umbrella"

On-time funding for increased enrollment, ch 7, Filed Emergency After Notice ARC 9467A 11/17/99

SECRETARY OF STATE[721]

Forms—annual agricultural landholding report, 4.2(4), Filed ARC 9483A 11/17/99
 150-day public notice for constitutional amendments, 21.200(3)"a," Filed ARC 9482A 11/17/99
 Election forms and instructions, 21.800(4), 21.803(4), Notice ARC 9293A Terminated ARC 9481A 11/17/99

STATE PUBLIC DEFENDER[493]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Indigent defense services, chs 11 to 13, Filed ARC 9476A 11/17/99

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 also Filed Emergency **ARC 9453A** 11/3/99

UTILITIES DIVISION[199]

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ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 2003.

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To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Self-employment loan program, 51.3 IAB 11/17/99 ARC 9474A (See also ARC 9475A herein)	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	December 7, 1999 1 p.m.
EDUCATION DEPARTMENT[281]		
Educational programs and services for pupils in juvenile homes, 63.1 to 63.21 IAB 11/17/99 ARC 9465A	ICN Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	December 7, 1999 1 p.m.
	All AEAs in the state of Iowa (ICN Network)	December 7, 1999 1 p.m.
	State Board Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	December 8, 1999 11:45 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Water quality, 61.2(2)“h” IAB 11/17/99 ARC 9478A	Conference Room—5th Floor Wallace State Office Bldg. Des Moines, Iowa	December 10, 1999 1 p.m.
MEDICAL EXAMINERS BOARD[653]		
License fees, 11.31 IAB 11/3/99 ARC 9448A	Suite C 400 S.W. 8th St. Des Moines, Iowa	November 23, 1999 1 p.m.
NATURAL RESOURCE COMMISSION[571]		
State parks and recreation areas, 61.2 to 61.4 IAB 11/3/99 ARC 9461A	East Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	November 23, 1999 9 a.m.
PHARMACY EXAMINERS BOARD[657]		
Self-assessment of pharmacy, 6.2(1), 7.6(7), 8.16, 8.17, 15.9, 36.1(4) IAB 10/6/99 ARC 9374A	Board Room Suite E 400 S.W. 8th St. Des Moines, Iowa	November 19, 1999 1 p.m.
PROFESSIONAL LICENSURE DIVISION[645]		
Respiratory care practitioners, 260.12 IAB 11/3/99 ARC 9460A	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	November 24, 1999 10 a.m. to 12 noon

RACING AND GAMING COMMISSION[491]

General, 5.15(9), 7.9, 7.13(7), 9.2(1), 10.1, 10.2, 10.4(2), 10.5, 13.2(5), 13.19(5), 24.29(11), 25.11(2), 25.14(3) IAB 11/17/99 ARC 9488A	Suite B 717 E. Court Ave. Des Moines, Iowa	December 7, 1999 9 a.m.
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TREASURER OF STATE[781]

Linked investments for tomorrow (LIFT), 4.11 IAB 11/3/99 ARC 9449A	Room 114 Capitol Bldg. Des Moines, Iowa	November 23, 1999 1 p.m.
Iowa educational savings plan trust, 16.2, 16.4 to 16.10, 16.12, 16.13 IAB 11/3/99 ARC 9454A (See also ARC 9453A)	Room 114 Capitol Bldg. Des Moines, Iowa	November 24, 1999 9 a.m.

UTILITIES DIVISION[199]

Restoration of agricultural lands during and after pipeline construction, ch 9 IAB 10/6/99 ARC 9400A	Board Hearing Room 350 Maple St. Des Moines, Iowa	November 17, 1999 10 a.m.
Natural gas supply and cost review, 19.11 IAB 11/3/99 ARC 9441A	Board Hearing Room 350 Maple St. Des Moines, Iowa	December 7, 1999 10 a.m.

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

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

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

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

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

Status of African-Americans, Division on the[434]

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE AND FINANCE DEPARTMENT[701]
 Lottery Division[705]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 9474A

ARC 9465A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 51, "Self-Employment Loan Program," Iowa Administrative Code.

Item 1 increases the income restriction from 125 percent to 200 percent of the poverty level guidelines as annually published by the Department of Health and Human Services. The proposed revision will enable more low-income clients to access the program.

Item 2 updates the list of business training available and also establishes a minimum length of time for the training sessions. The proposed amendment rescinds references to training programs that are no longer in existence and adds a list of programs currently offered. A minimum amount of training is needed in order to prepare the applicant to develop a business plan and open a business. A number of clients for this program do not have postsecondary education; therefore, training in accounting, marketing, and some of the other key aspects of opening a business are important.

Item 3 removes the limitation on the amount of management assistance a business may receive each year. This proposed amendment would permit the Department to assign more assistance to those businesses that need it and would help improve the sustainability of a business. The type of assistance that is typically provided is comprehensive management assistance. Under this type of assistance, a contractor is hired to assist the business owner with any problems that may be encountered in connection with marketing, bookkeeping, and other business-related activities.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on December 7, 1999. Interested persons may submit written or oral comments by contacting Ken Boyd (telephone (515)242-4810) or Mike Fastenau (telephone (515)242-4831), Business Finance, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

A public hearing to receive comments about the proposed amendments will be held on December 7, 1999, at 1 p.m. at the above address in the IDED main conference room. Individuals interested in providing comments at the hearing should contact Ken Boyd or Mike Fastenau by 4 p.m. on December 6, 1999, to be placed on the hearing agenda.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9475A**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 15.241.

EDUCATION DEPARTMENT[281]

Notice of Termination and Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5) and section 17A.3 as amended by 1998 Iowa Acts, chapter 1202, the State Board of Education terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on June 2, 1999, as **ARC 9062A** and hereby gives Notice of Intended Action to amend Chapter 63, "Educational Programs and Services for Pupils in Juvenile Homes," Iowa Administrative Code.

The Department is terminating the rule making commenced in **ARC 9062A** and is renouncing the proposed amendments to incorporate further changes and clarifications.

These amendments are proposed to align existing rules with statute. The proposed amendments incorporate uniform accounting procedures and uniform practices in the administration of instructional programs for juvenile homes. The proposed amendments allow the Area Education Agencies greater flexibility in determining the appropriate program to serve the needs of their student populations. The proposed amendments reflect current practices based on accounting publications, update financial language, lower pupil-to-staff ratios, reduce unnecessary restrictions and data burden, and provide waiver provisions.

Waivers are provided for student characteristics in subrules 63.13(4), 63.13(6), and 63.13(7). Waivers are provided in rule 281—63.21(282) for limitations on selected expenditures under paragraphs 63.13(1)"d," 63.18(3)"a," 63.18(3)"b," 63.18(3)"e," and 63.18(3)"g," and subrules 63.18(4) and 63.18(5). Other rules in this chapter reflect statutory provisions; therefore, a waiver of those rules or any portion of those rules would conflict with state law or a waiver would not be in the public interest.

Any interested person may submit written comments on or before December 8, 1999, by addressing them to Su McCurdy, Administrative Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; E-mail to su.mccurdy@ed.state.ia.us; or fax (515)281-7700. Comments should be restricted to the subject of the proposed amendments.

There will be a public hearing over the ICN on December 7, 1999, beginning at 1 p.m. at which persons may present their comments orally. Sites will be available in each AEA and in the ICN Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. There will be a second public hearing on December 8, 1999, beginning at 11:45 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, at which persons may present their comments orally and in writing. At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Any persons who intend to attend a public hearing and have special requirements such as hearing or

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mobility impairments should contact the Department of Education and advise of the specific needs prior to November 22, 1999.

These amendments are intended to implement Iowa Code sections 282.30 and 282.31.

The following amendments are proposed.

Amend 281—Chapter 63 as follows:

CHAPTER 63

EDUCATIONAL PROGRAMS AND SERVICES
FOR PUPILS IN JUVENILE HOMES

281—63.1(256 282) Scope. These rules apply to the provision of educational programs in juvenile shelter care homes and juvenile detention homes.

281—63.2(256 282) Definitions.

63.2(1) Special programs cited in 1987 1999 Iowa Code Supplement section 282.30 shall be referred to as juvenile shelter care homes and juvenile detention homes, and shall be referred to jointly as juvenile homes.

63.2(2) For purposes of this chapter, "school corporation" shall refer to school districts, area education agencies, and community colleges.

63.2(3) For purposes of this chapter, "aides" shall refer to aides and para-educators as defined in Iowa Code section 272.12.

281—63.3(256 282) Forms. The department of education shall provide forms to area education agencies (AEAs) for use by the juvenile home facilities requesting educational services, for submitting program and budget proposals, and for submitting claims. The annual dates for filing forms with the department of education are January 1 of the prior fiscal year for AEAs to submit proposed programs program and budgets budget proposals, and August 1 of the subsequent fiscal year for AEAs to file claims. The department of education shall review and approve or modify the program and proposed budget proposals and shall notify the AEA by February 1.

The department of education shall also provide forms to AEAs for use by the juvenile homes requesting educational services. These forms must be filed with the AEA annually by December 1 of the fiscal year prior to the school year for which services are being requested.

281—63.4(282) Budget amendments. An AEA shall amend the budget during the fiscal year in which there is a significant decrease in the student membership (actual is less than budgeted) or actual classrooms implemented are fewer than budgeted that would result in fewer teachers or aides necessary to support the average daily membership. An amendment shall also be required if actual expenditures by object or by function vary significantly from expenditures which were budgeted. Failure to amend timely may result in those expenditures not being allowed from juvenile home funding.

281—63.4(256) 281—63.5(282) Area education agency responsibility. An AEA shall provide or make provision for an appropriate educational program for each child living in the following types of facilities located within its boundaries:

1. An approved or licensed shelter care home, as defined in Iowa Code subsection 232.2(34).

2. An approved juvenile detention home, as defined in Iowa Code subsection 232.2(32).

The educational programs are assigned to the AEAs with the program responsibility to be assigned by the AEA administrator within the AEA or with program responsibility to be assigned

signed to another school corporation by a contractual agreement authorized by the AEA board of directors.

The provision of the educational program shall be pursuant to a written agreement which identifies the responsibilities of the AEA, juvenile home, and any other agency with which the AEA contracts to provide the educational program.

An AEA shall not provide educational services to a home that has not made a request for educational services to the AEA by December 1 of the school year prior to the beginning of the school year for which the services are being requested.

281—63.5(256) 281—63.6(282) Educational program.

63.5(1) 63.6(1) Methods of program provision. The AEA may provide the educational program by one of the following:

a. Enrolling the child in the child's district of residence of the child.

b. Delivering Obtaining the educational program course of study of the child's district of residence of the child for use in the district juvenile home where the child is living.

c. Enrolling the child in the district where the child is living.

d. Enrolling the child in the educational program provided in the juvenile home facility.

e. A delivery method not encompassed by "a" through "d" immediately above preceding, with approval of the department of education.

In accordance with Iowa Code section 273.2, an AEA shall contract, whenever practicable, with other school corporations for the use of personnel, buildings, facilities, supplies, equipment, programs, and services.

63.5(2) 63.6(2) Final determination. In the absence of a decision of a court regarding a child's educational placement, the AEA where the child is living shall make the final determination regarding the provision of the appropriate educational program for the child, in consultation with the district of residence of the child and with the juvenile home. In making this determination, consideration shall be given to:

a. A preference for continuance of the child's educational program that was in place prior to the child's placement in the facility home.

b. Placement into the least restrictive environment.

c. Development of a plan for future educational programming.

d. The provisions of the court order if the child was placed in the facility by a court.

e. Factors, including but not limited to, the child's emotional or physical state, the child's safety and the safety of others, the child's identified or assessed academic abilities, and the projected duration of stay in the facility home.

63.5(3) 63.6(3) Cooperation with area education agency. The AEA of the child's district of residence, the school district of residence, the school district in which the home is located, other AEAs, the juvenile home and other appropriate agencies involved with the care or placement of the child shall cooperate with the AEA where the child is living in sharing educational information, textbooks, curriculum, assignments, and materials in order to plan and to provide for the appropriate education of the child living in the facility home and to grant academic credit to the child for instructional time earned upon discharge from the home.

63.6(4) Summer school programs. Summer school programs, as distinguished from extended year programming, may be operated pursuant to Iowa Code subsection 282.31(5), and shall be considered as separate programs in each home. The fiscal year for a juvenile home program is

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from July 1 through June 30. Program and budget proposals submitted to the department of education prior to January 1, pursuant to Iowa Code section 282.31, may include requests for summer school programs, or portions of summer school programs, commencing July 1 of the subsequent fiscal year and summer school programs, or portions of summer school programs, ending June 30 of the subsequent fiscal year.

281—63.6(256) 281—63.7(282) Special education. The AEA shall establish policies and procedures for screening and evaluating students living in juvenile homes who may require special education.

63.6(1) 63.7(1) Assignment. A diagnostic-educational team shall be assigned by the AEA in which each program is located. This diagnostic-educational team shall include individuals who are appropriately qualified to conduct special education evaluations and to assist in planning programs for students who are ~~handicapped~~ *provided a special education program pursuant to an individualized education program (IEP).*

63.6(2) 63.7(2) Duties. The duties of this diagnostic-educational team shall include the screening of all students for potential special education needs, identifying children in need of special education, providing needed special education support services and assisting in the implementation of needed special education programs.

63.6(3) 63.7(3) Role of director of special education. It is the responsibility of the AEA director of special education to ensure that all procedures related to due process, protection in evaluation, least restrictive environment, development of individual educational programs and other requirements specified in 281—Chapter 41 are adhered to for ~~handicapped~~ *students provided a special education program pursuant to an IEP who are served in juvenile homes.* In addition, the director is responsible for coordinating the activities of the special education program with other programs and services provided.

281—63.7(256) 281—63.8(282) Educational services.

63.7(1) 63.8(1) Assignment. Personnel from the educational services division of the local AEA shall be made available to each program.

63.7(2) 63.8(2) Duties. Personnel from the educational services division shall assist with curriculum development as well as provide all other services that are made available to local education agencies within the particular AEA.

281—63.8(256) 281—63.9(282) Media services.

63.8(1) 63.9(1) Assignment. Personnel from the media services division of the local AEA shall be made available to each program.

63.8(2) 63.9(2) Duties. All services that are made available to local education agencies within the particular AEA shall be made available to these programs and students.

281—63.9(256) 281—63.10(282) Other responsibilities.

In addition to the above-mentioned responsibilities, AEA personnel shall assist with coordination of program curricula with the curricula of the local district in which the ~~facility~~ *home* is located and with the transition of students from these programs to subsequent program placement. This *coordination* shall include the establishment of procedures for ensuring that appropriate credit is available to the students while participating in the program.

281—63.10(256) 281—63.11(282) Curriculum. Each program shall use the minimum curriculum requirements for approved or accredited schools as a guide to developing specific content for each student's educational program. The content

of each student's program shall be sufficient to enable the student to earn credit while participating in the program.

281—63.11(256) Facilities, materials and equipment.

63.11(1) ~~Equivalent to school districts. Facilities, supplies, materials and equipment necessary to carry out the educational program shall be at least equivalent to those provided to a comparable number of students by the local school district in which the facility is located. Adequate work space shall be provided for itinerant and permanently assigned staff and shall be regularly available for their use. Secretarial and clerical assistance and telephone service shall also be provided.~~

281—63.12(282) Disaster procedures.

63.11(2) ~~Plan for emergencies. Each facility home shall maintain a written plan containing emergency and disaster procedures which will be that are clearly communicated to and periodically reviewed with staff.~~

281—63.12(256) 281—63.13(282) Maximum class size.

63.12(1) 63.13(1) ~~Maximum class size in shelter care homes. The following maximum class size-to-staff formula ratio shall be used in determining staff-to-pupil ratios shelter care homes:~~

Average Daily Enrollment Membership	Full-Time Teacher	Educational Aide(s)
10 or less fewer	1	.5 aide with 5 or fewer students 1 aide with more than 5 students 1 aide
11 More than 10 through 20	2	1 aide with fewer than 11 students 1.5 aides with 11 through 14 students more than 10 but fewer than 15 students 2 aides with 15 through 20 students

~~When a single class is located in an off-site facility, a full-time educational aide shall be assigned.~~

63.13(2) ~~Maximum class size in detention homes. The class size-to-staff ratio used in detention homes shall be the same as that defined in subrule 63.13(1) unless the needs of the students in the class require a lesser ratio. If the needs of students in the class require a lesser ratio, it shall be no greater than the following class size-to-staff ratio:~~

Average Daily Membership	Full-Time Teacher	Educational Aide(s)
Fewer than 10	1	1 aide with 5 or fewer students 2 aides with more than 5 students
10 through 20	2	2 aides with fewer than 15 students 3 aides with 15 through 20 students

Support for this staffing ratio must be provided with the juvenile home budget proposals and with the juvenile home claims.

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63.13(3) When a classroom is located in an off-site facility, a full-time educational aide may be assigned for each off-site classroom in addition to the number allowed in subrule 63.13(1) or 63.13(2).

63.13(4) If the age range of students in the home necessitates a different class size-to-staff ratio, the department of education may waive subrules 63.13(1), 63.13(2), and 63.13(3). Any variance from the maximum prescribed class size-to-staff ratio must be approved by the department of education on an annual basis. Support for the waiver request must be provided with the juvenile home budget proposals and with the juvenile home claims.

63.13(5) Average daily membership for determining class size in subrules 63.13(1) to 63.13(4) for the juvenile home budget proposals shall be based on the actual average daily membership from the year previous to the base year, average daily membership to date in the base year, and factors known at the time of the budget proposals which would impact the average daily membership in the budget year.

63.13(6) Class size waiver. If the number of teachers and aides as determined in subrules 63.13(1), 63.13(2), and 63.13(3) was appropriately estimated for the juvenile home budget proposal and was approved by the department of education, and the actual number of teachers or aides is determined to be in excess of maximum class sizes based on the actual average daily membership of students on the juvenile home claims, the department of education may waive subrules 63.13(1), 63.13(2), and 63.13(3).

63.13(7) Multiple classrooms. If the educational program at any one juvenile home is provided in more than one classroom location and using multiple classroom locations results in a different number of teachers and aides than would have been allowed if the students were in one classroom, the department of education may waive subrules 63.13(1) and 63.13(2). Support for the waiver request must be provided with the juvenile home budget proposals annually.

63.12(2) 63.13(8) Monitoring class size. The AEA shall develop policies and procedures to monitor and ensure that the educational program is provided sufficient instructional staff.

~~281—63.13(256)~~ **281—63.14(282) Teacher certification and preparation.**

63.13(1) 63.14(1) Certification. By July 1, 1991, each teacher who is assigned to these programs shall hold Iowa certification either for multicategorical special education or for behavioral disorders, or both, as appropriate to the grade level of the students served.

63.13(2) 63.14(2) In-service. Each teacher shall be provided appropriate in-service education opportunities annually in behavior management, social skills curriculum and other areas as defined through needs assessments.

~~281—63.14(256)~~ **281—63.15(282) Aides.** Educational aides shall be provided preservice and in-service opportunities consistent with duties to be performed and shall work under the direct supervision of the teacher.

~~281—63.15(256)~~ **281—63.16(282) Accounting.** Revenues, expenditures, and balances of the juvenile home programs shall be accounted for in the manner provided in Uniform Financial Accounting for Area Education Agencies Iowa LEAs and AEAs, except as otherwise noted in these rules. Juvenile home instructional programs shall be accounted for in a special revenue fund. The fund balances shall be maintained in the special revenue fund at year end, and the continuance or

disposition of positive or negative fund balances shall be determined by the department of education.

63.16(1) Tuition. Tuition paid or received shall be calculated as follows:

a. If juvenile home students not requiring special education attend a local school district, other than the district of residence, tuition shall be calculated in the manner prescribed in Iowa Code section 282.24 for determining tuition costs for any nonresident student attending a local school district. In lieu of paying tuition to the local school district for these students, the AEA may request the local school district to account for these students through the foster care facility claim process.

b. Tuition for students provided a special education program pursuant to an IEP shall be paid by the district of residence, in accordance with the rules of special education and pursuant to Iowa Code chapter 282, to the district in which the juvenile home is located or to the AEA, whichever is providing the special education. The district in which the juvenile home is located or the AEA, whichever is providing the special education, shall notify the district of residence if the child was being served on the third Friday in September by the district in which the home is located or by the AEA. The district in which the juvenile home is located or the AEA, whichever is providing the special education, shall also notify the district of residence if the child was being served on December 1 by the district in which the home is located or by the AEA.

63.16(2) Reserved.

~~281—63.16(256)~~ **281—63.17(282) Revenues.** Services for juvenile home instructional programs shall be accounted for in a special revenue fund. The financial fund balances of the programs shall be maintained in the special revenue fund at year end, and the continuance or disposition of positive or negative fund balances shall be determined by the department of education. Revenues shall include:

1. ~~funding~~ Funding received pursuant to 1987 Iowa Code Supplement section 282.31,

2. Educational excellence funding received pursuant to Iowa Code chapter 294A for teachers in the juvenile home program,

3. Tuition revenue from the district of residence or agency in another state for educational services provided for out-of-state students,

4. Tuition revenue from the district of residence for educational services for students provided a special education program pursuant to an IEP, and

5. ~~other~~ Other miscellaneous funding received or accrued for the purpose of operating the juvenile home instructional programs.

~~281—63.17(256)~~ **281—63.18(282) Expenditures.** Expenditures shall may include actual instructional expenditures, student support services expenditures, and instructional staff support services expenditures, and tuition expenditures. administrative support services, operations and maintenance of plant services, student transportation services, and interfund transfers for indirect costs. Supplies and equipment necessary to provide the educational program shall be equivalent to those provided to a comparable number of students by the district in which the juvenile home is located. Classroom space shall be adequate for the number and needs of children in the juvenile home instructional program.

~~63.17(1)~~ **63.18(1)** Instructional expenditures. Instructional expenditures may include:

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a. Salaries and employee benefits of employees providing instructional services. Included are teachers, substitutes, other instructional personnel, and aides performing non-teaching duties.

b. Purchased services, supplies, capital outlay, and other expenses equipment, which are customarily considered instructional expenditures. Examples include, but are not limited to, travel, equipment repair, textbooks, student supplies, and audio-visual equipment.

c. Use Intrafund transfers and internal service charges for instructional services and material provided by other programs of the AEA. Examples include, but are not limited to, printed material and audio-visual equipment.

d. The department of education shall annually determine the maximum amount that may be expended on instructional expenditures. Total expenditures for instructional services for each continuing classroom, other than salary and employee benefits, which are not provided pursuant to an IEP shall not exceed 10 percent of the state average expenditure on instructional salaries and employee benefits in the juvenile home program in the year prior to the base year. New classrooms in the first year of operation shall not exceed twice the maximum amount calculated.

~~63.17(2)~~ **63.18(2)** Student and instructional staff support services and student transportation services expenditures. Student and instructional services programs are those comparable to accounting definitions provided to the local school districts for "student services" and for "instructional services." Among the services included in these categories are guidance services, transportation services, and program coordination services, curriculum development, library and instructional technology. "Student services" are defined as those designed to assess and improve the well-being of pupils and to supplement the teaching process. "Instructional services" are defined as those designed to direct, manage, and supervise the improvement of instructional services. Student and instructional services expenditures Expenditures may include salaries, employee benefits, purchased services, supplies, capital outlay, other expenses, use transfers equipment, and intrafund transfers. and internal service charges associated with services of AEA staff or other school corporation staff assigned directly to the juvenile home educational program.

63.18(3) Administrative support services, operation and maintenance of plant services, and interfund transfers. Administrative support services, operation and maintenance of plant services and interfund transfer expenditures may include:

a. Use Intrafund transfers and from the general fund for actual costs of general administration services provided to the juvenile home program. The amount shall be no greater than that determined by using the restricted indirect cost rate calculated in the department of education's "Uniform Financial Accounting for Area Education Agencies." Expenditures for general administrative costs shall correspond to the amount of the administrator's time assigned and provided to the juvenile home program.

b. Use Intrafund transfers and from the general fund for actual costs of division administrative services provided to the juvenile home program. Proposed program and budget forms shall explain in detail the necessity for division administrative costs and the expenses shall be correlated Expenditures for division administrative costs shall correspond to the amount of the administrator's time assigned and provided to the juvenile home program.

c. Expenditures for the administrative services of administrative staff assigned directly to the juvenile home program. Proposed program and budget forms shall explain in detail the necessity for program administrative costs. Added justification is required if both program and division administrators are included.

d. Expenditures for business administration services provided to the juvenile home program. The juvenile home program may be charged for costs of providing business administration services. If the juvenile home program is charged for providing business administration services, the amount shall be either actual costs or the amount determined by using the restricted indirect cost rate applied to allowable juvenile home program expenditures.

e. The total of all expenditures for administrative services shall be no greater than the actual cost determined by the AEA's accounting records or 10 percent of the total expenditures in the juvenile home program, whichever is less.

f. Expenditures for operation and maintenance of plant services except as restricted in subrule 63.18(4).

g. The total of all expenditures for administrative services and for operation and maintenance of plant services shall be no greater than the actual cost determined by the AEA's cost accounting system or 20 percent of the total expenditures in the juvenile home program, whichever is less.

~~63.17(3)~~ Tuition expenses. Tuition expenses may include:

a. Tuition expenses for juvenile home students not requiring special education who attend a local school district, other than the district of residence, calculated in the manner prescribed for determining tuition costs for any nonresident student.

b. Tuition expenses for students requiring special education, to be paid by the district of residence of each child requiring special education in accord with the rules of special education.

~~63.17(4)~~ **63.18(4)** Unauthorized expenditures. Expenditures shall not include expenditures for debt services, for facilities acquisition and construction services including remodeling and facility repair, or for operation and maintenance of plant services except for rental expenditures for classroom facilities when adequate space is not available at the juvenile home or AEA.

63.18(5) Charges for AEA services. As required by rules 63.6(256), 63.7(256 282), and 63.8(256 282), and 63.9(282), juvenile home students shall have available to them special education support services, educational services, and media services comparable to those services made available to other students in the AEA; however, expenditures for these services are inherent costs to the respective AEA programs and are not to be assessed to the juvenile home educational program.

~~281—63.18(256)~~ **281—63.19(282)** Expenditure claims Claims. AEAs shall submit program and budget proposal proposals claim forms and expenditure claim claims forms consolidating all juvenile home education programs within each AEA. Separate accounting will be required for summer school programs. Certain program information may be required for each separate juvenile home.

The number of classrooms being provided by each AEA shall be reported on the budget proposals and claims. The number is to be expressed in terms of full-time equivalent (FTE) classrooms. One FTE represents a full-time teacher providing a program during the normal school year. One-tenth FTE shall be added for each month of summer school

EDUCATION DEPARTMENT[281](cont'd)

taught on a daily full-time basis. A full school year and three months of summer school is calculated as 1.3 FTE.

Pursuant to Iowa Code section 294.4, each teacher shall keep a daily register which shall include the name, age, attendance, and enrollment status of each student.

The average daily membership of students of school age living in juvenile homes who are being provided an educational program shall be reported on the budget proposals and claims. "Average daily membership (ADM)" shall mean the average obtained by dividing the total of the aggregate days of attendance plus the aggregate days of absence by the total number of student contact days. Student contact days are the days during which the educational program is provided and students are under the guidance and instruction of the instructional professional staff. "Aggregate days" means the sum of the number of days of attendance and days of absence for all pupils who are enrolled during the school year. A student shall be considered enrolled after being placed in a juvenile home and taking part in the educational program. A student is considered to be in membership from the date of enrollment until the date of leaving the juvenile home or receiving a high school diploma or its equivalent, whichever occurs first. ADM shall be calculated on the regular school year exclusive of summer session. School age is defined pursuant to Iowa Code chapter 282.

~~281—63.19(256) Summer school programs. Summer school programs, as distinguished from extended year programming, may be operated pursuant to Iowa Code subsection 282.31(5), and shall be considered as separate programs in each facility. The fiscal year for a juvenile home program is from July 1 through June 30. Program and budget proposals submitted to the department of education prior to January 1, pursuant to 1987 Iowa Code Supplement section 282.31, may include requests for summer school programs, or portions of summer school programs, commencing July 1 of the subsequent fiscal year and summer school programs, or portions of summer school programs, ending June 30 of the subsequent fiscal year.~~

~~Proposed budget and program applications shall include detailed information substantiating the valid educational reasons for a summer program. The reasons shall demonstrate that the necessity for a summer program beyond the regular school year is based upon identified student needs.~~

281—63.20(282) Audits. AEA's must make the records related to providing educational services for juvenile homes available to independent auditors, state auditors and department of education staff on request.

281—63.21(282) Waivers. A waiver may be requested by an AEA which presents evidence of a need for a different configuration of expenditures under paragraphs 63.18(1) "d," 63.18(3) "a," 63.18(3) "b," 63.18(3) "e," or 63.18(3) "g," or subrule 63.18(4) or 63.18(5). The AEA must annually request the waiver and must include the waiver request and the evidence required by this rule with the program and budget proposal or budget amendment submitted pursuant to rule 63.3(282) or rule 63.4(282). It is the intent of the department of education to waive requirements only when it is determined that they would result in unequal treatment of the AEA's or cause an undue hardship to the requesting AEA and the waiver clearly is in the public interest.

These rules are intended to implement Iowa Code ~~subsections~~ sections 256.7(5), 282.30, and 282.31.

ARC 9478A

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 61, "Water Quality Standards," Iowa Administrative Code.

The proposed amendment will provide water quality certification pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Section 1341) for five new Nationwide Permits (NWP's), six modified NWP's, and a regional general permit specific to Iowa.

Section 404 of the Clean Water Act requires a permit from the Corps of Engineers for the discharge of dredged or fill materials into the nation's waters. Section 401 of the Act requires that before the Corps can issue a Section 404 permit, the state water quality agency must certify that the proposed activity will not violate state water quality standards.

Section 404 authorizes the Corps to issue general permits on a state, regional or nationwide basis for categories of activities where such activities will have minimal adverse effects. The Corps has used their general permit authority to issue a number of general permits on a nationwide basis (i.e., NWP's). General permits, including nationwide permits, can be issued for a period not exceeding five years and a state water quality agency must provide Section 401 certification for a Section 404 general permit before the general permit is valid for that particular state. The Commission has previously provided Section 401 certification for 30 NWP's and four regional permits. These permits are referenced in 567—paragraph 61.2(2)"h."

The Corps recently issued a notice of intent to issue five new NWP's and modify six existing NWP's to replace NWP 26 when it expires on December 30, 1999. The Corps's new promulgation date will be inserted into the final rule at the time of adoption. The Corps is also proposing to modify nine NWP general conditions and add three new general conditions. The general conditions will apply to the proposed new and modified NWP's as well as the NWP's issued on December 13, 1996 (Federal Register volume 64, number 139, July 21, 1999). A copy of the Federal Register with the proposed NWP's is on file with the Administrative Rules Coordinator and can be obtained from the Department of Natural Resources. This amendment will provide Section 401 certification for the modified and new NWP's.

The new and modified NWP's will replace NWP 26 – Discharge to Headwaters and Isolated Waters, with activity-specific NWP's. The five new NWP's being proposed are as follows:

NWP	Title
39	Residential, Commercial, and Institutional Development
41	Reshaping Existing Drainage Ditches
42	Recreational Facilities
43	Stormwater Management Facilities

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

44 Mining Activities

The six modified NWP's proposed include:

NWP	Title
3	Maintenance (of previously permitted structures or fills)
7	Outfall Structures and Maintenance
12	Utilities Line Activities
14	Linear Transportation Crossings
27	Stream and Restoration Activities
40	Agricultural Activities

For all NWP's, there are general conditions that have to be met before an activity can be authorized by the NWP. Some general conditions are specific to certain NWP's while others apply to all NWP's. The Corps is proposing to modify nine NWP general conditions and add three new general conditions. This amendment will also recertify all existing NWP's as affected by the new and modified general conditions.

The Rock Island District is also proposing a new regional general permit that would authorize residential, commercial, institutional, agricultural, transportation, and passive recreational projects involving the loss of three acres or less of most jurisdictional waters, one acre or less of playas, prairie potholes, or vernal pools, or less than 500 linear feet of streambed. In general, the regional general permit would require preconstruction coordination with resource agencies if the potential loss to a jurisdictional water is greater than 1/4 acre or 250 linear feet of streambed. Compensatory mitigation would typically be required if the potential loss exceeded 1/4 acre.

Any interested person may make written suggestions or comments on the proposed amendment on or before December 20, 1999. Such written materials regarding the proposed action or Corps' NWP's should be directed to Christine Schwake, Department of Natural Resources, 900 East Grand Avenue, Des Moines, Iowa 50319-0034; fax (515) 281-6794; E-mail cschwak@max.state.ia.us. Persons who wish to convey their views orally should contact the Department at (515)281-8895 or at the Department offices on the fifth floor of the Wallace State Office Building.

Oral or written comments will also be accepted at a public hearing to be held Friday, December 10, 1999, at 1 p.m. in the Fifth Floor Conference Room of the Wallace State Office Building.

The Corps is currently requesting comments on the proposed NWP's and, therefore, the NWP's adopted by the Corps may differ from the proposals as contained in the July 21, 1999, Federal Register. The Commission will not take final action on this proposed amendment prior to the Corps' publication of the adopted NWP's and will consider all comments provided during the public comment period before taking final action.

This amendment may have an impact on small businesses.

This amendment is intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendment is proposed.

Amend subrule 61.2(2), paragraph "h," as follows:

h. This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject to 567—Chapters 70, 71, and 72 and this policy. The repair and

maintenance of a drainage district ditch as defined in 567—70.2(455B,481A) will not be considered a violation of the antidegradation policy for the purpose of implementing Title IV of these rules. United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, ~~26~~, 27, 29, 30, 32, 33, 34, 36, 37, 38, 39, and 40, 41, 42, 43, and 44 as promulgated December 13, 1996 [date to be inserted when adopted] are certified pursuant to Section 401 of the Clean Water Act. *The Regional General Permit and Regional permit numbers 2, 7, 12, and 20 of the Rock Island District of the Corps are also certified. No specific Corps permit or 401 certification is required for activities covered by these permits unless required by the nationwide permit or the Corps, and the activities are allowed subject to the terms of the nationwide and regional permits.*

ARC 9471A

GENERAL SERVICES DEPARTMENT[401]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 18.27, the Department of General Services hereby gives Notice of Intended Action to amend Chapter 5, "Printing Division," Iowa Administrative Code.

The proposed amendment sets the maximum allowable fees newspapers may charge for Fiscal Year 2001, beginning July 1, 2000, to publish public notices, orders, citations, or other official publications. The rate was determined at meetings that included representatives of the following associations: newspapers, school business officials, school boards, cities, and counties.

Consideration will be given to all written comments or suggestions on the proposed amendment made on or before December 7, 1999. Such written material should be directed to Julie Economaki, Department of General Services, Director's Office, Hoover State Office Building, Des Moines, Iowa 50319-0104, or to fax number (515)242-5974, or E-mail jeconom@max.state.ia.us.

The amendment is intended to implement Iowa Code section 618.11 which requires the Superintendent of Printing to periodically review and adjust allowable fees paid to newspapers for publications required or allowed by law.

In accordance with Iowa Code section 25B.6, a fiscal impact statement accompanies this proposed amendment.

The following amendment is proposed.

Amend rule 401—5.21(618) as follows:

401—5.21(618) Fees paid to newspapers. The fees paid to newspapers for official publications, notices, orders, citations or other publications required or allowed by law shall not exceed the following rates:

1. Fiscal year 1999—31 cents for one insertion and 21 cents for each subsequent insertion, for each line of eight-point type two inches in length, or its equivalent.

GENERAL SERVICES DEPARTMENT[401](cont'd)

2. Fiscal year 2000—33 cents for one insertion and 23 cents for each subsequent insertion, for each line of eight-point type two inches in length, or its equivalent.

2. Fiscal year 2001—34 cents for one insertion and 23 cents for each subsequent insertion, for each line of eight-point type two inches in length, or its equivalent.

Summary of Fiscal Impact of Proposed Amendment to Rule 401—5.21(618)

The proposed amendment sets the maximum allowable fees newspapers may charge in Fiscal Year 2001 beginning July 1, 2000, to publish notices, orders, citations, or other official publications. The fees impact newspapers and local governments required to publish official publications.

1. The proposed amendment increases by one cent per line the maximum allowable fee that newspapers may charge

for one insertion of public notices, from 33 cents in fiscal year 2000 to 34 cents in fiscal year 2001. Subsequent insertions remain at 23 cents.

2. The proposed amendment provides a discount rate to local governments of approximately 46 percent of current retail rate, if inflation projections are correct.

3. The total financial impact cannot be calculated without extensive monetary and staff commitment to data collection and analysis. It is clear that the financial impact will exceed \$100,000 on a statewide basis.

4. The impact should typically be less than 0.5 percent of any local government budget.

5. The rate decisions in the proposed amendment represent the rate that best balances the interests of local governments and local community newspapers to benefit local citizens.

Fiscal Year 2001 Proposed Rate: \$0.34 per insertion/\$0.23 for subsequent insertions

Affected Entity	Government Rate ^a	Retail Rate ^b
Counties	\$157,114 - \$1,587 per county	\$289,453 - \$2,924 per county
Schools	\$97,973 - \$258 per district	\$180,498 - \$476 per district
Small city estimate	\$331 per city	\$609 per city
Medium city estimate	\$2,587 per city	\$4,766 per city
Large city estimate	\$17,453 per city	\$32,154 per city

^a Based on a projected annual increase of 3.03% for the fiscal year ending 6-30-01.

^b Based on a projected annual inflation rate of 2.5% for the fiscal year ending 6-30-01.

1. This table is included to provide an example of projected impact based on estimates of both increased cost and inflation in the local government and retail sectors respectively.

2. Not all affected government entities were included in the study in the interest of timeliness and cost benefit.

3. All figures are estimated, as no statewide information is available on the amount of expenditures made for official publications in newspapers.

4. Information used to develop the fiscal impact statement of the fee change is on file in the division of printing and imaging, department of general services.

ARC 9488A

RACING AND GAMING COMMISSION[491]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 5, "Applications for Track Licenses and Racing Dates," Chapter 7, "Greyhound Racing," Chapter 9, "Harness Racing," Chapter 10, "Thoroughbred Racing," Chapter 13, "Occupational and Vendor Licensing," Chapter 24, "Accounting and Cash Control," and Chapter 25, "Riverboat Operation," Iowa Administrative Code.

Items 1, 2, 12, 13, and 15 change incorrect rule references.

Item 3 requires the paddock judge to report all delays to the stewards.

Item 4 requires the paddock judge to supervise the greyhounds from paddock to post.

Item 5 requires the brakeman to ensure that the lure is secured and the arm is fully extended.

Item 6 requires the brakeman to inspect the rail to ensure it is in perfect repair and free of debris.

Item 7 requires the brakeman to ensure that the arm has been retracted and stop the lure at the finish of the race.

Item 8 allows a kennel owner to request a change in the racing weight of a greyhound.

Item 9 eliminates an official timer, placing judges and the photo finish technician from the list of racing officials.

Item 10 defines an outrider.

Item 11 makes an outrider a racing official.

Item 14 outlines additional duties for the stewards.

Item 16 establishes the duties of an outrider.

Item 17 does not allow a jockey to intimidate any other horse during a race.

Item 18 does not allow a horse to enter a race if it appears on the starter's list, steward's list or veterinarian's list.

Item 19 establishes rules as to when a horse is required to have a workout prior to starting in an official race.

Item 20 does not allow a change in the equipment used on a horse unless permission has been granted by the stewards.

Item 21 requires an owner and trainer to be licensed one hour prior to the scheduled post time of the race in which the horse is entered.

Item 22 eliminates unnecessary language.

RACING AND GAMING COMMISSION[491](cont'd)

Item 23 requires a Commission representative to conduct an investigation of any jackpot in excess of \$100,000.

Item 24 adds baccarat as an approved game and changes the definition of "video machine" for racetrack enclosures.

Item 25 establishes rules for the reporting of incidents by the licensees to the Commission.

Any person may make written suggestions or comments on the proposed amendments on or before December 7, 1999. Written material should be directed to the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on December 7, 1999, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are proposed.

ITEM 1. Amend subrule 5.15(9) as follows:

5.15(9) Certification. A certification will be provided by both the president of the association and the general manager that all contracts and financial documents described in rule 491—4.28 I.6(99D,99F) have been submitted to the commission for approval.

ITEM 2. Amend subrule 7.9(4), paragraph "e," as follows:

e. The stewards shall have the authority to regulate and control owners, trainers, kennel helpers, all other persons attendant to greyhounds, officials, and licensed personnel of the racing meet and those persons addressed by 491—4.3(99D,99F), numbered paragraph "8." 491—paragraph 4.6(5) "e."

ITEM 3. Amend subrule 7.9(6) by adopting the following new paragraph:

j. The paddock judge shall report all delays to the stewards.

ITEM 4. Amend subrule 7.9(12), paragraph "b," subparagraph (1), as follows:

(1) Supervise the lead-outs and greyhounds from paddock to post.

ITEM 5. Amend subrule 7.9(14), paragraph "a," subparagraph (3), as follows:

(3) Fully extend the lure arm Ensure the lure is secured and the arm is fully extended into a stable, locked position.

ITEM 6. Amend subrule 7.9(14), paragraph "a," by adopting the following new subparagraph:

(4) Inspect the rail to ensure it is in perfect repair and free of debris.

ITEM 7. Amend subrule 7.9(14), paragraph "b," as follows:

b. The brakeman shall "brake" the lure ensure the arm has retracted and stop the lure, after the prescribed race is finished, in a safe and consistent manner.

ITEM 8. Amend subrule 7.13(7), introductory paragraph, as follows:

7.13(7) The established racing weight may be changed from time to time on upon written request of the kennel owner or trainer and by written consent of the stewards, providing the change is made four calendar days before the greyhound is allowed to race at the new weight.

ITEM 9. Rescind subrule 9.2(1), paragraphs "g," "h," and "k."

ITEM 10. Amend rule 491—10.1(99D) by adopting the following new definition in alphabetical order:

"Outrider" means an official with duties specified by administrative rule.

ITEM 11. Amend subrule 10.2(1) by adopting the following new paragraph:

n. Minimum of two outriders.

ITEM 12. Amend subrule 10.2(6), paragraph "a," subparagraph (1), as follows:

(1) General. The board of stewards for each racing meet shall be responsible to the commission for the conduct of the racing meet in accordance with the laws of this state and the rules adopted by the commission. The stewards shall have the authority to resolve conflicts or disputes between all other racing officials, licensees, and those persons addressed by 491—4.6(99D,99F), numbered paragraph "8." 491—paragraph 4.6(5) "e," where the disputes are reasonably related to the conduct of a race, or races, and to punish violators of these rules in accordance with provisions of these rules.

ITEM 13. Amend subrule 10.2(6), paragraph "b," subparagraph (4), as follows:

(4) The stewards shall have the authority to regulate and control owners, trainers, grooms and other persons attendant to horses, officials, licensed personnel of the meeting, and those persons addressed by 491—4.3(99D,99F), numbered paragraph "8." 491—paragraph 4.6(5) "e."

ITEM 14. Amend subrule 10.2(6), paragraph "b," by adopting the following new subparagraphs:

(15) The stewards shall maintain a log of all infractions of the rules and of all rulings of the stewards upon matters coming before them during the race meet.

(16) No persons other than the commissioners or authorized commission staff shall be allowed in the stewards' stand unless prior approval has been obtained from the state stewards.

ITEM 15. Amend subrule 10.2(7), paragraph "f," as follows:

f. Naming/engaging of riders. Riders must be named at the time of entry or in no case later than scratch time. Before naming any rider, the trainer, owner or other person authorized must first engage the services of the rider and state on the entry or to the clerk of scales whether it is a first or second call. Riders properly engaged must fulfill their requirements as provided in 10.4(19) "g." 10.4(2) "h."

ITEM 16. Amend rule 491—10.2(99D) by adopting the following new subrule:

10.2(17) Outrider.

a. The licensee shall appoint a minimum of two outriders on the main track for each race of a performance and during workouts. The licensee shall appoint one outrider on the training track during all workouts. Outriders must be neat in appearance and must wear approved helmets with chin straps securely fastened and approved safety vests while on the main track or training track.

b. The outriders shall:

(1) Accompany the field of horses from the paddock to the post.

(2) Ensure the post parade is conducted in an orderly manner, with all jockeys and pony riders conducting them-

RACING AND GAMING COMMISSION[491](cont'd)

selves in a manner in conformity with the best interests of racing as determined by the board of stewards.

- (3) Assist jockeys with unruly horses.
- (4) Render assistance when requested by a jockey.
- (5) Be present during morning workouts to assist exercise riders as required by regulations.
- (6) Promptly report to the stewards any unusual conduct which occurs while performing the duties of an outrider.
- (7) Ensure individuals using the track(s) are appropriately licensed.

ITEM 17. Amend subrule 10.4(2), paragraph "i," subparagraph (4), as follows:

- (4) Careless riding. A jockey shall not ride carelessly or willfully permit the mount to interfere with, *intimidate* or impede any other horse in the race. A jockey shall not willfully strike at another horse or jockey so as to impede, interfere with or injure the other horse or jockey. If a jockey rides in a manner contrary to this rule, the horse may be disqualified; or the jockey may be fined, suspended, or otherwise disciplined; or other penalties may apply.

ITEM 18. Amend subrule 10.5(1), paragraph "x," as follows:

- x. A horse is ineligible to ~~start~~ enter a race when a horse appears on the starter's list, steward's list or veterinarian's list and is barred from racing in any racing jurisdiction.

ITEM 19. Rescind subrule 10.5(9), paragraph "a," and adopt in lieu thereof the following **new** paragraph:

- a. When required. No horse shall be allowed to start unless the horse has raced in an official race or has an approved official timed workout satisfactory to the stewards. A horse which has not started for a period of 60 days or more shall be ineligible to race until it has completed a published workout satisfactory to the stewards prior to the day of the race in which entered. The workout must have occurred within the previous 30 days. First-time starters must have at least two published workouts and be approved from the gate by the starter.

ITEM 20. Amend subrule 10.5(10), paragraph "b," as follows:

- b. Equipment change. No licensee may change the equipment used on a horse from that used in the horse's last race, unless with permission of the ~~paddock judge~~ stewards. No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter, ~~the paddock judge~~, and the stewards. In the paddock prior to a race, a horse's tongue may be tied down with clean bandages, clean gauze or with a tongue strap.

ITEM 21. Amend subrule 13.2(5), paragraph "b," subparagraph (5), as follows:

- (5) ~~Before a horse leaves the paddock, its trainer and owners must be licensed~~ *The owner and trainer of a horse must be licensed at least one hour before post time of the race in which the horse is entered.* In the case of absentee owners, the trainer must submit a properly executed temporary application on behalf of the absentee owner(s) *at least one hour before post time of the race in which the horse is entered.* Failure on the part of owners to fully comply with the 15-day requirement will result in fine, suspension, or both.

ITEM 22. Amend subrule 13.19(5) as follows:

- 13.19(5) Prohibited names. No person may register a stable name which has already been registered by another person with any other racing authority, or which is the real name of another owner of race horses or which is the real or

stable name of any prominent person who does not own race horses, or which is not plainly distinguishable from that of another registered stable name ~~or which the stewards determine is being used to advertise any product or service.~~

ITEM 23. Amend rule 491—24.29(99F) by adopting the following **new** subrule:

24.29(11) Prior to payment of a jackpot in excess of \$100,000, a commission representative shall conduct an investigation, including a verification check of game-related storage media, on the slot machine or video game of chance where the jackpot occurred and has the authority to withhold or require the award of any jackpot, in writing, when conditions indicate that action is warranted.

ITEM 24. Amend subrule 25.11(2) as follows:

25.11(2) Gambling games authorized.

a. Dice, roulette, twenty-one, big-six (roulette), red dog, *baccarat*, and poker are authorized as table games.

b. Slot machines, progressive slot machines, video poker and all other video games of chance will be allowed as machine games, subject to the approval of individual game prototypes. For racetrack enclosures, video machine as used in Iowa Code section 99F.1(9) shall mean ~~any video poker, video blackjack, video keno or similar games requiring a decision on the part of a player after the wager has been made but prior to completing the game.~~ *Video machine shall also include a video lottery machine which dispenses payouts in the form of a paper credit slip. video keno and any video machine game version of a table or card game including but not limited to those listed in 491—paragraph 25.11(2) "a."* A weighted average of the theoretical payout percentage, as defined in 491—subrule 26.15(6), on all machine games shall be posted at the point of ticket sales, main casino entrance, cashier cages, and slot booths.

ITEM 25. Rescind subrule 25.14(3) and adopt in lieu thereof the following **new** subrule:

25.14(3) Incident reports. The licensee is required to file a written report, within 72 hours, detailing any incident in which an employee or patron is detected violating a provision of Iowa Code chapter 99F; a commission rule, order or final order; internal control; or is removed for reasons specified under 25.14(1). In addition to the written report, the licensee will provide immediate notification to the commission and DCI representatives on duty or on each office's messaging system, if the incident involved employee theft, criminal activity, Iowa Code chapter 99F violations, or gaming receipts.

ARC 9487A

REVENUE AND FINANCE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.17(19) and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend

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

Chapter 40, "Determination of Net Income," Chapter 42, "Adjustments to Computed Tax," Chapter 43, "Assessments and Refunds," and Chapter 46, "Withholding," Iowa Administrative Code.

A number of changes in the individual income tax and the withholding tax laws were made by 1999 Iowa Acts, House File 733, Senate File 136, and Senate File 230. Most of the changes are retroactively applicable to January 1, 1999, for tax years beginning on or after that date. However, one change is applicable on January 1, 1997, and two other changes take effect on July 1, 1999.

Item 1, which amends subrule 39.2(4), specifies when interest is to start to accrue on overpayments on individual income tax returns when the returns are filed in the six-month extended period after the due date and at least 90 percent of the income tax liability was paid by the due date.

Item 2, which proposes new subrule 40.18(9), provides that net operating losses from farm businesses for tax years beginning on or after January 1, 1998, may be carried back five years. The amendment also provides that in cases where taxpayers have net operating losses from farm businesses and make a valid federal election to carry back the net operating losses two or three years, the taxpayers can carry the net operating losses two or three years for Iowa income tax purposes. The implementation clause for rule 701—40.18(422) is also amended in Item 2.

Item 3, which amends subrule 42.2(6), provides that the 1998 changes in the federal research activities credit are applicable in computing the Iowa credit for increasing research activities that are available for individual taxpayers. Also, in Item 3, new subrule 42.2(10) describes the Investment Tax Credit that is directly related to new jobs created by the location and expansion of an eligible business. This credit is granted for the purchase of machinery or equipment or the cost of real property, buildings, structures or improvements to real property that are involved in the expansion of a business. This subrule also provides that if a taxpayer, within five years of purchase of a property for which an investment credit was claimed, sells, disposes of, razes, or otherwise renders unusable, all or a part of the property, the income tax liability of the taxpayer is increased by an amount shown in a schedule included in the subrule.

Item 4 amends the rule for livestock production refunds for certain cow-calf operations so the refunds for the cow-calf operations are determined solely on the number of certain types of cattle in inventory on December 31 of the tax year. The implementation clause for rule 701—43.8(422) is also amended in Item 4.

In Item 5, new paragraph 46.3(3)"e" is proposed for the withholding of Iowa income tax using a Verified Summary of Payments Report that is to be filed with the Department of Revenue and Finance by the end of the second month following the year in which the Iowa income tax was withheld. The new paragraph is proposed to show how the Verified Summary of Payments Report is to be filed and to show if and when W-2 forms and 1099 forms are to be submitted with the summary report.

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

There are no waiver provisions reflected in these rules except Item 5 because the Department lacks the statutory authority to grant waivers where rules are mainly an interpretation of statutes. Any person who believes that the application of subparagraph (3) of 46.3(3)"e" in Item 5 would result in hardship or injustice to that person may petition the De-

partment for a waiver of the rule in the manner set out in Section II of the Governor's Executive Order Eleven, issued September 13, 1999.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A (1998 Iowa Acts, chapter 1202, section 10). The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A (1998 Iowa Acts, chapter 1202, section 10) if a written request is filed by delivery or by mailing postmarked no later than December 19, 1999, to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who qualify as a small business, or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 10, 1999. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by December 17, 1999.

These amendments are intended to implement Iowa Code section 15.333 as amended by 1999 Iowa Acts, House File 733; sections 422.9, 422.16, 422.25 and 422.121 as amended by 1999 Iowa Acts, Senate File 136; and section 422.10 as amended by 1999 Iowa Acts, Senate File 230.

The following amendments are proposed.

ITEM 1. Amend rule 701—39.2(422) as follows:

Amend subrule 39.2(4) by adopting the following **new** paragraph "b":

b. Payment of interest on refunds from income tax returns filed in the six-month period after the due date. The following information applies only to Iowa individual income tax returns that are filed for tax years beginning on or after January 1, 1999. In the case of Iowa returns that have overpayments of income tax that are filed in the six-month period after the due date and where at least 90 percent of the tax shown due was paid by the due date, interest at the statutory rate will be paid on the overpayments determined on the returns, starting on the first day of the second month after the end of the six-month extended period and ending in the month in which the refund is issued.

For taxpayers filing Iowa individual income tax returns for calendar-year tax years, the six-month extended period starts May 1 of the year following the end of the tax year and ends on October 31 of the year following the end of the tax year. However, if April 30 falls on a Sunday as it does in the year 2000 for 1999 Iowa individual returns filed in that year, the due date is moved to Monday, May 1. The extended period in this instance starts on Tuesday, May 2, 2000, and ends on October 31, 2000.

EXAMPLE. A husband and wife file their 1999 Iowa return on September 15, 2000. This return has an overpayment of tax of \$200. Because the return is filed in the six-month period after the May 1, 2000, due date and because the refund is

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

issued in January 2001, interest accrues on the overpayment for the months of December 2000 and January 2001.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 422.21 and Iowa Code section 422.25 as amended by 1999 Iowa Acts, Senate File 136.

ITEM 2. Amend rule 701—40.18(422) as follows:

Adopt the following new subrule:

40.18(9) Net operating loss carryback for a taxpayer engaged in the business of farming. Notwithstanding the net operating loss carryback periods described in subrule 40.18(3), a taxpayer who is engaged in the trade or business of farming as defined in Section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in Section 172(b)(1)(F) of the Internal Revenue Code for a tax year beginning on or after January 1, 1998, this loss from farming is a net operating loss which the taxpayer may carry back five taxable years prior to the year of the loss. Therefore, if a taxpayer has a net operating loss from the trade or business of farming for the 1998 tax year, the net operating loss from farming can be carried back to the taxpayer's 1993 Iowa return and can be applied to the income shown on that return. The farming loss is the lesser of (1) the amount that would be the net operating loss for the tax year if only income and deductions from the farming business were taken into account, or (2) the amount of the taxpayer's net operating loss for the tax year. Thus, if a taxpayer has a \$10,000 loss from a grain farming business and the taxpayer had wages in the tax year of \$7,000, the taxpayer's loss for the year is only \$3,000. Therefore, the taxpayer has a net operating loss from farming of \$3,000 that may be carried back five years.

However, if a taxpayer has a net operating loss from the trade or business of farming for a taxable year beginning in 1998 or for a taxable year after 1998 and makes a valid election for federal income tax purposes to carry back the net operating loss two years, or three years if the loss was in a presidentially declared disaster area or related to a casualty or theft loss, the net operating loss must be carried back two years or three years for Iowa income tax purposes. A copy of the federal election made under Section 172(i)(3) for the two-year or three-year carryback in lieu of the five-year carryback may be attached to the Iowa return or the amended Iowa return to show why the carryback was two years or three years instead of five years.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 422.5, and 422.7, and Iowa Code section 422.9(3) as amended by 1998 Iowa Acts, Senate File 230 2357.

ITEM 3. Amend rule 701—42.2(422) as follows:

Amend subrule 42.2(6), introductory paragraph, as follows:

42.2(6) Research activities credit. Effective for tax years beginning on or after January 1, 1985, taxpayers are allowed a credit equal to 6½ percent of the state's apportioned share of qualified expenditures for increasing research activities. Effective for tax years beginning on or after January 1, 1991, the state research activities credit will be computed on the basis of the qualifying expenditures for increasing research activities as allowable under Section 41 of the Internal Revenue Code in effect on January 1, 1998 1999. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in Iowa to the total qualified research expenditures. The Iowa research activities credit is made permanent for tax years beginning on or after January 1,

1991, even though there may no longer be a research activities credit for federal income tax purposes.

Adopt the following new subrule:

42.2(10) Investment tax credit. An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit is to be taken in the year the qualifying asset is placed in service. For business applications received by the Iowa department of economic development on or after July 1, 1999, purchases of real property made in conjunction with the location or expansion of an eligible business, the cost of land and any buildings and structures located on the land will be considered to be new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken.

If the eligible business within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this rule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

a. One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

b. Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

c. Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

d. Forty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

e. Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by the individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 15.333 as amended by 1999 Iowa Acts, House File 733, 422.10 as amended by 1999 Iowa Acts, Senate File 230, and Iowa Code sections 422.11A, 422.12, and 422.12B as amended by 1998 Iowa Acts, House File 2513 and Senate File 2357.

ITEM 4. Amend rule 701—43.8(422) as follows:

Amend subrule 43.8(2), paragraph "o," as follows:

o. For the purposes of this rule and for tax years beginning on or after January 1, 1998, "cow-calf beef operations" means those livestock cattle production operations that include ~~mature bred beef cows bred or for breeding~~, bred yearling heifers, and breeding bulls. The livestock production credit refunds for cow-calf beef operations are determined

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

only on the number of ~~mature beef bred cows bred or for breeding~~, bred yearling heifers, and breeding bulls in inventory of the operations on December 31 of the tax year times the corn equivalent factor of 111.5 or \$11.15. However, only those ~~mature beef bred cows bred or for breeding~~, bred yearling heifers, and breeding bulls in inventory on December 31 which were also in inventory on July 1 of the same calendar year may be ~~considered~~ counted for purposes of computing the livestock production refunds.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code ~~section sections~~ 422.120 and 422.122 and Iowa Code section 422.121 as amended by ~~1997~~ 1999 Iowa Acts, ~~House Senate~~ File 136 726, ~~division I~~.

ITEM 5. Amend rule 701—46.3(422) as follows:

Rescind subrule ~~46.3(3)~~, paragraph “e,” and adopt the following ~~new~~ paragraph in lieu thereof:

e. Annual verified summary of payments reports.

(1) Every withholding agent required to withhold Iowa income tax under subrules 46.1(1), 46.1(2), 46.1(3), and 46.4(1) is to furnish to the department of revenue and finance on or before the last day of February following the tax year a withholding information statement entitled Annual Verified Summary of Payments Report. With the Verified Summary of Payments Report (VSP), the withholding agent is to provide copies of wage statement W-2 form showing Iowa income tax withheld during the tax year from payments of wages for personal services and copies of 1099 form showing Iowa income tax withheld from various types of income payments made in the tax year. See subparagraph (3) below for the Verified Summary of Payments Report forms to be filed for calendar year 2000 and for those years after 2000.

(2) The W-2 forms and 1099 forms to be submitted with the Verified Summary of Payments Report can be provided on magnetic tape, computer printout, cartridge or diskette. The department of revenue and finance booklet Income Information Return Reporting Guidelines includes specifications for providing W-2 forms and 1099 form data to the department. The withholding agent completing the VSP form must enter the total Iowa income tax withheld that is shown on the W-2 forms and 1099 forms for the year, the new jobs credits, supplemental jobs credits and housing assistance credits claimed on withholding reports for the year. In addition, the withholding agent must enter on the VSP the withholding payments made for the year. If the amount of Iowa income tax withholding tax remitted to the department of revenue and finance for the year is less than the withholding tax and withholding credits claimed, the withholding agent is

to remit the additional withholding tax due on a withholding amended return and mail the payment to Department of Revenue and Finance, P.O. Box 10411, Des Moines, Iowa 50306.

However, if the Iowa income tax shown as withheld on the W-2s and 1099s issued for the tax year is less than the amount of withholding tax remitted to the department of revenue and finance by the withholding agent, the agent should file a claim for refund with the department for the excess tax paid.

(3) For Verified Summary of Payments Report forms filed with the department of revenue and finance for the year 2000 and for years after 2000, the withholding agents filing the reports are not to submit W-2 forms and 1099 forms with the reports. However, the withholding agents should supply W-2 forms or 1099 forms as requested by personnel of the department of revenue and finance, if the request for the forms is made within three years from the end of the year for which the W-2 forms or 1099 forms apply. Therefore, if a request is made to a withholding agent for a W-2 form or a 1099 form for the year 2000, the request is valid if the request is postmarked, faxed or made on or before December 31, 2003.

Amend the implementation clause as follows:

This rule is intended to implement ~~Iowa Code Supplement section 422.7 and Iowa Code sections 422.7 and 422.12C~~ and Iowa Code section 422.16 as amended by 1999 Iowa Acts, ~~Senate~~ File 136.

ARC 9481A

SECRETARY OF STATE[721]

Notice of Termination

Pursuant to the authority of Iowa Code section 47.1, the Secretary of State terminates the rule making initiated by the Notice of Intended Action published in the Iowa Administrative Bulletin on September 8, 1999, as **ARC 9293A**, amending Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code. These amendments to subrules 21.800(4) and 21.803(4) were also Adopted and Filed Emergency as **ARC 9294A**.

The period for public comment on the Notice has passed. No comments were received. The Secretary finds no further purpose for the continuation of the rule-making process, since the rule is currently in effect. The rule-making process with regard to **ARC 9293A** is therefore terminated.

ARC 9475A

ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 51, "Self-Employment Loan Program," Iowa Administrative Code.

Item 1 increases the income restriction from 125 percent to 200 percent of the poverty level guidelines as annually published by the Department of Health and Human Services. This revision will enable more low-income clients to access the program.

Item 2 updates the list of business training available and also establishes a minimum length of time for the training sessions. The amendment rescinds references to training programs that are no longer in existence and adds a list of programs currently offered. A minimum amount of training is needed in order to prepare the applicant to develop a business plan and open a business. A number of clients for this program do not have postsecondary education; therefore, training in accounting, marketing, and some of the other key aspects of opening a business are important.

Item 3 removes the limitation on the amount of management assistance a business may receive each year. This amendment permits the Department to assign more assistance to those businesses that need it and helps improve the sustainability of a business. The type of assistance that is typically provided is comprehensive management assistance. Under this type of assistance, a contractor is hired to assist the business owner with any problems that may be encountered in connection with marketing, bookkeeping, and other business-related activities.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation would be impracticable and contrary to the public interest. These amendments confer a public benefit. Raising the income restrictions increases program accessibility, removing the award limit on management assistance makes funding more available for businesses most in need of these services, and quantifying the duration of business training necessary to apply for funds improves the likelihood that an applicant will be awarded funds and that the business started will succeed.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective on October 22, 1999.

The IDEB Board adopted these amendments on October 21, 1999.

These amendments are also published herein under Notice of Intended Action as **ARC 9474A** to allow for public comment.

These amendments are intended to implement Iowa Code section 15.241.

These amendments became effective on October 22, 1999.

The following amendments are adopted.

ITEM 1. Amend subrule 51.3(3), introductory paragraph, as follows:

51.3(3) Income. To qualify to apply for a loan, an applicant must have annualized household family income that is equal to or less than ~~125~~ 200 percent of the most current pov-

erty guidelines as published on an annual basis by the Department of Health and Human Services (DHHS). For purposes of calculating family income, exclusions are:

ITEM 2. Amend subrule 51.3(7) as follows:

51.3(7) Experience. *Prior to applying for SELP funding, an applicant must have successfully completed a comprehensive business training program no less than four weeks in length including, but not limited to, programs such as ~~SEID Next Level, WEDGE FasTrack, Drake's Minority Business Venture FirstStep, or other programs developed by a John Papajohn Entrepreneurial Center, Small Business Development Center, or the Institute for Social and Economic Development and Kirkwood Community College's Rural Development Center;~~ or be able to demonstrate a basic knowledge of business strategy and planning documented by previous successful business management or ownership; or be willing to enroll in a business training program; or agree in writing to accept and utilize ongoing technical assistance.*

ITEM 3. Amend **51.3(8)"e"(3)** as follows:

(3) Disbursement. Each eligible business may receive up to ~~\$2,500~~ funding for individualized management assistance per year. All funds under the comprehensive management assistance program will be paid directly to the service provider. No funds will be given directly to the business.

[Filed Emergency 10/22/99, effective 10/22/99]

[Published 11/17/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/99.

ARC 9484A

PERSONNEL DEPARTMENT[581]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 19A.9, the Department of Personnel adopts an amendment to Chapter 15, "Benefits," Iowa Administrative Code.

The amendment to Chapter 15 adopts a new rule designed to implement legislation passed by the Seventy-eighth General Assembly in 1999 Iowa Acts, House File 781, section 18. This legislation created a State Employee Health Flexible Spending Account Trust Fund. This amendment is intended to establish a rule for the provision of a health care spending account for state employees.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 22, 1999, as **ARC 9364A**.

In compliance with Iowa Code chapter 17A, a public hearing was scheduled for October 14, 1999. No comments were received. In addition, public comment was requested. No comments were received.

The amendment is identical to that published under Notice of Intended Action.

Pursuant to Iowa Code section 17A.5(2)"b"(2), this amendment shall become effective upon publication on November 17, 1999. The Department finds that this amendment confers a benefit on employees by creating a health flexible spending account benefit program.

This amendment is intended to implement Iowa Code sections 19A.1(2)"c," 19A.9, and 1999 Iowa Acts, House File 781, section 18.

PERSONNEL DEPARTMENT[581](cont'd)

This amendment will become effective November 17, 1999.

The following amendment is adopted.

Amend 581—Chapter 15 by adopting the following **new** rule:

581—15.13(19A) Health flexible spending account. The director administers the medical spending account program for employees of the state of Iowa. The plan is permitted under IRC § 125. Administration of the plan shall comply with all applicable federal regulations and the plan document. To the extent that the provisions of the plan document or administrative rule conflict with IRC § 125, the provisions of IRC § 125 shall govern. For purposes of this rule, the plan year is a calendar year.

15.13(1) Employee eligibility. All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the medical spending program. Temporary employees are not eligible to participate in this program. Employees subject to a collective bargaining agreement shall have their eligibility determined by the collective bargaining agreement.

15.13(2) Enrollment. An open enrollment period, as designated by the director, shall be held for employees who wish to participate in the plan. New employees may enroll within 30 calendar days following their date of hire. Employees also may enroll or change their existing medical spending salary reduction amounts during the plan year, provided they have a qualifying change in status as defined in the plan document, and as permitted under IRC § 125. To continue participation, employees shall reenroll each year during the open enrollment period.

15.13(3) Modification or termination of participation in the plan. An employee may modify or terminate participation in the plan, provided the employee has a qualifying change in status as defined in the plan document, and as permitted under IRC § 125. Employees who have terminated state employment and are later rehired within the same plan year cannot reenroll in the medical spending program until the subsequent plan year.

15.13(4) Continuation of coverage. The medical spending account shall provide the opportunity to continue coverage as required by applicable state and federal laws.

15.13(5) Eligible health care expenses. The types of expenses eligible for reimbursement shall be consistent with medical expenses as defined under IRC § 213.

15.13(6) Acceptable proof of eligible expense. Only those expenses for which appropriate documentation is submitted shall be eligible for reimbursement. Such documentation shall include the date upon which the expense was incurred; sufficient evidence that the expense is an eligible health care expense; evidence that the expense has been incurred and will not be reimbursed under an otherwise qualified health plan authorized by IRC § 105 and 106; and the amount of such expense.

15.13(7) Appeal process. In the event that a participant disagrees with a determination as to reimbursement from the health flexible spending account program, a formal appeals mechanism is hereby provided. The participant may submit a formal appeal in writing to the director (or designee). Such appeal must be accompanied by a previous written request for favorable consideration to the designated administrator of the program, along with evidence as to an unfavorable determination in response to this request. Upon receipt of a qualified appeal, the director (or designee) shall provide a

written determination within 30 days of receipt. Such determination shall be final and binding. This appeal process is not a contested case proceeding as defined by Iowa Code chapter 17A.

15.13(8) Third-party administrator. The director may contract with a third-party administrator to perform such actions as are reasonably necessary to administer the health flexible spending account program.

[Filed Emergency After Notice 10/29/99, effective 11/17/99]
[Published 11/17/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/99.

ARC 9467A

SCHOOL BUDGET REVIEW
COMMITTEE[289]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 256.7(5) and 257.31(10) and section 17A.3 as amended by 1998 Iowa Acts, chapter 1202, the State Board of Education adopts a new Chapter 7, "On-Time Funding for Increased Enrollment," Iowa Administrative Code.

The rules are adopted to implement a new statute. The rules incorporate criteria adopted by the School Budget Review Committee (SBRC) regarding increased enrollment and requirements included in 1999 Iowa Acts, House File 147. 1999 Iowa Acts, House File 147, makes provision for an appropriation to be given to school districts which experience an actual enrollment for the budget year which is greater than the budget enrollment for the budget year. The legislation requires the SBRC to consider the relative increase in enrollment on a school district-by-district basis in determining whether to approve the request. The school district must apply by November 1 in accordance with 1999 Iowa Acts, House File 147.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 8, 1999, as **ARC 9311A**.

A public hearing was held on September 28, 1999. Several districts commented that they preferred a pro-rata distribution of funding without the application of SBRC criteria. At least one school district preferred that the funding be allocated to those school districts which actually had increased expenditures which is the method included in these rules.

Changes have been made to the Notice of Intended Action. Rule 289—7.5(257) has been added to allow a school district to request a waiver from rule 289—7.2(257) or any portion of this rule. Rules 289—7.1(257), 289—7.3(257), and 289—7.4(257) reflect statutory provisions; therefore, a waiver of these rules or any portion of these rules would conflict with state law.

Pursuant to Iowa Code section 17A.5(2)"b"(2) and (3), these rules became effective upon filing on October 21, 1999. The State Board finds that this is necessary because school districts must implement these rules for the application for on-time funding which 1999 Iowa Acts, House File 147, requires must be filed by November 1, 1999.

These rules are intended to implement 1999 Iowa Acts, House File 147, section 2.

These rules became effective October 21, 1999.

The following **new** chapter is adopted.

SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

CHAPTER 7
ON-TIME FUNDING
FOR INCREASED ENROLLMENT

289—7.1(257) Definitions. For the purpose of this chapter, the following definition applies.

“Increased enrollment” means an actual enrollment for the budget year which is greater than the budget enrollment for the budget year. Enrollment shall be determined pursuant to Iowa Code section 257.6.

289—7.2(257) On-time funding eligibility.

7.2(1) Eligibility. A school district is eligible to request on-time funding if it experiences increased enrollment and it incurs additional costs due to the increased enrollment in one or both of the following categories.

a. The school district adds an additional teacher or other instructional staff due to the increased enrollment or incurs additional expenditures for instructional supplies.

b. The school district incurs additional expenditures other than instructional staff and instructional supplies. This would include, but not be limited to, expenditures for transportation and equipment.

7.2(2) Expenditure definitions. Expenditure objects and functions shall be defined according to Uniform Financial Accounting for Iowa LEAs and AEA's.

7.2(3) Special education expenditures excluded. Expenditures shall not include instructional staff, instructional supplies, or other expenditures for students eligible for the special education weighting plan provided in Iowa Code section 256B.9.

7.2(4) Average costs. Expenditures for instructional staff and instructional supplies shall be based on average costs. Average costs for instructional staff shall be determined separately for teachers, teacher aides, and other instructional staff. The average shall be calculated as the sum of expenditure objects for salaries, employee benefits, travel, in-service, and professional dues divided by the total staff full-time equivalent in each category. The average costs shall be multiplied by the staff full-time equivalent increase in each staff classification to determine increased expenditures for instructional staff. The average instructional supplies costs shall be determined separately for elementary, middle or junior high, and high school. The average shall be calculated as the sum of the expenditure objects for general supplies, books and periodicals, software and magnetic media, and audio-visual media within the expenditure function of instruction divided by the total student full-time equivalent at each level. The average cost shall be multiplied by the student full-time equivalent increase at each level to determine increased expenditures for instructional supplies. Actual expenditures for the base year shall be used in the calculation. The school budget review committee will provide a form for the purpose of calculating these average costs.

7.2(5) Additional expenditures. If the school district has expenditures due to increased enrollment other than for instructional staff and instructional supplies, the school district shall provide a listing of the additional expenditures and a

statement showing the relationship between the additional expenditures and the increased enrollment.

289—7.3(257) Maximum on-time funding for increased enrollment.

7.3(1) Maximum requests. The total amount requested for on-time funding shall not be greater than the increased enrollment multiplied by the state cost per pupil for the budget year.

7.3(2) Proration of appropriation. If the total amount of the requests for on-time funding approved by the SBRC exceeds the appropriation to the department of education to be paid to school districts as on-time funding for increased enrollment, the appropriation shall be prorated such that each school district approved for on-time funding shall receive an amount of on-time funding equal to the percentage that the on-time funding to be provided to the school district bears to the total amount of on-time funding to be provided to all school districts receiving SBRC approval.

7.3(3) Reduction for budget adjustment. The amount of funding calculated and approved by the SBRC pursuant to this chapter shall be reduced by the amount of budget adjustment which the school district is receiving for the budget year.

289—7.4(257) Due date. An application for on-time funding for increased enrollment must be on the forms provided by the SBRC and is due November 1. The application form shall include an assurance statement certifying the accuracy of the information submitted. A copy of the resolution of the board of directors of the school district requesting the on-time funding must be included with the application.

289—7.5(257) Waiver. Upon a majority vote of the members of the school budget review committee at a regular or special meeting, the committee may waive rule 289—7.2(257) or any portion of that rule. A waiver may be requested by a school district if the school district did not have increased expenditures. The school district must provide evidence regarding why it was not able to increase expenditures associated with enrollment increases but would have increased expenditures had additional miscellaneous income been available and how additional funds will be expended if they become available. The school district must include the waiver request and the evidence required by this rule with the application form submitted pursuant to rule 289—7.4(257). It is the intent of the committee to waive requirements only when it is determined that they would result in unequal treatment of school districts or cause an undue hardship to the requesting district and the waiver clearly is in the public interest.

These rules are intended to implement Iowa Code chapter 257 as amended by 1999 Iowa Acts, House File 147, section 2.

[Filed Emergency After Notice 10/21/99, effective 10/21/99]
[Published 11/17/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/99.

ARC 9470A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7, the State Board of Education hereby adopts Chapter 79, "Standards for Practitioner Preparation Programs," Iowa Administrative Code.

This new chapter will govern approval of practitioner preparation programs at undergraduate and graduate levels rather than having a separate chapter for each level. New licensure rules adopted by the Board of Educational Examiners and effective August 31, 2001, require institutions to change programs to performance-based teacher education. This necessitates the application of different standards when examining the content and procedures used by programs.

This chapter does not include a waiver provision at this time. The Department is considering the adoption of a uniform waiver rule. Upon adoption of a waiver rule, the Department will determine whether this chapter or any portion of this chapter should be eligible for waiver.

Notice of Intended Action was published in the June 30, 1999, Iowa Administrative Bulletin as **ARC 9130A**. Changes from the Notice include the addition of definitions of "Administrator candidates" and "ISLLC" and, where appropriate, the phrase "teacher, administrator and other professional school personnel candidates." The changes, based on recommendations from the State Board of Education, place greater emphasis on leadership development in practitioner preparation programs and on the collection and utilization of evaluative data to modify programs and engage in continuous improvement. In addition, "shall" was inserted, where needed, and resulting grammatical changes were made, where appropriate, to clarify that the institutions and Department of Education must abide by the rules in Chapter 79.

This chapter will become effective on August 31, 2001.

These rules are intended to implement Iowa Code section 256.7 and 1999 Iowa Acts, House File 532, sections 1 and 3. The following new chapter is adopted.

CHAPTER 79
STANDARDS FOR
PRACTITIONER PREPARATION PROGRAMS
(Effective August 31, 2001)

281—79.1(256) General statement. Programs of practitioner preparation leading to licensure in Iowa are subject to approval by the state board of education, as provided in Iowa Code chapter 256. All programs having accreditation on August 31, 2001, are presumed accredited unless or until the state board takes formal action to remove accreditation. Commencing August 31, 2001, all program approval evaluations will be conducted under these rules.

281—79.2(256) Definitions. For purposes of clarity, the following definitions are used throughout the chapter:

"Administrator candidates" means individuals who are enrolled in practitioner preparation programs leading to administrator licensure.

"Cooperating teachers" means classroom teachers who provide guidance and supervision to teacher candidates during the candidates' field experiences in the schools.

"Department" means department of education.

"Director" means director of education.

"Institution" means a college or university in Iowa offering its practitioner preparation and seeking state board approval of its practitioner preparation program(s).

"INTASC" means Interstate New Teacher Assessment and Support Consortium, the source of national standards for beginning teachers.

"ISLLC" means Interstate School Leadership and Licensure Consortium, the source of national standards for school administrators.

"Practitioner candidates" means individuals who are enrolled in practitioner preparation programs leading to licensure as administrators, teachers or other professional school personnel that require a license issued by the board of educational examiners.

"Practitioner preparation programs" means the programs of practitioner preparation leading to licensure of teachers, administrators, and other professional school personnel.

"Program" means a specific field of specialization leading to a specific endorsement.

"State board" means Iowa state board of education.

"Teacher candidates" means individuals who are enrolled in practitioner preparation programs leading to teacher licensure.

"Unit" means the organizational entity within an institution with the responsibility of administering the practitioner preparation program(s).

281—79.3(256) Institutions affected. All Iowa colleges and universities engaged in the preparation of practitioners and seeking state board approval of their programs (hereinafter institutions) shall meet the standards contained in this chapter.

281—79.4(256) Criteria for Iowa practitioner preparation programs. Each institution seeking approval of its programs of practitioner preparation shall file evidence of the extent to which it meets the standards contained in this chapter by means of a self-evaluation report. After the state board has approved the practitioner preparation programs filed by an institution, students who complete the programs and are recommended by the authorized official of that institution will be issued the appropriate license and endorsement(s).

281—79.5(256) Approval of programs. Approval of institutions' practitioner preparation programs by the state board shall be based on the recommendation of the director after study of the factual and evaluative evidence on record about each program in terms of the standards contained in this chapter.

Approval, if granted, shall be for a term of five years; however, approval for a lesser term may be granted by the state board if it determines conditions so warrant.

If approval is not granted, the applying institution will be advised concerning the areas in which improvement or changes appear to be essential for approval. In this case, the institution shall be given the opportunity to present factual information concerning its programs at the next regularly scheduled meeting of the state board. The institution may also reapply at its discretion when it is ready to show what actions have been taken to address the areas of suggested improvement.

281—79.6(256) Visiting teams. Upon application or reapplication for approval, a team shall visit each institution for evaluation of its practitioner preparation program. The membership of the team shall be selected by the practitioner preparation and licensure bureau with the concurrence of the institution being visited. The team may include faculty members

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of other practitioner preparation institutions within or outside the state; personnel from elementary and secondary schools, to include classroom practitioners; personnel of the state department of education; and representatives from professional education organizations. Each team member should have appropriate competencies, background, and experiences to enable the member to contribute to the evaluation visit. The expenses for the visiting team shall be borne by the institution.

281—79.7(256) Periodic reports. Institutions placed on the approved programs list may be asked to make periodic reports upon request of the department which shall provide basic information necessary to keep records of each practitioner preparation program up to date and to provide information necessary to carry out research studies relating to practitioner preparation.

281—79.8(256) Reevaluation of practitioner preparation programs. Every five years or at any time deemed necessary by the director, an institution shall file a self-evaluation of its practitioner preparation programs to be followed by a team visit. Any action for continued approval or rescission of approval shall be approved by the state board.

281—79.9(256) Approval of program changes. Upon application by an institution, the director is authorized to approve minor additions to, or changes within, the institution's approved practitioner preparation program. When an institution proposes a revision which exceeds the primary scope of its programs, the revisions shall become operative only after having been approved by the state board.

281—79.10(256) Unit governance and resources standards.

79.10(1) The professional education unit shall have primary responsibility for all programs offered at the institution for the initial and continuing preparation of teachers and other professional school personnel.

79.10(2) Unit faculty shall collaborate with members of the professional community, including the unit's advisory committee, to design, deliver, and evaluate programs to prepare school personnel.

79.10(3) Resources shall support quality clinical practice for all candidates, professional development for faculty, and technological and instructional needs of faculty to prepare candidates with the dispositions, knowledge, and skills necessary to support student learning.

79.10(4) Practitioner candidates' and faculty's access to books, journals, and electronic information shall support teaching and scholarship.

79.10(5) Sufficient numbers of faculty and administrative, clerical, and technical staff shall be available to ensure the consistent planning, delivery, and quality of programs offered for the preparation of school personnel.

79.10(6) The use of part-time faculty and graduate students in teaching roles shall be managed to ensure integrity, quality, and continuity of programs.

79.10(7) Institutional commitment shall include financial resources, facilities and equipment to ensure the fulfillment of the institution's and unit's missions, delivery of quality programs, and preparation of practitioner candidates.

79.10(8) The unit's planning and evaluation system shall support practitioner candidate performance and shall use assessment data to evaluate the effectiveness of the unit and its programs.

281—79.11(256) Diversity.

79.11(1) Recruitment, admissions, hiring, and retention policies and practices shall support a diverse faculty and candidate population in the unit.

79.11(2) Efforts toward racial, ethnic, and gender diversity among education candidates and unit faculty shall be documented. In addition, diversity efforts shall include persons with disabilities, persons from different language and socioeconomic backgrounds, and persons from different regions of the country and world.

79.11(3) Unit efforts in increasing or maintaining diversity shall be reflected in plans, monitoring of plans and efforts, and results.

79.11(4) The institution and unit shall maintain a climate that supports diversity in general as well as supporting practitioner candidates and faculty from underrepresented groups on the campus.

281—79.12(256) Faculty performance and development.

79.12(1) Faculty shall be engaged in scholarly activities that relate to teaching, learning, or practitioner preparation.

79.12(2) Faculty members in professional education shall have preparation and have had experiences in situations similar to those for which the practitioner preparation students are being prepared.

79.12(3) Faculty members shall collaborate regularly and in significant ways with colleagues in the professional education unit and other college/university units, schools, Iowa department of education, area education agencies, and professional associations as well as community representatives.

79.12(4) The work climate within the unit shall promote intellectual vitality, including best teaching practice, scholarship and service among faculty.

79.12(5) Policies and assignments shall allow faculty to be involved effectively in teaching, scholarship, and service.

79.12(6) The unit shall administer a systematic and comprehensive evaluation system and professional development activities to enhance the teaching competence and intellectual vitality of the professional education unit.

79.12(7) Part-time faculty, when employed, shall be identified and shall meet the requirements for appointment as full-time faculty or be employed to fill a need for staff to support instruction.

79.12(8) Faculty members in professional education shall maintain an ongoing, meaningful involvement in activities in preschools, elementary, middle, or secondary schools. Activities of professional education faculty members preparing preservice teachers shall include at least 40 hours of team teaching during a period not exceeding five years in duration at the preschool, elementary, middle, or secondary school level.

281—79.13(256) Practitioner preparation clinical practice standards.

79.13(1) Candidates admitted to a teacher preparation program shall participate in field experiences including both observation and participation in teaching activities in a variety of school settings and totaling at least 50 hours' duration, with at least 10 hours to occur prior to acceptance into the program and at least 40 hours after acceptance.

79.13(2) Student teaching shall be a full-time experience for a minimum of 12 consecutive weeks in duration during the student's final year of the practitioner preparation program.

79.13(3) Practitioner candidates shall study and practice in settings that include diverse populations, students with disabilities, and students of different ages.

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79.13(4) Clinical practice for teacher, administrator and other professional school personnel candidates shall support the development of knowledge, dispositions, and skills that are identified in the Iowa board of educational examiners' licensure standards, the unit's framework for preparation of effective practitioners, and standards from INTASC, ISLLC, or other national professional organizations as appropriate for the licenses sought by candidates.

79.13(5) Practitioner candidates shall develop the capacity to utilize assessment data in effecting student learning in prekindergarten through grade 12.

79.13(6) Environments for clinical practice shall support learning in context, including:

a. Scheduling and use of time and resources to allow candidates to participate with teachers and other practitioners and learners in the school setting.

b. Practitioner candidate learning that takes place in the context of providing high quality instructional programs for children.

c. Opportunities for practitioner candidates to observe and be observed by others and to engage in discussion and reflection on practice.

d. The involvement of practitioner candidates in activities directed at the improvement of teaching and learning.

79.13(7) School and college/university faculty shall share responsibility for practitioner candidate learning, including, but not limited to, planning and implementing curriculum and teaching and supervision of the clinical program.

79.13(8) School and college/university faculty shall jointly provide quality clinical experiences for practitioner candidates. Accountability for these experiences shall be demonstrated through:

a. Jointly defined qualifications for practitioner candidates entering clinical practice.

b. Selection of college/university and school faculty members to demonstrate skills, knowledge, and dispositions of highly accomplished practitioners.

c. Selection of college/university and school faculty members who are prepared to mentor and supervise practitioner candidates.

d. Involvement of the cooperating teacher and college/university supervisor in the evaluation of practitioner candidates.

e. Use of a written evaluation procedure with the completed evaluation form included in practitioner candidates' permanent records.

79.13(9) The institution shall annually offer workshop(s) for prospective cooperating teachers to define the objectives of the student teaching experience, review the responsibilities of the cooperating teacher, and provide the cooperating teacher other information and assistance the institution deems necessary. The cumulative instructional time for the workshop(s) shall be a day or the equivalent hours, and the workshop(s) shall utilize delivery strategies identified as appropriate for staff development and reflect information gathered via feedback from workshop participants.

79.13(10) The institution shall enter into a written contract with the cooperating school providing field experiences, including student teaching.

281—79.14(256) Practitioner preparation candidate performance standards.

79.14(1) Candidate knowledge and competence.

a. Candidates for teacher, administrator and other professional education personnel roles in schools shall be expected to develop the knowledge, skills, and dispositions

identified by the profession and reflected in the national guidelines for the appropriate field, including methods of teaching with an emphasis on the subject area and grade level endorsement sought.

b. Alignment shall exist between the unit's expectations for content, performance, and dispositions, content and pedagogy identified by national professional organizations, Iowa board of educational examiners' licensure standards, national advanced certification, educational leadership, and others appropriate for specific areas.

c. Teacher candidates shall acquire a core of professional education knowledge that includes social, historical, and philosophical foundations; human growth and development; student learning; diversity, including mobile students, students speaking English as a second language, and exceptionalities (students with disabilities and students who are gifted and talented); assessment methods including use of student achievement data in instructional decision making; classroom management addressing high-risk behaviors including, but not limited to, behavior related to substance abuse; teachers as consumers of research; law and policy, ethics, and the profession of teaching.

d. Teacher candidates shall acquire a core of liberal arts knowledge including but not limited to mathematics, natural sciences, social sciences, and humanities.

e. Teacher candidates shall acquire through a human relations course approved by the board of educational examiners knowledge about and skill in interpersonal and intergroup relations that shall contribute to the development of sensitivity to and understanding of the values, beliefs, life styles, and attitudes of individuals and the diverse groups found in a pluralistic society.

f. Teacher candidates in elementary education shall acquire knowledge about and receive preparation in elementary reading programs, including but not limited to reading recovery.

g. Teacher candidates in secondary education candidates shall acquire knowledge about and receive preparation in the integration of reading strategies into secondary content areas.

h. Teacher candidates shall develop the dispositions, knowledge, and performance expectations of the INTASC standards embedded in the professional education core for an Iowa teaching license at a level appropriate for a novice teacher.

i. Administrator candidates shall develop the dispositions, knowledge, and performance expectations of the ISLLC standards embedded in the requirements for an Iowa administrator license at a level appropriate for a novice administrator.

j. Teacher, administrator, and other professional school personnel candidates shall demonstrate their dispositions and knowledge related to diversity as they work with student populations and communities.

k. Teacher candidates shall effectively integrate technology in their instruction to support student learning.

l. Experienced teachers in graduate programs shall build upon and extend their prior knowledge and experiences to improve their teaching and their effect on student learning as outlined in the national advanced certification propositions.

79.14(2) Candidate assessment and unit planning and evaluation.

a. The performance assessment system for teacher, administrator and other professional school personnel candi-

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dates shall be an integral part of the unit's planning and evaluation system.

b. Performance of teacher, administrator and other professional school personnel candidates shall be measured against national professional standards, state licensure standards, and the unit's learning outcomes.

c. Multiple criteria and assessments shall be used for admission at both graduate and undergraduate levels to identify teacher, administrator and other professional school personnel candidates with potential for becoming education practitioners.

d. The teacher candidate performance system shall include the administration of a basic skills test with program admission denied to any applicants failing to achieve the institution's designated criterion score.

e. Information on performance of teacher, administrator and other professional school personnel candidates shall be drawn from multiple assessments, including, but not limited to, institutional assessment of content knowledge, professional knowledge and its application, pedagogical knowledge and its application; teaching and other school personnel performance and the effect on student learning, as candidates work with students, teachers, parents, and professional colleagues in school settings; and follow-up studies of graduates and employers.

f. The design and implementation of the assessment system shall include all stakeholders associated with the unit and its practitioner preparation activities.

g. The unit's assessment system shall:

(1) Provide description of stakeholders' involvement in system development.

(2) Provide evidence that the assessment system reflects both the institution's mission and the unit's framework for preparation of effective teachers, administrators and other professional school personnel.

(3) Include a coherent, sequential assessment system for individual practitioner candidates that shall:

1. Provide evidence that the unit and Iowa licensure standards are shared with teacher, administrator and other professional school personnel candidates.

2. Utilize, for both formative and summative purposes, a range of performance-based assessment strategies throughout the program that shall provide teacher, administrator and other professional school personnel candidates with ongoing feedback about:

◦ What performance of teacher, administrator and other professional school personnel candidates is being assessed/measured. Examples include preentry understandings, skills and dispositions, including professional and pedagogical and content knowledge, teaching abilities and dispositions, leadership abilities and dispositions, and effect on student learning.

◦ How performance of teacher, administrator and other professional school personnel candidates is being assessed/measured. Examples include a specified grade point average at preentry, standardized test scores, authentic assessments of content and professional studies, authentic assessments of teaching and leadership abilities.

3. Have multiple summative decision points. Examples include admission to professional education, after completing introductory courses; prior to, during, and upon completion of student teaching/internship; and beginning performance on the job.

4. Clearly document teacher, administrator and other professional school personnel candidates' attainment of the unit and the board of educational examiners' licensure standards by providing evidence of:

◦ Content knowledge via multiple measures. Examples include content tests, lesson plans showing representation of knowledge structures, ability to apply principles of the discipline to problem solving in the classroom, written essays on content, evidence of being able to represent classroom/school problems in terms of abstract principles of the discipline.

◦ Professional and pedagogical knowledge via multiple measures. Examples include core performance tasks such as analyzing a child's progress on learning and development and instruction using a case study of a child; designing a curriculum unit; analyzing a curriculum case study; analyzing an example of teaching as presented on video clip or teacher candidate's own teaching, including an assessment on student learning; evaluating examples of performance of a range of school district and area education agency personnel; analyzing student work and learning over time; assessing feedback given by teachers to students; communicating with parents and the community; developing a school vision based on assessment data related to student learning; analyzing a budget plan; and other measures appropriate to a given task.

◦ Effect on student learning and achievement via multiple measures. Examples include student work, lesson plans, scores on achievement tasks, feedback from cooperating teachers and administrators, scoring rubrics for determining levels of student accomplishment, and other measures appropriate to a given task.

5. Include scoring rubrics or criteria for determining levels or benchmarks of teacher, administrator and other professional school personnel candidate accomplishment.

6. Demonstrate credibility such as reliability and validity of both the overall assessment system and the instruments being used.

(4) Document the quality of programs through the collective presentation of assessment data related to performance of teacher, administrator and other professional school personnel candidates and demonstrate how the data are used for continuous program improvement. This shall include:

1. Evidence of evaluative data collected by the department from teachers, administrators and other professional school personnel who work with the unit's candidates. The department shall report this data to the unit.

2. Evidence of evaluative data collected by the unit through follow-up studies of graduates and their employers.

(5) Demonstrate how the information gathered via the individual practitioner candidate assessment system is utilized to refine and revise the unit's framework and programs' goals, content and delivery strategies.

(6) Describe how the assessment system is managed.

(7) Explain the process for reviewing and revising the assessment system.

h. An annual report including a composite of evaluative data collected by the unit shall be submitted to the bureau of practitioner preparation and licensure by September 30 of each year.

These rules are intended to implement Iowa Code section 256.7 and 1999 Iowa Acts, House File 532, sections 1 and 3.

[Filed 10/22/99, effective 8/31/01]

[Published 11/17/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/99.

ARC 9469A**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby adopts Chapter 83, "Beginning Teacher Induction Program," Iowa Administrative Code.

The new chapter establishes a new grant program designed to assist school districts in the induction of beginning teachers and provides guidelines of the application and award process. The program was established by the Seventy-eighth General Assembly in 1999 Iowa Acts, Senate File 464, section 23.

A waiver provision is not included. The Department is considering adopting a uniform waiver rule and will consider the applicability of a waiver provision to this chapter at that time.

Notice of Intended Action was published in the September 8, 1999, Iowa Administrative Bulletin as **ARC 9313A**. These rules were simultaneously Adopted and Filed Emergency as **ARC 9315A**. The Department received no public comment during the public comment period. In response to a suggestion by the Administrative Rules Review Committee, rule 281—83.4(78GA,SF464) has been amended from the Notice to include the specific competitive grant criteria and the point system to be used in awarding the grants.

These rules are intended to implement 1999 Iowa Acts, Senate File 464, sections 22 to 26.

These rules will become effective December 22, 1999, at which time the Adopted and Filed Emergency rules are hereby rescinded.

The following **new** chapter is adopted.

CHAPTER 83**BEGINNING TEACHER INDUCTION PROGRAM**

281—83.1(78GA,SF464) Purpose. The beginning teacher induction program is available to Iowa school districts as a means to promote excellence in teaching, build a supportive environment within school districts, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers.

281—83.2(78GA,SF464) Definitions. For the purpose of these rules, the following definitions shall apply:

"Beginning teacher" means an individual serving under an initial provisional or conditional license, issued by the board of educational examiners under Iowa Code chapter 272, who is assuming a position as a classroom teacher new to the profession of teaching.

"Board" means the board of directors of a school district or a collaboration of boards of directors of school districts.

"Classroom teacher" means an individual who holds a valid practitioner's license under Iowa Code chapter 272 and who is employed under a teaching contract with a school district or area education agency in the state of Iowa.

"Department" means the department of education.

"District facilitator" means a professional licensed in Iowa who is appointed by a board to serve as the liaison between the board and the department for the beginning teacher induction program.

"Mentor" means an individual who holds a valid practitioner's license under Iowa Code chapter 272 and who is employed under a teaching contract with a school district or area education agency in the state of Iowa. This individual

has been selected and trained to be a mentor. The individual must have a record of four years of successful teaching practice, must be employed as a classroom teacher on a non-probationary basis, and must demonstrate professional commitment to the improvement of teaching and learning, and the development of beginning teachers.

"School district" means a public school district.

281—83.3(78GA,SF464) Program requirements.

83.3(1) Area education agency models. An area education agency shall prepare a model beginning teacher induction program plan and shall provide the model plan to each school district within its area. The plan shall include a model evaluation component by which a school district may measure the effectiveness of its program. The area education agency shall be responsible for monitoring effective practices, integrating those effective practices into the model, and continually updating the model based on those practices. The model shall include the components contained in the state-funded induction program.

83.3(2) Eligibility. All school districts are eligible to apply for funding. School districts eligible for the beginning induction program shall meet all of the following:

a. District plan. A school district that wishes to participate in the program shall have the board adopt a beginning teacher induction program plan and written procedures for the program. At the board's discretion, the district may choose to use or revise the model plan provided by the area education agency or develop a plan locally. The components of a district written induction program shall include, but are not limited to, the following:

- (1) Goals for the program.
- (2) A process for the selection of mentors.
- (3) A description of the mentor training process which shall:

1. Be consistent with effective staff development practices and adult professional needs.

2. Describe mentor needs, indicating a clear understanding of the role of the mentor.

3. Demonstrate the mentor's understanding of the needs of new teachers.

4. Demonstrate the mentor's understanding of the district expectations for all teachers.

5. Facilitate the mentor's ability to provide guidance and support to new teachers.

- (4) A description of the supportive organizational structure for beginning teachers which shall include:

1. The activities that shall provide access and opportunities for interaction between mentor and beginning teacher.

2. The identification of who will be in the mentor/beginning teacher partnership.

3. Supportive actions of the district.

4. The name of the district facilitator.

- (5) The evaluation process for the program, which shall include:

1. The periodic assessment and monitoring of the mentor and beginning teacher program to address both summative and formative evaluation strategies.

2. District participation in the state evaluation of the beginning teacher induction program.

3. Evaluation strategies which shall include an evaluation of the district program goals, an evaluation process that provides for the minor and major program revisions and a process for how information about the program will be provided to interested stakeholders.

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(6) The process for dissolving mentor and beginning teacher partnerships.

(7) A plan that reflects the needs of the beginning teacher employed by the district.

(8) Activities recommended to meet the needs of beginning teachers. Examples include:

1. Managing the classroom.
2. Acquiring information about the school system.
3. Obtaining instructional resources and materials.
4. Planning, organizing, and managing instruction and other professional responsibilities.
5. Assessing students and evaluating student progress.
6. Motivating students.
7. Using effective teaching methods.
8. Dealing with individual students' needs, interests, abilities, and problems.
9. Communicating and collaborating with colleagues, including administrators, supervisors, and other teachers.
10. Communicating with parents.
11. Adjusting to the teaching environment and role.
12. Receiving emotional support.

(9) Budget.

b. District facilitator. A district must engage a board-appointed facilitator. Duties of the facilitator shall include, but not be limited to, the following:

(1) Submits the proposed board plan and proposed costs to the board and the department.

(2) Oversees the implementation of the board plan.

(3) Ensures that the plan meets the goals of the program as set forth in the board plan.

(4) Works collaboratively with the area education agency and postsecondary institutions in preparation and implementation of the board plan.

(5) Places beginning teachers participating in the program in a manner that provides the opportunity to work with at least one mentor. Whenever possible, there should be opportunities to work with other mentors in the district.

(6) Acts as a liaison between the district and the department.

(7) Submits the annual report on program results to the department.

281—83.4(78GA,SF464) Program approval. Any district participating in the state-funded induction program must submit an application according to the components established in these rules. Programs shall be awarded a maximum of 425 points according to the following criteria:

1. Readiness summary—40 points. The readiness summary is evidence that the district is prepared to implement the program. The summary should describe the district's ability to make this program a success and the partnerships the district has or plans to develop with area education agency, community college, or other institution of higher education.

2. Abstract—20 points. The abstract is a detailed summary of the proposal. It may be shared with the department and others and may be used for annual reporting purposes.

3. District plan—300 points. The requirements for the plan are included in rule 83.3(78GA,SF464).

4. Budget—25 points. The budget requirements are included in rule 83.6(78GA,SF464).

5. Timeline—20 points. The timeline shall provide for the implementation of the program and be reflective of the period the applicant is utilizing the funds requested, not to exceed June 30, 2001.

281—83.5(78GA,SF464) Funding for approved programs. The process to be followed in determining the amount of funds to be approved for this competitive program grant will be described in the grant application. The review criteria and point allocation for each criterion will also be described in the grant application material. The membership of the funding review committee shall be determined by the appropriate division administrator. Members shall, at minimum, include representatives from local school districts, area education agencies, and institutions of higher education. The review committee members shall allocate points per review criterion in rule 83.3(78GA,SF464). In the event the number of approved programs exceeds available funding, the department will award grants based on the geographic and district population of the school districts with approved plans. A district may receive funding for subsequent years if it has an approved plan on file with the department and also submits any additional program improvements or updates that have been implemented by the district.

281—83.6(78GA,SF464) Beginning teacher induction program budget. Funds received by a school district from the beginning teacher induction program shall be used for any or all of the following purposes:

1. To pay mentors as they implement the plan. A mentor in a beginning teacher induction program approved under this chapter shall be eligible for an award of \$500 per semester, at a minimum, for full participation in the program.

2. To provide for a stipend for the district facilitator.

3. To pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system for a pension and annuity retirement system established under Iowa Code chapter 294 for such amounts paid by the district.

These funds are miscellaneous funds or are considered encumbered. A school district shall maintain a separate listing within its budget for payments received and expenditures made for this program. Funds that remain unencumbered or unobligated at the end of the fiscal year will not revert, but will remain available for expenditure for the purposes of the program until the close of the succeeding fiscal year.

281—83.7(78GA,SF464) Appeal of grant denial or termination. Any applicant for beginning teacher induction program grant funds may appeal the denial of a properly submitted competitive program grant application or the unilateral termination of a competitive program grant to the director of the department. Appeals must be in writing and received within ten working days of the date of the notice of decision and must be based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members. The hearing and appeal procedures found in 281—Chapter 6 that govern the director's decisions shall be applicable to any appeal of denial or termination. In the notice of appeal, the grantee shall give a short and plain statement of the reasons for the appeal. The director shall issue a decision within a reasonable time, not to exceed 60 days from the date of the hearing.

281—83.8(78GA,SF464) Annual report. The board implementing an approved beginning teacher induction program will submit an assessment of the evaluation strategies on forms secured from the department by each July 1 of the fiscal year succeeding the year in which the school district received funding. Each district receiving funding must report the results of the state evaluation. The department will annu-

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ally report the statewide results of the program to the chairpersons and ranking members of the senate and house education committees by January 1.

These rules are intended to implement 1999 Iowa Acts, Senate File 464, sections 22 to 26.

[Filed 10/21/99, effective 12/22/99]

[Published 11/17/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/99.

ARC 9468A**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 84, "Financial Incentives for National Board Certification," Iowa Administrative Code.

This chapter contains two financial incentive pilot programs for Iowa teachers receiving National Board Certification (NBC) and provides guidelines to administer both pilot programs. The amendments reflect the statutory changes made by the Seventy-eighth General Assembly in 1999 Iowa Acts, House File 766. The amendments include lowering the amount of the annual award while extending the number of years the award is available and specifying that an eligible teacher must be receiving a salary as a classroom teacher.

A waiver provision is not provided as the amendments reflect the statute and, therefore, are not eligible for waiver.

Notice of Intended Action was published in the September 8, 1999, Iowa Administrative Bulletin as **ARC 9316A**. These amendments were simultaneously Adopted and Filed Emergency as **ARC 9314A**. One public comment was received in support of the amendments. The adopted amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 256.44 as amended by 1999 Iowa Acts, House File 766.

These amendments will become effective December 22, 1999, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [84.1 to 84.4] is being omitted. These amendments are identical to those published under Notice as **ARC 9316A**, IAB 9/8/99.

[Filed 10/21/99, effective 12/22/99]

[Published 11/17/99]

[For replacement pages for IAC, see IAC Supplement 11/17/99.]

ARC 9466A**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5) and section 17A.3 as amended by 1998 Iowa Acts, chapter 1202, the State Board of Education adopts Chapter 97, "Supplementary Weighting," Iowa Administrative Code.

This chapter is adopted to comply with an Attorney General's opinion regarding current statutes. This chapter incorporates uniform practices in the reporting of students for supplementary weighting following the Attorney General's opinion.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 8, 1999, as **ARC 9312A**. In addition, these rules were simultaneously Adopted and Filed Emergency as **ARC 9318A**. These rules are substantially similar to those published under Notice of Intended Action and Adopted and Filed Emergency. Minor changes were made for clarification.

Public comments were received in support of providing supplementary weighting for all community college courses offered to school districts and for alternative schools. Comments were received on the extent of funding loss due to implementation of the Attorney General's opinion. Comments were received stating that the criteria for joint employment set by declaratory ruling were too restrictive for most districts to meet. These comments pertain to potential legislation, but do not apply to the rules in this chapter. Several recommendations were made to change the wording "in a community college" to "community college courses." The Attorney General's opinion specifically addresses the meaning of "in a community college," and subrule 97.2(5) specifically defines courses that are eligible for supplementary weighting.

These rules reflect statutory provisions; therefore, a waiver of these rules or any portion of these rules would conflict with state law.

These rules were adopted by the Board on October 20, 1999.

These rules shall become effective December 22, 1999, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement Iowa Code sections 257.6, 257.11, and 257.12.

The following new chapter is adopted.

CHAPTER 97**SUPPLEMENTARY WEIGHTING**

281—97.1(257) Definitions. For the purpose of this chapter, the following definitions apply.

"Class" means a course for academic credit which applies toward a high school or community college diploma.

"Enrolled" shall mean that a student has registered with the school district and is taking part in the educational program.

"Fraction of a school year at the elementary level" shall mean the product of the minutes per day of class times the number of days per year the class meets divided by the product of the total number of minutes in a school day times the total number of days in a school year.

"Fraction of a school year at the secondary level" shall mean the product of the class periods per day of class times the number of days per year the class meets divided by the

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product of the total number of class periods in a school day times the total number of days in a school year. All class periods available in a normal day shall be used in the calculation.

“Supplant” shall mean the community college’s replacing the identical course that was offered by the school district in the preceding year or the second preceding year, or the community college’s offering a course that is required by the school district in order to meet the minimum accreditation standards in Iowa Code section 256.11.

“Supplementary weighting plan” shall mean a plan as defined in this chapter to add a weighting for each resident student eligible that 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.

“Teacher” shall be defined pursuant to Iowa Code section 272.1.

281—97.2(257) Supplementary weighting.

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. Resident student attends class in another school district pursuant to subrule 97.2(2), or
- b. Resident student attends class taught by a teacher employed by another school district pursuant to subrule 97.2(3), or
- c. Resident student attends class taught by a teacher jointly employed by two or more school districts pursuant to subrule 97.2(4), or
- d. Resident student attends class in a community college for college credit pursuant to subrule 97.2(5).

Other than as listed in paragraphs “a” to “d” above, no other sharing arrangement shall be eligible for supplementary weighting.

97.2(2) Attend class in another school district. Students attending class in another school district will be eligible for supplementary weighting under paragraph 97.2(1)“a” only if the school district does not have a licensed and endorsed teacher available within the school district to teach the course(s) being provided.

97.2(3) Attend class taught by a teacher employed by another school district. Students attending class taught by a teacher employed by another school district will be eligible for supplementary weighting under paragraph 97.2(1)“b” only if the school district does not have a licensed and endorsed teacher available within the school district to teach the course(s) being provided.

97.2(4) Attend class taught by a teacher jointly employed with another school district. All of the following conditions must be met for any student attending class taught by a teacher jointly employed to be eligible for supplementary weighting under paragraph 97.2(1)“c.” The school districts jointly employing the teacher must have:

- a. A joint teacher evaluation process and instruments.
- b. A joint educational excellence phase III plan.
- c. A joint seniority list.

d. One single, unified master contract which illustrates joint collective bargaining.

e. One single salary schedule.

Except for joint employment contracts which meet the requirements of paragraphs “a” to “e” 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 class in a community college to be eligible for supplementary weighting under paragraph 97.2(1)“d.”

a. The course must supplement, not supplant, high school courses.

(1) The course must not replace the identical course that was offered by the school district in the preceding year or the second preceding year.

(2) The course must not be required by the school district in order to meet the minimum accreditation standards in Iowa Code section 256.11.

b. The course must be included in the community college catalog or an amendment or addendum to the catalog.

c. The course must be open to all registered community college students not just high school students.

d. The course must be for college credit and the credit must apply toward an associate of arts or associate of science degree, or toward an associate of applied arts or associate of applied science degree, or toward completion of a college diploma program.

e. The course must be taught by a teacher meeting community college licensing requirements.

f. The course must be taught utilizing the community college course syllabus.

g. The course must be of the same quality as a course offered on a community college campus.

97.2(6) Ineligibility. The following students are ineligible for supplementary weighting:

- a. Nonresident students attending the school district under any arrangement.
- 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.
- c. Students eligible for the special education weighting plan provided in Iowa Code section 256B.9.
- d. Students in whole-grade sharing arrangements.
- e. Students open enrolled in or out.
- f. Students enrolled in nonpublic schools.
- g. Students participating in a home school assistance program or dual enrollment.
- h. Students participating in shared services rather than shared classes.
- i. Students taking postsecondary enrollment options (PSEO) courses authorized under Iowa Code chapter 261C are ineligible for supplementary weighting for the PSEO courses.

j. Students enrolled in courses or programs offered by their resident school district 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).

k. 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

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in subrule 97.2(5) are met for students attending class in a community college.

97.2(7) Whole-grade sharing. If all or a substantial portion of the students in any grade are shared with another two or more school districts for all or a substantial portion of a school day, then no students in that grade level are eligible for supplementary weighting.

281—97.3(257) Due date. Supplementary weighting shall be included with the certified enrollment which is due October 1 following the third Friday in September on which the enrollment was taken.

These rules are intended to implement Iowa Code sections 257.6, 257.11, and 257.12.

[Filed 10/21/99, effective 12/22/99]

[Published 11/17/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/99.

ARC 9479A**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 these amendments is to update references to federal effluent limits and associated analytical methods. The change to rule 60.2(455B) updates the definition of "Act" to include amendments to the Water Pollution Control Act through July 1, 1999. References to federal effluent and pretreatment standards found in rules 62.4(455B) and 62.5(455B) are amended to reflect updates to 40 Code of Federal Regulations (CFR). The change to subrule 63.1(1) updates the reference to the latest federally approved methods for the analysis of wastewater samples.

In accordance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary. Under rule 62.2(455B), the Commission has previously determined 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 federal effluent and pretreatment standards. The Commission must adopt effluent and pretreatment standards at least as stringent as the promulgated federal standards to maintain primacy in the National Pollutant Discharge Elimination System (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 federal standards. Therefore, public participation is unnecessary. The Commission also found that public participation is unnecessary when updating the reference to approved methods for analysis as these methods must be used to implement federal effluent and pretreatment standards.

The Commission adopted these amendments on October 18, 1999.

These amendments will become effective on December 22, 1999.

These amendments may have an impact on small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendments are adopted.

ITEM 1. Amend rule **567—60.2(455B)**, definition of "Act," as follows:

"Act" means the Federal Water Pollution Control Act as amended through July 1, ~~1998~~ 1999, 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, ~~1998~~ 1999, 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, ~~1998~~ 1999.

ITEM 4. Amend paragraph **63.1(1)"a"** as follows:

a. The following is adopted by reference: 40 Code of Federal Regulations (CFR) Part 136, revised as of July 1, ~~1998~~ 1999.

[Filed Without Notice 10/28/99, effective 12/22/99]

[Published 11/17/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/99.

ARC 9477A**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.103A, the Environmental Protection Commission hereby adopts amendments to Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

Amendments to Chapter 64 clarify storm water general permit requirements regarding the transfer of property on which construction activity is taking place while the property is still covered under the provisions of the storm water permit. These amendments outline the responsibilities of both the permittee and transferee. These amendments also specify the conditions under which a permittee may be exempted from keeping records on the construction site.

A typographical error is also being corrected in General Permit No. 2.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 19, 1999, as **ARC 9037A**. No comments were received during the comment period or at the public hearing. There are no changes from the Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 455B, division I.

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These amendments shall become effective December 22, 1999.

The following amendments are adopted.

ITEM 1. Amend rule 567—64.6(455B) by adopting the following new subrule:

64.6(6) Transfer of ownership—construction activity part of a larger common plan of development. For construction activity which is part of a larger common plan of development, such as a housing or commercial development project, in the event a permittee transfers ownership of all or any part of property subject to NPDES General Permit No. 2, both the permittee and transferee shall be responsible for compliance with the provisions of the general permit for that portion of the project which has been transferred, including when the transferred property is less than five acres in area, from and after the date the department receives written notice of the transfer, provided that:

a. The transferee is notified in writing of the existence and location of the general permit and pollution prevention plan, and of the transferee's duty to comply, and proof of such notice is included with the notice to the department of the transfer.

b. If the transferee agrees, in writing, to become the sole responsible permittee for the property which has been transferred, then the transferee shall be solely responsible for compliance with the provisions of the general permit for the transferred property from and after the date the department receives written notice of the transferee's assumption of responsibility.

ITEM 2. Amend subrule 64.15(2) by adopting the following new paragraphs:

a. Part II, provision F of General Permit No. 2 is amended to read as follows:

F. TRANSFER OF COVERAGE UNDER THIS PERMIT. For storm water discharge associated with industrial activity for construction activities where ownership changes, the Department must be notified of the title transfer within 30 days. If a storm water discharge associated with industrial activity for construction activities is covered by this general permit, the new owner(s) shall be subject to all terms and conditions of this general permit. A copy of the notice of transfer of title that was sent to the Department shall be included in the pollution prevention plan. For construction activity which is part of a larger common plan of development such as a housing or commercial development project, if a permittee transfers ownership of all or any part of property subject to this permit, both the permittee and transferee shall be responsible for compliance with the provisions of this permit for that portion of the project which has been transferred including when the transferred property is less than five acres in area. If the new owner(s) agree in writing to be solely responsible for compliance with the provisions of this permit for the property which has been transferred, then the existing permittee(s) shall be relieved of responsibility for compliance with this permit for the transferred property, from and after the date the Department receives written notice of transfer of responsibility. A copy of the notice of transfer of responsibility shall be included in the pollution prevention plan.

b. Part III, provision B of General Permit No. 2 is amended to read as follows:

B. RELEASES IN EXCESS OF REPORTABLE QUANTITIES. Any owner or operator identified in the pollution prevention plan is subject to the spill notification requirements as specified in 455B.386 of the Iowa Code. Iowa law requires that as soon as possible but not more than

six hours after the onset of a "hazardous condition" the Department and local sheriff's office or the office of the sheriff of the affected county be notified.

c. Part V, RETENTION OF RECORDS, provision B of General Permit No. 2 is amended to read as follows:

B. If there is a construction trailer, shed or other covered structure located on the property, the permittee shall retain a copy of the storm water pollution prevention plan required by this permit at the construction site from the date of project initiation to the date of final stabilization. If there is no construction trailer, shed or other covered structure located on the property, the permittee shall retain a copy of the plan at a readily available alternative site approved by the Department and provide it for inspection upon request. If the plan is maintained at an off-site location such as a corporate office, it shall be provided for inspection no later than two business days after being requested.

[Filed 10/28/99, effective 12/22/99]

[Published 11/17/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/99.

ARC 9486A

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of 1999 Iowa Acts, Senate File 276, section 20, the Insurance Division adopts Chapter 76, "External Review," Iowa Administrative Code.

The new chapter provides guidelines for enrollees to appeal a carrier's or 509A plan's adverse decision based upon medical necessity. The rules also instruct carriers on appropriate notice provisions to enrollees of their right to an external appeal. In addition, the rules provide guidance on communication between interested parties. The rules further provide guidelines for an expedited review process. Notice of Intended Action was published in the Iowa Administrative Bulletin on September 22, 1999, as ARC 9356A.

A public hearing was held Tuesday, October 12, 1999, at 10 a.m. at the offices of the Insurance Division. The Division also received both written and oral comments. Carriers and health care providers were concerned about the process for an expedited review and asked for further clarification of the process. It was suggested that the requirements for certification as an independent review entity were overburdensome and could create difficulty in certification of any entity. Changes were made by the Division to provide clarity to the expedited review process, and the rules were modified for the certification process to allow for additional flexibility. Comments were also received concerning style and format of the rules.

These rules are intended to implement 1999 Iowa Acts, Senate File 276.

These rules will become effective December 22, 1999.

The following new chapter is adopted.

CHAPTER 76

EXTERNAL REVIEW

191—76.1(78GA,SF276) Purpose. This chapter is intended to implement 1999 Iowa Acts, Senate File 276, to provide a uniform process for enrollees of carriers providing health insurance coverage to request an external review of a

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coverage decision based upon medical necessity. Carriers defined in 1999 Iowa Acts, Senate File 276, section 8(1), are subject to these rules.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 7.

191—76.2(78GA,SF276) Applicable law. The rules contained in this chapter and 1999 Iowa Acts, Senate File 276, shall apply to health insurance policies and 509A plans delivered or issued for delivery in this state.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 7.

191—76.3(78GA,SF276) Notice of coverage decision and content. The notice required under 1999 Iowa Acts, Senate File 276, shall contain the following information:

1. The enrollee was covered by the carrier at the time the service or treatment was proposed;

2. The enrollee has been denied coverage based on a determination by the carrier that the proposed service or treatment does not meet the definition of medical necessity;

3. The enrollee or the enrollee's treating health care provider acting on behalf of the enrollee has exhausted all internal appeal mechanisms provided under the carrier's evidence of coverage; and

4. Information on how the enrollee or the enrollee's treating health care provider can request an external review. The information provided shall specify the following:

- The enrollee or the enrollee's treating health care provider must send the request for an external review within 60 days of receipt of the coverage decision from the carrier;

- The request shall be made to the Division of Insurance, 330 Maple Street, Des Moines, Iowa 50319;

- A copy of the carrier's coverage decision shall accompany the written request for an external review;

- A \$25 filing fee is required unless the enrollee is requesting that the fee be waived. The check should be made payable to the Insurance Division. If a waiver is requested, the request shall include an explanation of why the enrollee is requesting that the fee be waived.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 10.

191—76.4(78GA,SF276) External review request.

76.4(1) The enrollee shall send a copy of the carrier's written notice with the enrollee's request for an external review to the insurance commissioner within 60 days of the receipt of the coverage decision.

76.4(2) A \$25 filing fee shall be enclosed with the external review request. The commissioner may waive the fee for good cause.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 10.

191—76.5(78GA,SF276) Certification of external review.

76.5(1) The commissioner shall certify the enrollee for external review if the criteria in 1999 Iowa Acts, Senate File 276, section 11, are met.

76.5(2) The commissioner shall have two business days from receipt of a request for an external review to certify or deny the request and to notify, in writing, the carrier, the enrollee and the enrollee's treating health care provider acting on behalf of the enrollee. The commissioner shall fax the certification decision to the carrier, the enrollee or the enrollee's treating health care provider acting on behalf of the enrollee, within the two-day period.

76.5(3) A carrier has three business days to contest the eligibility of the request for external review with the commissioner. The commissioner has two business days to rule on this contested eligibility. The commissioner shall provide a written notice of the determination to the carrier and the enrollee or the enrollee's treating health care provider acting on behalf of the enrollee. The commissioner shall fax the decision to the carrier within the two-day period.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 11.

191—76.6(78GA,SF276) Expedited review.

76.6(1) The enrollee's treating health care provider shall directly contact the carrier for an expedited review if the enrollee's treating health care provider states that delay would pose an imminent or serious threat to the enrollee.

76.6(2) The enrollee's treating health care provider and the carrier shall select an independent review entity to conduct the external review within 72 hours. In the event that the enrollee's treating health care provider and the carrier cannot reach an agreement upon the selection of an independent review entity, the enrollee's treating health care provider shall notify the commissioner who shall select an independent review entity.

76.6(3) The carrier and enrollee's treating health care provider shall provide any additional medical information to the review entity.

76.6(4) The enrollee's treating health care provider shall notify the commissioner of the expedited review request following the agreement in subrule 76.6(2).

76.6(5) In the event the carrier does not find that a delay would pose an imminent or serious threat to the enrollee, the enrollee's treating health care provider may ask the commissioner to immediately review the request for certification as an expedited review.

76.6(6) A review by the commissioner under subrule 76.6(5) shall stay the 72-hour expedited review time period.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 14.

191—76.7(78GA,SF276) Decision notification. The independent review entity shall immediately notify the carrier, enrollee or enrollee's treating health care provider, and insurance division of the external appeal decision.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 18.

191—76.8(78GA,SF276) Carrier information. Each carrier shall provide to the commissioner the name or title, telephone and fax numbers and E-mail address of an individual who shall be the carrier's contact person for external review procedures. Any changes in personnel or communication numbers shall be immediately sent to the commissioner.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 13.

191—76.9(78GA,SF276) Certification of independent review entity.

76.9(1) The following minimum standards are required for certification as an independent review entity:

a. The individual must hold a current unrestricted license to practice a health care profession in the United States.

b. A health care professional who is a medical physician shall also hold a certification by a recognized American medical specialty board.

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c. A health care professional who is not a physician shall also hold a current certification by the professional's respective specialty board if applicable.

d. The applicant must attest that reviewers have no history of disciplinary actions or sanctions including, but not limited to, the loss of staff privileges or any participation restriction taken or pending by any hospital or state or federal government regulatory agency for wrongdoing by the health care professional.

e. The applicant shall provide a description of the qualifications of the reviewers retained to conduct external reviews of coverage decisions including the reviewers' current and past employment histories and practice affiliations.

f. The applicant shall provide a description of the procedures employed to ensure that reviewers conducting external reviews are appropriately licensed, registered or certified; trained in the principles, procedures and standards of the independent review entity; and knowledgeable about the health care service which is the subject of the external review.

g. The applicant shall provide a description of the methods of recruiting and selecting impartial reviewers and matching such reviewers to specific cases.

h. The applicant shall provide the number of reviewers retained by the independent review entity and a description of the areas of expertise available from such reviewers and the types of cases such reviewers are qualified to review.

i. The applicant shall provide a description of the policies and procedures employed to protect confidentiality of individual medical and treatment records in accordance with applicable state and federal law.

j. The applicant shall provide a description of the quality assurance program established by the independent review entity.

k. The applicant shall provide the names of all corporations and organizations owned or controlled by the independent review entity or which own or control the applicant, and the nature and extent of any such ownership or control.

l. The applicant shall provide the names and résumés of all directors, officers, and executives of the independent review entity.

m. The applicant shall provide a description of the fees to be charged by the review entity for external reviews.

n. The applicant shall provide the name of the medical director or health professional director responsible for the supervision and oversight of the independent review procedure.

76.9(2) The independent review entity shall develop written policies and procedures governing all aspects of the external review process including, at a minimum, the following:

a. Procedures to ensure that external reviews are conducted within the times frames specified in 1999 Iowa Acts, Senate File 276, and that any required notices are provided in a timely manner.

b. Procedures to ensure the selection of qualified and impartial reviewers. The reviewers shall be qualified to render impartial determinations relating to the health care service which is the subject of the coverage decision under external review. The reviewers shall be experts in the treatment of the medical condition under review.

c. Procedures to ensure the confidentiality of medical and health treatment records and review materials.

d. Procedures to ensure adherence to the requirements of 1999 Iowa Acts, Senate File 276, by any contractor, subcontractor, subvendor, agent or employee affiliated with the certified independent review entity.

76.9(3) The independent review entity shall establish a quality assurance program. The program shall include a written description to be provided to all individuals involved in the program, the organizational arrangements, and the ongoing procedures for the identification, evaluation, resolution and follow-up of potential and actual problems in external reviews performed by the independent review entity and procedures to ensure the maintenance of program standards pursuant to this requirement.

76.9(4) The independent review entity shall establish a toll-free telephone service to receive information relating to external reviews pursuant to 1999 Iowa Acts, Senate File 276. The system shall develop a procedure to ensure the capability of accepting, recording, or providing instruction to incoming telephone calls during other than normal business hours. The independent review entity shall also establish a facsimile and electronic mail service.

76.9(5) No independent review entity, officer, director, employee, or reviewer employed or engaged to conduct external reviews shall have any material professional affiliation or material financial affiliation with a health plan for which it is conducting a review.

76.9(6) The independent review entity shall provide the commissioner such data, information, and reports as the commissioner determines necessary to evaluate the external review process established under 1999 Iowa Acts, Senate File 276.

76.9(7) Applications shall be submitted in duplicate to the Commissioner of Insurance, 330 Maple Street, Des Moines, Iowa 50319. Applications must be submitted in full to be considered. All applicants will be notified of the certification decision. A list of certified independent review entities shall be maintained at the division of insurance and shall be available through the division's Web site.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 12.

[Filed 10/29/99, effective 12/22/99]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/99.

ARC 9485A

PERSONNEL DEPARTMENT[581]

Adopted and Filed

Pursuant to the authority of Iowa Code section 19A.9, the Department of Personnel adopts amendments to Chapter 15, "Benefits," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 8, 1999, as ARC 9297A. In compliance with Iowa Code chapter 17A, a public hearing was scheduled for September 28, 1999. No oral or written comments were received. In addition, these amendments were simultaneously Adopted and Filed Emergency as ARC 9298A. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The amendment to subrule 15.1(3) changes the date by which HMO and ODS benefit providers must acquire national accreditation in order to offer benefits to state employees, dependents, and retirees. The amendment also permits the director to waive accreditation for up to two years.

PERSONNEL DEPARTMENT[581](cont'd)

The amendment to rule 15.8(19A) correctly identifies the inclusive dates of the plan year that were previously approved by the governing body of the plan, the Executive Council.

These amendments shall become effective December 22, 1999, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code sections 19A.1(2)"c" and 19A.9 and Iowa Code chapter 509A.

The following amendments are adopted.

ITEM 1. Amend subrule 15.1(3), introductory paragraph, as follows:

15.1(3) Health maintenance organizations (HMO) and organized delivery systems (ODS). Beginning with the 1999 benefit year *starting January 1, 2001*, any HMO or ODS seeking approval to offer benefits to state employees shall provide evidence of accreditation by the National Committee for Quality Assurance (NCQA) or the Joint Commission on Accreditation of Health Care Organizations (JCAHO). *When an HMO or ODS seeks approval to offer benefits to state employees and has not achieved the required accreditation, the director of the department may waive the accreditation requirement for up to two consecutive benefit years. The granting of such a waiver shall be based, in part, on information submitted by the HMO or ODS that outlines its intent to achieve accreditation. If the HMO or ODS has not achieved the required accreditation by the end of the second benefit year, the director shall report this information to the executive council, and may recommend termination of the contract.*

ITEM 2. Amend rule 581—15.8(19A), introductory paragraph, as follows:

581—15.8(19A) Premium conversion plan (pretax program). The director administers the premium conversion plan for employees of the state of Iowa. The plan is permitted under IRC Section 125. Pursuant to IRC Section 105, the plan is also an insured health care plan to the extent that participants use salary reduction to pay for health or dental insurance premiums. In accordance with IRC Section 79, the plan is also a group term life insurance plan to the extent that salary reduction is used for life insurance premiums. Administration of the plan shall comply with all federal regulations and the Summary Plan Document. For purposes of this rule, the plan year is ~~August 1 to July 31~~ *January 1 to December 31* of each year.

[Filed 10/29/99, effective 12/22/99]

[Published 11/17/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/99.

ARC 9472A**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455G.4(3) and 455G.11, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board)

amends Chapter 10, "Eligibility for Insurance," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 11, 1999, as **ARC 9263A**. No public comment was received on this amendment. This amendment is identical to that published under Notice of Intended Action.

Chapter 10 describes the guidelines for insurance eligibility. Rule 10.2(455G) lists the deductible options for the insurance coverage offered by the Board. Effective January 1, 1995, the Board restructured the deductible options.

This amendment corrects the existing deductible wording to reflect the Board's decision, whereby an insured site can obtain a policy with either a \$5,000 or \$10,000 deductible and the \$25,000 deductible is eliminated.

This amendment was approved October 20, 1999.

This amendment shall become effective December 22, 1999.

This amendment is intended to implement Iowa Code section 455G.11.

The following amendment is adopted.

Amend rule 591—10.2(455G) as follows:

591—10.2(455G) Deductibles. The following deductibles are established under the Iowa plan:

~~10.2(1) For locations with three tanks or less, there~~ *There is a \$5,000 deductible.*

~~10.2(2) For locations with more than three tanks, there~~ *There is a \$10,000 deductible at minimum.*

~~10.2(3) A \$25,000 deductible may be used if it is determined that the scope of the risk warrants higher retention levels, at the discretion of the board or administrator.~~

~~10.2(4) Deductibles may be reduced from \$10,000 to \$5,000 for sites with more than three tanks for an additional premium payment of 50 percent of policy totals with administrative approval. There is no provision to buy down deductibles on sites with \$5,000 or \$25,000 deductibles.~~

[Filed 10/22/99, effective 12/22/99]

[Published 11/17/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/99.

ARC 9473A**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455G.4(3), 455G.6(15), 455G.9 and 455G.21, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board) hereby amends Chapter 11, "Remedial or Insurance Claims," Iowa Administrative Code.

Chapter 11 describes the guidelines for remedial or insurance claims. Subrule 11.1(3) lists the eligibility criteria for remedial and retroactive claimants. The purpose of these amendments is to broaden the rules in accordance with 1999 Iowa Acts, House File 442, which amended Iowa Code section 455G.9, subsection 1. This legislation provides for 100 percent of the cost of corrective action for a governmental subdivision in connection with a petroleum underground

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

storage tank that the governmental subdivision did not own or operate when the release occurred and subsequently acquired the property via eminent domain after the release occurred.

This legislation also allows for reimbursement of reasonable expenses incurred by a governmental subdivision for treating, handling, or disposing, as required by the Department of Natural Resources, of petroleum-contaminated soil and groundwater encountered in a public right-of-way during the installation, maintenance or repair of a public improvement. The legislation provides the ability for the Board to seek full cost recovery from the responsible party for any and all such expenses paid for by the Fund. This will include the ability to place a lien on a property as provided under Iowa Code section 424.11.

Notice of Intended Action was published in the August 11, 1999, Iowa Administrative Bulletin as **ARC 9264A**. The adopted amendments are identical to those published under Notice.

These amendments were approved October 20, 1999.

These amendments will become effective on December 22, 1999.

These amendments are intended to implement Iowa Code sections 455G.9 and 455G.21.

The following amendments are adopted.

ITEM 1. Amend paragraph **11.1(3)"n"** by adopting the following **new** subparagraph **(13)**:

(13) If the property is acquired via eminent domain by a governmental subdivision.

ITEM 2. Amend subrule **11.1(5)** by adopting the following **new** paragraph **"g"**:

g. Costs incurred by a governmental subdivision for treating, handling or disposing of, as required by DNR, petroleum-contaminated soil and groundwater encountered in a public right-of-way during installation, maintenance or repair of a public improvement.

[Filed 10/22/99, effective 12/22/99]

[Published 11/17/99]

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ARC 9480A

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Nursing Home Administrators hereby amends Chapter 141, "Licensure of Nursing Home Administrators," and Chapter 143, "Continuing Education," Iowa Administrative Code.

Items 1 through 9 pertain to examinations. These amendments revise the application procedures pertaining to completion of the national examination and eliminate the requirement for a state examination. State law requires that each applicant for licensure as a nursing home administrator pass an examination. Accordingly, the board requires that all licensees complete and pass the national standardized examination of the National Association of Boards of Examiners of Long Term Care Administrators (NAB). The NAB procedures for completion of the national examination will

change effective January 1, 2000, including implementation of automated access for candidates to complete the national examination. The amendments ensure consistency in the application procedures to accommodate the changes in the national examination. Regarding the state examination, the board has determined that the continued administration of a state examination is unnecessary due to the comprehensive nature of the national examination and the recognition that there are areas in which the two examinations overlap. Additionally, the state examination would be burdensome to continue, given the changes in the national examination.

Items 10 and 12 provide current information regarding the continuing education review service of the national association.

Item 11 pertains to the continuing education compliance period. This amendment allows increased efficiency of the administration of board operations by making the compliance period identical to the license renewal period.

These amendments do not provide for waivers in specified situations, because of one or both of the following reasons: (1) the amendments pertain to a statutory requirement, and the amendments cannot waive the requirement; or (2) the amendment provides for the increased efficiency of the board operation or is a technical change, and a waiver would not confer a benefit nor would a waiver be appropriate in any situation that can be specified.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 8, 1999, as **ARC 9339A**. A public hearing was held on September 30, 1999, from 10 a.m. to 12 noon, in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa. Three persons, including two representatives from a college with a board-approved academic program and a representative of the Iowa Health Care Association, attended the public hearing. The Iowa Health Care Association provided formal comment regarding the proposed amendments. The comments included support for rule changes that will simplify the testing requirements for licensure and a question regarding how the continuing education hours earned by licensed administrators from October 1, 1999, to December 31, 1999, will be credited for the license renewal period beginning January 1, 2000. The following clarification is provided in response to the question posed. The proposed amendments provide that effective January 1, 2000, the continuing education compliance period will be the same period as the license renewal period. This will effectively extend the current continuing education compliance period that began on October 1, 1999, to December 31, 2001. Any continuing education hours completed during the period of October 1, 1999, to December 31, 1999, are included in the new compliance period, and there will be no change in the required number of hours. Licensees will be informed of the extended compliance period at the time the amendments become effective.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective December 22, 1999.

These amendments are intended to implement Iowa Code chapters 155 and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 141.5(1) as follows:

141.5(1) Each applicant for licensure as a nursing home administrator shall complete an application on a form furnished by the board. The application, which may be obtained from the Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Moines, Iowa 50319-0075, supporting data and documents required by the board must be completed and on file at least 45 30 days prior to the ~~announced licensure examination date~~ *applicant desires board eligibility determination for the examination*. Each applicant found to be eligible for the examination date will be notified by letter to the address shown on the application, of eligibility for, and of the time and place of the examination at least 14 days prior to the examination date. *The board shall notify the examination service of applicant eligibility for the examination.*

ITEM 2. Amend subrule 141.5(2) as follows:

141.5(2) Each applicant who is otherwise qualified and has passed the approved state and national examinations *examination* will be notified of eligibility for licensure.

ITEM 3. Amend subrule 141.5(3) as follows:

141.5(3) Each applicant who fails the state or national examination may apply *to the board* for reexamination ~~at the next examination scheduled by the board~~. The applicant shall not be examined more than three times for either the state or national examination, except as provided in subrule 141.5(4).

ITEM 4. Amend subrule 141.5(4) as follows:

141.5(4) If the applicant fails a third state or national examination, education in areas established by the board must be obtained before another examination will be allowed or a license is issued.

ITEM 5. Amend subrule 141.5(5) as follows:

141.5(5) Application forms are available from the department of public health. License and examination fees *are nonrefundable and* are sent to: Board of Examiners for Nursing Home Administrators, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. *Examination fees must be received in the board office at least 20 days prior to the testing date.*

ITEM 6. Amend rule 645—141.6(155), introductory paragraph, as follows:

645—141.6(155) Examination. Each applicant for licensure shall be required to pass a national and a state examination.

ITEM 7. Amend subrule 141.6(1) as follows:

141.6(1) National examination. The passing score is a scaled score, set by the National Association ~~for~~ of Boards of Examiners for ~~Nursing Home Administrators of Long Term Care Administrators~~. This examination tests knowledge of the domains of practice including:

- a. Resident care management;
- b. Personnel management;
- c. Financial management;
- d. ~~Organizational management; Environmental management;~~
- e. ~~Environmental management; Governance and management.~~
- f. ~~Regulatory management.~~

ITEM 8. Rescind and reserve subrules **141.6(2)** and **141.6(3)**.

ITEM 9. Rescind and reserve subrules **141.11(2)** and **141.11(3)**.

ITEM 10. Amend rule **645—143.1(272C)**, definition of “National Continuing Education Review Service (NCERS)” as follows:

“National Continuing Education Review Service (NCERS)” means the continuing education review service operated by the National Association of Boards of Examiners ~~for Nursing Home Administrators, of Long Term Care Administrators, #200, 808 17th Street NW, 1444 I Street NW, Suite 700, Washington, DC 20006 20005-2210.~~

ITEM 11. Amend subrule 143.2(2) as follows:

143.2(2) ~~The continuing education compliance period shall extend from October 1 of one odd-numbered year of a biennium to September 30 of the next odd-numbered year of the biennium during which period attendance at approved continuing education programs may be used as evidence of fulfilling continuing education requirements for the subsequent license renewal period beginning January 1. Beginning January 1, 2000, the continuing education compliance period shall be each biennium beginning January 1 of each even-numbered year to December 31 of the next odd-numbered year.~~

ITEM 12. Amend subrule 143.4(1), introductory paragraph, as follows:

143.4(1) Prior approval of activities. Offerings and providers approved by the National Continuing Education Review Service (NCERS) are deemed approved by the board. Organizations which desire prior approval of a course, program or other continuing education activity from NCERS may apply for approval to the National Continuing Education Review Service (NCERS), ~~808 17th St. NW, #200, Washington, DC 20006 1444 I Street NW, Suite 700, Washington, DC 20005-2210.~~

[Filed 10/29/99, effective 12/22/99]

[Published 11/17/99]

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ARC 9483A

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 9.1, 17A.3 and 10B.4, the Secretary of State hereby amends Chapter 4, “Forms,” Iowa Administrative Code.

This amendment adds Form FR-6, the Annual Agricultural Landholding Report, as required by Iowa Code section 10B.4.

Notice of Intended Action was published in the September 8, 1999, Iowa Administrative Bulletin as **ARC 9348A**. The adopted amendment is identical to the one published under Notice.

This amendment was approved by the Secretary of State on October 27, 1999.

This amendment will become effective on December 22, 1999.

This amendment is intended to implement Iowa Code section 10B.4.

The following amendment is adopted.

Amend subrule 4.2(4) as follows:

4.2(4) Farm reporting.

Form Number	Description
FR-1	Agricultural Report
FR-2	Information on Agricultural Reports

SECRETARY OF STATE[721](cont'd)

FR-3 Pork and Beef Processor Report
 FR-4 Registration of Nonresident Alien
 Land Ownership
 FR-5 Nonresident Alien Ownership Report
 FR-6 *Annual Agricultural Landholding
 Report*

[Filed 10/29/99, effective 12/22/99]
 [Published 11/17/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/17/99.

ARC 9482A**SECRETARY OF STATE[721]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 47.1, the Secretary of State hereby amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

The purpose of the amendment is to restore the 150-day requirement language nullified by the Legislature in 1999 Iowa Acts, House Joint Resolution 15.

Notice of Intended Action was published in the September 22, 1999, Iowa Administrative Bulletin as **ARC 9357A**. The adopted amendment is identical to the one published under Notice.

This amendment was approved by the Secretary of State on October 27, 1999.

This amendment will become effective on December 22, 1999.

This amendment is intended to implement Iowa Code section 49.44.

The following amendment is adopted.

Amend paragraph **21.200(3)"a"** as follows:

a. *The Not less than 150 days prior to the election at which a proposed constitutional amendment or statewide public measure is to be voted on by the voters, the state commissioner shall prepare a proposed description to be used on the ballots in administrative rule form and shall file the proposed rules with the administrative rules coordinator for publication in the Iowa Administrative Bulletin.*

[Filed 10/29/99, effective 12/22/99]
 [Published 11/17/99]

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ARC 9476A**STATE PUBLIC DEFENDER[493]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 13B.4(7), the State Public Defender hereby adopts Chapter 11, "Indigent Defense Contracts," and Chapter 12, "Claims for Indigent Defense Legal Services"; and rescinds Chapter 13, "Court-Appointed Counsel—Eligibility Guidelines and Repayment," and adopts a new Chapter 13, "Court-Appointed

Counsel—Eligibility Guidelines," Iowa Administrative Code.

These rules implement 1999 Iowa Acts, Senate File 451, which revises the procedures regarding contracts and claims for indigent defense legal services and adjusts the eligibility guidelines for appointment of counsel to indigent clients in specific cases.

These rules were Adopted and Filed Emergency as **ARC 9134A** and were simultaneously published under Notice of Intended Action as **ARC 9133A** in the June 30, 1999, Iowa Administrative Bulletin.

Following a public hearing and public comment, changes were made to the rules contained in the Notice of Intended Action. Specifically, definitions contained in Chapters 11 and 12 were modified to make suggested changes and to make the definitions consistent. Reporting requirements for submission of claims are clarified. Procedures for review of the actions of the State Public Defender are prescribed.

These rules will become effective December 22, 1999, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement Iowa Code chapter 13B and Iowa Code sections 815.7, 815.9, and 815.10 as amended by 1999 Iowa Acts, Senate File 451.

The following rules are adopted.

ITEM 1. Adopt **new** 493—Chapter 11 as follows:

CHAPTER 11**INDIGENT DEFENSE CONTRACTS****493—11.1(13B) Definitions.**

"Attorney" means an individual licensed to practice law by the Iowa Supreme Court.

"Attorney time" means the total time the attorney appointed to a case spends on in-court time, out-of-court time, and in travel time attributable to that specific case.

"Case" means all charges or allegations arising from the same transaction or occurrence contained in the same trial information or indictment in a criminal proceeding or in the same petition in a civil or juvenile proceeding.

"Contract" means a written agreement between the state public defender and an attorney.

"Fees" means the consideration paid to an attorney appointed by the court to represent an indigent.

"In-court time" means time spent by the attorney appointed to the case engaged before a judge or jury including, but not limited to, arraignments, bail hearings, pretrial conferences, pretrial motion hearings, evidentiary hearings, jury selection, trial, plea proceedings, posttrial hearings, and probation violation hearings.

"Indigent" means a person entitled to legal representation as defined in Iowa Code section 815.9 as amended by 1999 Iowa Acts, Senate File 451, section 27.

"Out-of-court time" means time actually spent by the attorney appointed to the case in drafting documents, case preparation, depositions and other discovery, client or witness interviews, investigation, research, brief drafting, conferences or negotiations with opposing counsel or the court, obtaining or reviewing records, and other productive case-related time that is not "in-court time" or "travel time."

"Paralegal time" means time actually spent by someone other than the attorney appointed to the case which would be "out-of-court time" if performed by the attorney appointed to the case with the following exceptions. Paralegal time does not include any time spent on the case if the attorney appointed to the case also charges for the same time and activity. In addition, paralegal time does not include time spent

STATE PUBLIC DEFENDER[493](cont'd)

making photocopies, sending faxes, mailing documents, answering phones, scheduling, or other similar clerical activities.

“Travel time” means the reasonable and necessary time spent by the attorney in automobile travel under one of the following circumstances:

1. To and from the scene of a crime;
2. To and from the location of a pretrial hearing, trial, or posttrial hearing, if the venue has been changed from the county in which the crime occurred;
3. To and from the place of incarceration of a client in a postconviction relief case, criminal appeal, or postconviction relief appeal;
4. To and from the place of detention of a client in a criminal case, if the place of detention is other than the county seat of the county in which the crime occurred;
5. To and from the location of the placement of a child in a juvenile case, if required by statute to visit the placement and the placement is located in Iowa, but outside the county in which the case is pending;
6. To and from the location of the placement of a child in a juvenile case, if required by statute and court order to visit the placement and the placement is outside the state of Iowa; or
7. Other automobile travel for which prior written authorization is obtained from the state public defender.

493—11.2(13B) Contracts. An attorney may enter into a contract with the state public defender for the provision of legal services to indigent persons.

11.2(1) To be eligible to contract with the state public defender, an attorney must be licensed to practice law in the state of Iowa.

11.2(2) A copy of an original contract is available from the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087, by telephoning (515)242-6158, or on the Web at www.spd.state.ia.us.

493—11.3(13B) Notice of proposed contract. The state public defender will give notice to attorneys of the availability of contracts for indigent defense services in a manner reasonably calculated to make attorneys aware of the availability of the contracts.

493—11.4(13B) Contract approval or rejection.

11.4(1) The state public defender may confer with judges, attorneys and others with knowledge of the potential contracting attorney’s competence, effectiveness, trustworthiness, or ability to provide services to eligible individuals. The information received may be taken into consideration in determining whether to enter into a contract with the potential contracting attorney.

11.4(2) The state public defender may hold discussions with, or otherwise obtain information from, potential contracting attorneys to determine their qualifications and ability to perform the conditions of the contract.

11.4(3) The state public defender may hold discussions with, or otherwise obtain information from, potential contracting attorneys to establish the types of cases the contracting attorney will handle and the geographic area in which the cases will be handled.

11.4(4) The state public defender may decline to award a contract to a proposed contracting attorney if the state public defender receives information from credible sources that the attorney is not competent, effective, or trustworthy, or is not appropriate to provide the services for some other pertinent reason. The state public defender shall give written notice of

this action to the attorney. The attorney may appeal this decision in the manner prescribed in rule 11.9(13B).

11.4(5) Nothing contained in this rule shall obligate the state public defender to enter into any contract if the state public defender determines that it is not in the best interests of the state to enter into such contract.

493—11.5(13B) Contract elements.

11.5(1) A contract with a private attorney may be awarded for the provision of trial or appellate legal services to indigents in cases as determined by the state public defender.

11.5(2) A contract can only be in force and effect when signed by the contracting attorney and approved by the state public defender.

11.5(3) The contracting attorney shall be an independent contractor and shall not be an agent or employee of the state of Iowa or of the state public defender. The attorney shall exercise the attorney’s best independent professional judgment on behalf of clients to whom the attorney is assigned.

11.5(4) Once a contract has been awarded, the state public defender shall notify the court administrator of the district and clerks of court of the counties in which the contracting attorney has agreed to provide services.

11.5(5) A contract with a private attorney should cover, but not be limited to, the following subjects:

- a. The categories of cases in which the attorney is to provide services;
- b. The term of the contract and the responsibility of the attorney for provision of services in cases undertaken pursuant to the contract;
- c. Identification of the attorney(s) who will perform legal representation under the contract;
- d. A prohibition against assignment of the obligations undertaken pursuant to the contract, including a prohibition against substitution of counsel without prior consent of the state public defender or the court;
- e. The qualifications of the contracting attorney to undertake legal representation pursuant to the contract;
- f. A description of the compensation to be paid and the manner of payment;
- g. A description of any expenses, such as support services, investigative services and expert witness expenses, which may be provided under the contract;
- h. A description of the record-keeping and reporting requirements under the contract;
- i. A description of the manner in which the contract may be terminated;
- j. A description of the manner of disposition of ongoing obligations following termination.

11.5(6) Compensation. Unless the attorney has a contract with the state public defender that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of services rendered at the trial level in all cases to which the attorney is appointed after June 30, 1999:

	Out-of-Court Time	In-Court Time
Attorney time		
Class A felonies	\$60/hour	\$60/hour
Class B felonies	\$55/hour	\$55/hour
All other cases	\$50/hour	\$50/hour
Paralegal time	\$25/hour	N/A

STATE PUBLIC DEFENDER[493](cont'd)

In addition to this compensation, contract attorneys shall be entitled to payment and reimbursement for expenses to the extent provided in 493—Chapter 12 of these rules.

11.5(7) Applicability to juvenile cases. In juvenile cases to which the attorney was appointed prior to July 1, 1999, the state public defender will pay the attorney at the above-referenced rate for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. However, the attorney must file a separate claim for services before and after said hearing.

11.5(8) Appointments before July 1, 1999. Except as provided in subrule 11.5(7), in cases in which the attorney was appointed prior to July 1, 1999, attorney time shall be paid at a rate that is \$5 per hour less than the above rates.

493—11.6(13B) Appellate contracts. Subject to the provisions of this rule, attorneys who have entered into a contract with the state public defender shall be paid \$1,500 for each appellate case to which the attorney is appointed. One thousand dollars is payable following submission of the contract attorney's proof brief; the remainder, at the conclusion of the case.

11.6(1) Frivolous appeals. In appeals in which the attorney withdraws, based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$50 per hour with a maximum fee of \$750 in each case.

11.6(2) Unusually complicated cases. In appeals that are unusually complicated, the attorney may negotiate with the state public defender for a fee in excess of the fees contained in this rule. However, this rule does not require that the state public defender agree to a higher fee in any particular case. The term "unusually complicated" as used in this rule means that the case is highly exceptional and complex from a legal or factual perspective and so atypical as to be beyond the purview of both the attorney and the state public defender. A case is not considered unusually complicated merely because the client is difficult to work with or because the case took longer than the attorney anticipated. Cases in which an application for further review is filed are generally deemed to be "atypical" as that term is used in this rule.

493—11.7(13B) Contract renewal. Prior to renewal of any contract, the state public defender may contact judges, attorneys, court personnel, and others to determine if any existing contract is being properly fulfilled. If the state public defender has determined that a contract renewal is in the best interests of the state, the state public defender may offer a new contract to the contracting attorney. The contracting attorney may accept the new contract by signing the same and returning the signed contract to the state public defender within 30 days of the date on which the contract is submitted to the contracting attorney. If a contracting attorney is not offered a contract renewal, the state public defender shall give the contracting attorney written notice of this action. The attorney may appeal this decision in the manner prescribed in rule 11.9(13B).

493—11.8(13B) Contract termination. Either the state public defender or the contract attorney upon 30 days' notice in any of the following instances may terminate any contract:

1. Mutual agreement of the parties;
2. Failure of appropriation or sufficient funds available to continue the services;
3. Failure to make required reporting;

4. Failure to abide by the provisions of the contract;
5. Repeated submission of inappropriate claims;
6. Good cause.

The terminating party shall notify the other party in writing not less than 30 days before the date of termination except in an emergency situation wherein the contract can be terminated upon notice of termination. An emergency situation would exist if the contracting attorney could no longer provide the service or in any situation which would have rendered the contracting attorney originally ineligible for the contract. The attorney may appeal any termination in the manner prescribed in rule 11.9(13B).

Upon termination of the contract, the cases currently assigned to the attorney shall be handled as provided in the contract.

493—11.9(13B) Appeals. An appeal is perfected by giving written notice of appeal to the state public defender within ten days of receipt of notice of the action. The notice of appeal shall state the grounds upon which the attorney challenges the action. Upon receipt of the appeal, the state public defender shall hold a hearing and may uphold, reverse or modify the prior decision. The decision following the hearing shall be made in writing and shall set forth all of the findings relied upon in making the decision. If an attorney remains aggrieved by the decision, the attorney may seek judicial review of the decision.

493—11.10(13B) Applicability. This chapter shall apply to contracts with an effective date on or after July 1, 1999.

These rules are intended to implement Iowa Code chapter 13B as amended by 1999 Iowa Acts, Senate File 451.

ITEM 2. Adopt new 493—Chapter 12 as follows:

CHAPTER 12
CLAIMS FOR INDIGENT DEFENSE
LEGAL SERVICES

493—12.1(13B,815) Definitions.

"Attorney" means an individual licensed to practice law by the Iowa Supreme Court.

"Attorney time" means the total time the attorney appointed to a case spends on in-court time, out-of-court time, and in travel time attributable to that specific case.

"Case" means all charges or allegations arising from the same transaction or occurrence contained in the same trial information or indictment in a criminal proceeding or in the same petition in a civil or juvenile proceeding.

"Court-appointed attorney" means an attorney appointed by the court to represent an indigent person whether or not the attorney has a contract with the state public defender.

"Fee limitations" means the limitations established by the state public defender for specific classes of cases.

"Fees" means the consideration paid to an attorney appointed by the court to represent an indigent.

"Good cause" means a sound, effective and truthful reason. It is something more than an excuse, plea, apology, extenuation, or some justification. Inadvertence or oversight does not constitute good cause.

"In-court time" means time spent by the attorney appointed to the case engaged before a judge or jury including, but not limited to arraignments, bail hearings, pretrial conferences, pretrial motion hearings, evidentiary hearings, jury selection, trial, plea proceedings, posttrial hearings, and probation violation hearings.

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"Indigent" means a person entitled to legal representation as defined in Iowa Code section 815.9 as amended by 1999 Iowa Acts, Senate File 451, section 27.

"Out-of-court time" means time actually spent by the attorney appointed to the case in drafting documents, case preparation, depositions and other discovery, client or witness interviews, investigation, research, brief drafting, conferences or negotiations with opposing counsel or the court, obtaining or reviewing records, and other productive case-related time that is not "in-court time" or "travel time."

"Paralegal time" means time actually spent by someone other than the attorney appointed to the case which would be "out-of-court time" if performed by the attorney appointed to the case with the following exceptions. Paralegal time does not include any time spent on the case if the attorney appointed to the case also charges for the same time and activity. In addition, paralegal time does not include time spent making photocopies, sending faxes, mailing documents, answering phones, scheduling, or other similar clerical activities.

"Travel time" means the reasonable and necessary time spent by the attorney in automobile travel under one of the following circumstances:

1. To and from the scene of a crime;
2. To and from the location of a pretrial hearing, trial, or posttrial hearing, if the venue has been changed from the county in which the crime occurred;
3. To and from the place of incarceration of a client in a postconviction relief case, criminal appeal, or postconviction relief appeal;
4. To and from the place of detention of a client in a criminal case, if the place of detention is other than the county seat of the county in which the crime occurred;
5. To and from the location of the placement of a child in a juvenile case, if required by statute to visit the placement and the placement is located in Iowa, but outside the county in which the case is pending;
6. To and from the location of the placement of a child in a juvenile case, if required by statute and court order to visit the placement and the placement is outside the state of Iowa; or
7. Other automobile travel for which prior written authorization is obtained from the state public defender.

"Written" as used in these rules may include electronically transmitted communication to the extent permitted by subsequent rules of the state public defender.

493—12.2(13B,815) Submission and payment of claims. Court-appointed attorneys shall submit written claims to the state public defender for review, approval and payment. These claims shall include the following:

1. A completed request for compensation on a form promulgated by the state public defender.
2. A copy of the signed order appointing the attorney to the case.
3. A copy of any application and court order authorizing the attorney to exceed the fee limitations.
4. An itemization detailing all work done on the case for which the attorney seeks compensation. The itemization shall separately designate time claimed for in-court time, out-of-court time and travel time.

Payment for services shall be made only after all reporting requirements have been complied with and the claim has been approved by the state public defender.

493—12.3(13B,815) Interim claims. Claims will be paid only at the conclusion of the case, unless one of the following applies.

12.3(1) Juvenile cases. Initial claims for services in juvenile cases may be submitted after the dispositional hearing, if any. Subsequent claims may be submitted after each hearing held in the case.

12.3(2) Appellate cases. A claim for work done to date by an attorney having an appellate contract with the state public defender may be submitted in appellate cases after filing of the attorney's proof brief. A subsequent claim may be submitted at the conclusion of the case.

12.3(3) Specific cases. Interim claims in Class A felony cases, Class B felony cases, cases under Iowa Code chapter 229A, and cases defined in Iowa Code section 902.12 may be submitted once every three months with the first claim submitted at least 90 days following the effective date of the attorney's appointment.

12.3(4) Other cases. In all other cases, claims filed prior to the conclusion of the case will not be paid except with prior written consent of the state public defender. Approval of or payment of any interim claims shall not affect the right of the state public defender to review any subsequent claims or the aggregate amount of the claims submitted.

493—12.4(13B,815) Fee limitations. The state public defender establishes fee limitations for combined attorney time and paralegal time in the following particular categories of cases:

Class A felonies	\$15,000
Charges defined in Iowa Code section 902.12	\$3,500
Class B felonies	\$3,000
Class C felonies	\$1,200
Class D felonies	\$1,000
Aggravated misdemeanors	\$1,000
Serious misdemeanors	\$500
Simple misdemeanors	\$200
Contempt/show cause proceedings	\$200
Proceedings under Iowa Code chapter 229A	\$10,000
Probation violation	\$250
Delinquency (through disposition)	\$1,000
Child in need of assistance (CINA) (through disposition)	\$1,000
Termination of parental rights (through disposition)	\$1,500
Juvenile review hearings (postdispositional hearings)	\$200
Judicial bypass hearings	\$150
Appeals to supreme court	\$2,000

Postconviction relief—the greater of \$1,000 or 1/2 of charge for which relief is sought.

12.4(1) Claims in excess of fee limitations. Claims will not be paid in excess of the fee limitations unless the attorney seeks and obtains authorization from the appointing court to exceed the fee limitations prior to exceeding the fee limitations. If authorization to exceed the fee limitations is granted, payments in excess of the fee limitations shall be made only for services performed after the date of submission of the request for authorization to exceed the fee limitations.

Nothing contained in this rule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

12.4(2) Retroactivity of authorization. Authorization to exceed the fee limitations shall be effective only as to services performed after an application to exceed the fee limita-

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tions is filed with the court unless the court enters an order specifically authorizing a late filing of the application and finding that good cause exists that excuses the attorney's failure to timely file the application to exceed the fee limitations.

12.4(3) Applicability to juvenile cases. For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each phase of the case separately.

493—12.5(13B,815) Rate of compensation. Unless the attorney has a contract with the state public defender that provides for a different manner or rate of payment, the following hourly rates are deemed reasonable compensation and shall apply to payment of all claims for cases to which the attorney is appointed after June 30, 1999:

	Out-of-Court Time	In-Court Time
Attorney time		
Class A felonies	\$60/hour	\$60/hour
Class B felonies	\$55/hour	\$55/hour
All other cases, including all appeals	\$50/hour	\$50/hour
Paralegal time	\$25/hour	N/A

Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced pursuant to 1999 Iowa Acts, Senate File 451, section 5.

Claims for services rendered prior to the effective date of the attorney's appointment are not payable under the attorney's appointment and will be reduced pursuant to 1999 Iowa Acts, Senate File 451, section 5.

Claims for services that contain charges that are either not reasonable or not necessary to adequately represent the client are not payable under the attorney's appointment and will be reduced pursuant to 1999 Iowa Acts, Senate File 451, section 4.

12.5(1) Appointments before July 1, 1999. In cases to which the attorney was appointed prior to July 1, 1999, attorney time shall be paid at a rate that is \$5 per hour less than the above rates.

Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced pursuant to 1999 Iowa Acts, Senate File 451, section 5.

12.5(2) Applicability to juvenile cases. In juvenile cases to which the attorney was appointed prior to July 1, 1999, the state public defender will pay the attorney at the above-referenced rate in the table above for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. However, the attorney must file a separate claim for services before and after said hearing.

493—12.6(13B,815) Reimbursement for specific expenses. The state public defender will reimburse the attorney for the payments made by the attorney to investigators for necessary investigations in the interest of justice, court reporters, and expert witnesses if the following conditions exist:

1. The attorney obtained court approval to conduct depositions or hire an investigator or expert witness prior to incurring any expenses with regard to each.

2. A copy of the application and order granting authority accompanies the claim.

3. The investigator, court reporter or expert witness does not submit a claim for the same services.

4. The attorney is seeking reimbursement for moneys already expended or certifies that the funds for these services will be paid to the investigator, court reporter or expert witness.

Nothing contained in this rule is intended to require the attorney to provide notice to any other party prior to seeking such an order, or to require the attorney to disclose confidential information, work product, or trial strategy in order to obtain the order.

In the case of an appeal, the state public defender will pay the cost of obtaining the transcript of the trial records and briefs. In such instance, paragraphs "2," "3," and "4" above shall apply.

Claims for expenses that do not meet these conditions are not payable under the attorney's appointment and will be denied pursuant to 1999 Iowa Acts, Senate File 451, section 5.

493—12.7(13B,815) Reimbursement of other expenses. The state public defender will reimburse the attorney for the following out-of-pocket expenses incurred by the attorney in the case:

1. Mileage for travel outside the county in which the attorney's office is located at the rate of 24 cents per mile;

2. Lodging and meals, when required to be away from one's home overnight for hearings and trials at the state approved rate;

3. Necessary photocopying at the attorney's office at the rate of 10 cents per copy;

4. Photocopying for which the attorney must pay at the actual cost of photocopying;

5. Postage, toll calls, collect calls, faxes and parking for the actual cost of these expenses;

6. Other specific expenses for which prior approval by the state public defender is obtained.

Claims for expenses other than these or at rates in excess of the rates set forth herein are not payable under the attorney's appointment and will be reduced or denied pursuant to 1999 Iowa Acts, Senate File 451, section 5.

493—12.8(13B,815) Court review. An attorney whose claim for compensation is denied, reduced, or otherwise modified by the state public defender, for other than mathematical errors, may seek court review of the action of the state public defender.

12.8(1) Motions for court review. Court review of the action of the state public defender is initiated by filing a motion with the appointing court requesting the review. The following conditions shall apply to all such motions:

1. The motion must be timely filed pursuant to 1999 Iowa Acts, Senate File 451, section 4 or 5.

2. The motion must set forth each and every ground on which the attorney intends to rely in challenging the actions of the state public defender.

3. The motion must have attached to it a complete copy of the claim, together with the notice of action that the attorney seeks to have reviewed.

4. A copy of all documents filed must be provided to the state public defender.

5. It is unnecessary for the state public defender to file any response to the motion.

12.8(2) Hearings. The following shall apply to hearings on motions for court review:

1. Notice of the hearing on the attorney's request for review shall be provided to the attorney and the state public de-

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fender at least ten days prior to the date and time set by the reviewing court.

2. Hearings on an attorney's motion for review shall be conducted telephonically. For purposes of this subrule, the state public defender may be reached at (515)242-6158.

3. As provided in 1999 Iowa Acts, Senate File 451, section 4 or 5, the burden shall be on the attorney requesting the review.

4. Issues not raised in the attorney's motion will not be considered by the court at the hearing.

5. The court shall issue a written ruling on the issues properly presented in the request for review.

These rules are intended to implement Iowa Code chapters 13B and 815 as amended by 1999 Iowa Acts, Senate File 451.

ITEM 3. Rescind 493—Chapter 13 and adopt the following new 493—Chapter 13 in lieu thereof:

**CHAPTER 13
COURT-APPOINTED COUNSEL—
ELIGIBILITY GUIDELINES**

493—13.1(815) Definitions. As used in these rules, unless the context otherwise requires, the following definitions apply:

“Affidavit of Financial Status” means a full written disclosure of all income, assets, liabilities, dependents, and other information required to determine if an applicant qualifies for legal assistance by an appointed attorney.

“Applicant” means a person requesting legal assistance by appointed counsel.

“Assets” means all resources or possessions of the applicant.

“Child” or “juvenile” means a person so defined in Iowa Code, chapter 232.

“Family” or “household” includes the applicant, applicant's spouse, including a common-law spouse and applicant's children living in the same residence.

“Governmental assistance program” means any public assistance program from which a person is receiving assistance.

“Income” means any money received from any source, including but not limited to remuneration for labor, products or services; money received from governmental assistance programs; tax refunds; prize winnings; pensions; investments; and money received from any other source.

“Liabilities” includes all living expenses, business or farming expenses, and fixed debts.

“Poverty income guidelines” means the annual poverty income guidelines established by the United States Department of Health and Human Services (DHHS).

493—13.2(815) Eligibility. The eligibility of any person for legal assistance by an appointed attorney shall be determined in accordance with Iowa Code section 815.9 as amended by 1999 Iowa Acts, Senate File 451, section 27, and with the guidelines set forth in these rules. Any person who is eligible for appointed counsel shall be required by the court to repay all or a part of the cost of the applicant's legal assistance.

493—13.3(815) Income guidelines. Annually, the state public defender shall provide information to the court showing the most recently revised poverty income guidelines.

493—13.4(815) Designation of eligibility reviewer. The chief judge of each judicial district may designate the person(s) or entity to evaluate the eligibility of persons for legal

assistance by an appointed attorney. However, the decision to appoint counsel remains with the court.

493—13.5(815) Application. Except as specifically provided in Iowa Code chapter 232, any person claiming to be entitled to legal representation by an appointed attorney shall have an indigency evaluation done before being provided legal representation. The applicant should provide information on an Affidavit of Financial Status/Application for Appointment of Counsel and Order form. This form will be prescribed by the state public defender, but any form containing substantially the same information will be accepted.

13.5(1) Affidavit. The applicant shall provide information required by the Affidavit of Financial Status under penalty of perjury.

13.5(2) Family. The applicant shall provide information that accurately represents the number of family members who are supported by or live with the applicant.

13.5(3) Income. The applicant shall provide information that accurately represents the total gross income received or reasonably anticipated to be received by the applicant.

13.5(4) Household income. The applicant shall provide information that accurately represents the gross income of the household in which the applicant lives. The income of a spouse is not included if the spouse is the alleged victim in the offense charged. The income of a child member of the household need not be included unless the legal representation is sought for the child in a delinquency proceeding.

13.5(5) Assets. The applicant shall provide information that accurately represents the total assets owned, in whole or in part, by the applicant. This includes the requirement to disclose interest in real property and tangible and intangible personal property.

13.5(6) Liabilities. The applicant shall provide information that accurately represents the total monthly debts and expenses for which the applicant is responsible. Child support and alimony payments should be included only when payments have been made in a timely manner.

13.5(7) Nature of proceedings. In criminal cases, the Affidavit of Financial Status shall contain a statement of the charge(s) against the defendant. In juvenile or civil cases, a statement of the nature of the proceedings shall be included.

13.5(8) Child applicant. If the applicant is a child, the child's parent, guardian, or custodian shall complete the Affidavit of Financial Status. The Affidavit of Financial Status shall include a statement of the income, assets and liabilities of the person or persons having a legal obligation to support the child.

13.5(9) Additional information. The applicant shall provide such additional information as may be required by the court to determine applicant's eligibility for appointed counsel. The applicant has a continuing duty to update information provided in the Affidavit of Financial Status to reflect changes in the information previously provided.

493—13.6(815) Evaluation of Affidavit of Financial Status. In determining whether counsel should be appointed to represent the applicant, the court should consider the following:

13.6(1) Family size. The total size of applicant's household shall be used to determine eligibility for appointed counsel.

13.6(2) Household income. The applicant's income, or the combined income of the applicant and the applicant's spouse, if living in the same residence, shall be used in determining an applicant's household income, subject to the following:

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a. The income of applicant's spouse shall not be considered if the spouse is the alleged victim of the offense charged.

b. The income of a child shall not be considered unless the child is requesting representation in a delinquency case, or unless the child is under a conservatorship or is the beneficiary of trust proceeds.

c. In juvenile proceedings, the income of both parents shall be considered to determine whether the child is entitled to appointed counsel. If a child's parents are divorced, the household income of each parent shall be considered separately.

13.6(3) DHHS poverty income guidelines. The applicant's family size and household income shall be compared to the DHHS poverty income guidelines to determine whether the applicant's household income is less than 125 percent of the poverty level; between 125 percent and 200 percent of the poverty level; or greater than 200 percent of the poverty level.

13.6(4) Income less than 125 percent of the poverty level. If the applicant's household income is less than 125 percent of the poverty level, the applicant is entitled to appointed counsel, unless the court determines that the applicant is able to pay for the cost of an attorney to represent the applicant on the pending charge. In determining whether the applicant is able to pay for the cost of an attorney, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

13.6(5) Income between 125 percent and 200 percent of the poverty level. If the applicant's household income is greater than 125 percent, but less than 200 percent of the poverty level, the applicant is not entitled to appointed counsel, unless the court determines and makes a written finding that not appointing counsel on the pending charge would cause the applicant substantial hardship. In determining whether substantial hardship would result, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

13.6(6) Income greater than 200 percent of the poverty level. If the applicant's household income is greater than 200 percent of the poverty level, the applicant is not entitled to appointed counsel, unless the applicant is charged with a felony and the court determines and makes a written finding that not appointing counsel on the pending charge would cause the applicant substantial hardship. In determining whether substantial hardship would result, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

13.6(7) Applicability to juvenile cases. In evaluating whether to appoint counsel for a parent in a juvenile proceeding, the court shall consider not only the applicant's income, but also the availability of any assets subject to execution and the nature of the proceeding in determining whether the parent is financially unable to employ counsel.

493—13.7(815) Payment procedures.

13.7(1) Payment to clerk. An applicant who has been determined to be eligible for appointed counsel shall pay any sums ordered by the court to the office of the clerk of the district court. This order for payment may be entered during or following the pendency of the action.

13.7(2) Wage assignments. If the applicant is employed, the applicant shall execute an assignment of applicant's wages. A portion of the applicant's wages, as determined by the court, shall be paid to the office of the clerk of district court for recovery of attorney fees. This assignment of wages may be entered during or following the pendency of the action.

These rules are intended to implement Iowa Code section 815.9 as amended by 1999 Iowa Acts, Senate File 451, section 27.

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