



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.

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Telephone: (515)242-5120**

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CITATION of Administrative Rules

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

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

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

Schedule for Rule Making 2000

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 24 '99	Jan. 12 '00	Feb. 1 '00	Feb. 16 '00	Feb. 18 '00	Mar. 8 '00	Apr. 12 '00	July 10 '00
Jan. 7	Jan. 26	Feb. 15	Mar. 1	Mar. 3	Mar. 22	Apr. 26	July 24
Jan. 21	Feb. 9	Feb. 29	Mar. 15	Mar. 17	Apr. 5	May 10	Aug. 7
Feb. 4	Feb. 23	Mar. 14	Mar. 29	Mar. 31	Apr. 19	May 24	Aug. 21
Feb. 18	Mar. 8	Mar. 28	Apr. 12	Apr. 14	May 3	June 7	Sept. 4
Mar. 3	Mar. 22	Apr. 11	Apr. 26	Apr. 28	May 17	June 21	Sept. 18
Mar. 17	Apr. 5	Apr. 25	May 10	May 12	May 31	July 5	Oct. 2
Mar. 31	Apr. 19	May 9	May 24	May 26	June 14	July 19	Oct. 16
Apr. 14	May 3	May 23	June 7	June 9	June 28	Aug. 2	Oct. 30
Apr. 28	May 17	June 6	June 21	June 23	July 12	Aug. 16	Nov. 13
May 12	May 31	June 20	July 5	July 7	July 26	Aug. 30	Nov. 27
May 26	June 14	July 4	July 19	July 21	Aug. 9	Sept. 13	Dec. 11
June 9	June 28	July 18	Aug. 2	Aug. 4	Aug. 23	Sept. 27	Dec. 25
June 23	July 12	Aug. 1	Aug. 16	Aug. 18	Sept. 6	Oct. 11	Jan. 8 '01
July 7	July 26	Aug. 15	Aug. 30	Sept. 1	Sept. 20	Oct. 25	Jan. 22 '01
July 21	Aug. 9	Aug. 29	Sept. 13	Sept. 15	Oct. 4	Nov. 8	Feb. 5 '01
Aug. 4	Aug. 23	Sept. 12	Sept. 27	Sept. 29	Oct. 18	Nov. 22	Feb. 19 '01
Aug. 18	Sept. 6	Sept. 26	Oct. 11	Oct. 13	Nov. 1	Dec. 6	Mar. 5 '01
Sept. 1	Sept. 20	Oct. 10	Oct. 25	Oct. 27	Nov. 15	Dec. 20	Mar. 19 '01
Sept. 15	Oct. 4	Oct. 24	Nov. 8	Nov. 10	Nov. 29	Jan. 3 '01	Apr. 2 '01
Sept. 29	Oct. 18	Nov. 7	Nov. 22	Nov. 24	Dec. 13	Jan. 17 '01	Apr. 16 '01
Oct. 13	Nov. 1	Nov. 21	Dec. 6	Dec. 8	Dec. 27	Jan. 31 '01	Apr. 30 '01
Oct. 27	Nov. 15	Dec. 5	Dec. 20	Dec. 22	Jan. 10 '01	Feb. 14 '01	May 14 '01
Nov. 10	Nov. 29	Dec. 19	Jan. 3 '01	Jan. 5 '01	Jan. 24 '01	Feb. 28 '01	May 28 '01
Nov. 24	Dec. 13	Jan. 2 '01	Jan. 17 '01	Jan. 19 '01	Feb. 7 '01	Mar. 14 '01	June 11 '01
Dec. 8	Dec. 27	Jan. 16 '01	Jan. 31 '01	Feb. 2 '01	Feb. 21 '01	Mar. 28 '01	June 25 '01
Dec. 22	Jan. 10 '01	Jan. 30 '01	Feb. 14 '01	Feb. 16 '01	Mar. 7 '01	Apr. 11 '01	July 9 '01
Jan. 5 '01	Jan. 24 '01	Feb. 13 '01	Feb. 28 '01	Mar. 2 '01	Mar. 21 '01	Apr. 25 '01	July 23 '01

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
14	Friday, December 24, 1999	January 12, 2000
15	Friday, January 7, 2000	January 26, 2000
16	Friday, January 21, 2000	February 9, 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.

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
DENTAL EXAMINERS BOARD[650]		
Practice of dental hygiene, 1.1 IAB 12/15/99 ARC 9552A	Conference Room—Suite D 400 SW 8th St. Des Moines, Iowa	January 5, 2000 1 p.m.
Dental hygienists—monitoring of nitrous oxide inhalation analgesia, 10.3(1), 29.6(4), 29.6(5) IAB 12/15/99 ARC 9553A	Conference Room—Suite D 400 SW 8th St. Des Moines, Iowa	January 5, 2000 1 p.m.
EDUCATION DEPARTMENT[281]		
Open enrollment, 17.2 to 17.4, 17.7, 17.8, 17.10(7) IAB 12/15/99 ARC 9531A	State Board Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	January 6, 2000 1 p.m.
Access to a school breakfast program, 69.11 to 69.16 IAB 12/15/99 ARC 9530A	State Board Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	January 11, 2000 1 p.m.
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Title V operating permit fee, 22.106(1) IAB 12/15/99 ARC 9536A	Conference Rooms 1 to 4 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	January 14, 2000 1 p.m.
Emission standards for contaminants, 23.1(4) IAB 12/15/99 ARC 9535A	Conference Rooms 1 to 4 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	January 14, 2000 10 a.m.
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Waivers or variances from rules, 1.11 IAB 12/1/99 ARC 9509A	Suite 250 100 E. Grand Des Moines, Iowa	December 22, 1999 9 a.m.
NATURAL RESOURCE COMMISSION[571]		
Horsepower limit on Lake Icaria, 40.20 IAB 12/1/99 ARC 9514A	West Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	December 22, 1999 9 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Waivers or variances from administrative rules, ch 18 IAB 12/1/99 ARC 9502A	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	December 22, 1999 10 to 11 a.m.
Speech pathology and audiology examiners, 300.6(2), 301.4 IAB 12/15/99 ARC 9547A	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	January 4, 2000 9 to 11 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Emergency medical services, ch 131; 132.1, 132.2(4), 132.3 to 132.6, 132.7(6), 132.8(1), 132.10(16), 132.11 to 132.13 IAB 12/1/99 ARC 9522A (ICN Network)	ICN Room—6th Floor Lucas State Office Bldg. Des Moines, Iowa	December 21, 1999 1 to 2 p.m.
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 21, 1999 1 to 2 p.m.
	National Guard Armory 1712 LaClark Rd. Carroll, Iowa	December 21, 1999 1 to 2 p.m.
	National Guard Armory 1160 10th St. SW Mason City, Iowa	December 21, 1999 1 to 2 p.m.
	National Guard Armory 195 Radford Rd. Dubuque, Iowa	December 21, 1999 1 to 2 p.m.
	National Guard Armory 501 Hwy. 1 South Washington, Iowa	December 21, 1999 1 to 2 p.m.

RACING AND GAMING COMMISSION[491]

Waivers or variances from rules; certified bleeder; evaluation of new gambling game, 1.8, 10.6(1), 26.18 IAB 12/15/99 ARC 9537A	Suite B 717 E. Court Ave. Des Moines, Iowa	January 4, 2000 9 a.m.
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SOIL CONSERVATION DIVISION[27]

Cost-sharing on grade stabilization structures; summer construction incentive dates, 10.41, 10.60(2) IAB 12/15/99 ARC 9528A	Conference Room—2nd Floor South Half Wallace State Office Bldg. Des Moines, Iowa	January 11, 2000 2 p.m.
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TRANSPORTATION DEPARTMENT[761]

General aviation airport infrastructure program, ch 717 IAB 12/15/99 ARC 9527A	Operations and Finance Division Conference Room—2nd Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	January 6, 2000 10 a.m. (If requested)
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WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

Requests for waiver of rules, 2.4 IAB 12/15/99 ARC 9534A	Stanley Conference Room—1st Floor 1000 E. Grand Ave. Des Moines, Iowa	January 4, 2000 10 a.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

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

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

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

The following list will be updated as changes occur:

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AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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 159.5(11), 159.6(2), 163.1(1), and 166D.1, the Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

These proposed amendments are intended to require testing of all swine premises in the Stage II area during the first eight months of 2000, require testing of off-site nursery units in the Stage II area as a condition of animals' being allowed to move off site, require all cull breeding swine and finisher swine from infected herds to be sold direct to slaughter under restricted movement, require permitting of movements other than to slaughter in infected herds, and require whole herd test and removal of positive animals in infected breeding herds.

A general waiver provision which is applicable to Items 4 and 5 is already included in the rules. A waiver does not exist for the other items as the Department feels that a waiver would hamper the progress toward eradication of pseudorabies.

Any interested person may make written suggestions or comments on the following proposed amendments prior to 4:30 p.m. on January 4, 2000. Such written material should be directed to Dr. John Schiltz, State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319, by sending an E-mail to John.Schiltz@idals.state.ia.us, or by facsimile to (515)281-4282.

These proposed amendments are intended to implement Iowa Code chapters 163 and 166D.

The following amendments are proposed.

ITEM 1. Amend rule 21—64.153(166D) by adopting the following **new** subrule:

64.153(6) All premises containing swine which are located in the Stage II area of Iowa must have a monitoring test for the premises conducted between January 1, 2000, and August 31, 2000.

ITEM 2. Amend subrule **64.156(2)** by adopting the following **new** paragraph:

f. Nursery units located in the Stage II area of Iowa and not in the vicinity of the breeding herd are required to maintain a monitored status on the nursery unit in order for the swine to be eligible to move to a finishing premises, irrespective of whether there is a change of ownership. These testing requirements also apply to swine eligible for relocation movement.

ITEM 3. Amend subparagraph **64.157(2)"c"(5)** as follows:

(5) Feeder pig movement or relocation from the premises of origin must be detailed in writing in the herd cleanup plan. If this movement, or relocation, involves more than one dis-

trict veterinarian's area, all participants must concur with the cleanup plan. *Effective March 15, 2000, all movements from infected premises, except to slaughter, shall be accompanied by an Iowa Restricted Movement Permit. "Movement" in this paragraph includes movement to a premises in the production system not in the vicinity of the current location, irrespective of whether there is a change of ownership;*

ITEM 4. Amend subparagraph **64.157(2)"c"(6)** as follows:

(6) Culled breeding swine must move directly to slaughter. *Effective March 15, 2000, all culled breeding swine and finisher swine from infected herds must move directly to a recognized slaughter establishment under restricted movement and accompanied by a VS Form 1-27 (Permit for Restricted Movement to Slaughter) and transported in a sealed vehicle. The vehicle shall be sealed in accordance with procedures established in paragraph 64.154(2)"c."* No swine moved from infected herds may be represented as breeding swine;

ITEM 5. Amend subparagraph **64.157(2)"c"(7)** as follows:

(7) ~~All Effective March 15, 2000, all herd plans for infected herds identified prior to August 1, 1999, shall be designed to complete herd cleanup before January 1, 2000. Herds identified as infected on or after August 1, 1999, with breeding swine, shall implement a test and removal herd cleanup plan which allows for the phased test and removal of bred animals for one farrowing cycle, followed by a whole herd test and removal plan. The herd plan shall include the following:~~

1. All breeding swine, including boars, shall be tested within 14 days of the herd's being classified as infected. *If the herd was classified as infected prior to March 15, 2000, all positive animals must be removed direct to slaughter in accordance with 64.157(2)"c"(6) by April 1, 2000.* Testing shall also include progeny, if applicable.

2. All breeding swine must be identified by an approved ear tag, or other approved identification method, at the time of blood collection.

3. All seropositive, ~~unbred~~ breeding swine must be removed from the herd, direct to slaughter *in accordance with 64.157(2)"c"(6), within 15 days after blood collection. All seropositive, bred swine must be removed from the herd, direct to slaughter, within 15 days of weaning. All replacement breeding stock must be vaccinated prior to addition into the herd and must be retested 60 days after entry into the herd.*

4. ~~A whole herd test shall be required within 30 days after the removal of the last known positive animal. Any additional seropositive animals must be removed, direct to slaughter, within 15 days of the collection date. Whole herd retests retesting shall be required at 30-day 30 days after removal of the positive animals intervals, with removal of positive animals within 15 days of the test, until it has been determined that the herd is noninfected.~~

5. ~~Seropositive swine must be removed from the herd direct to a buying station or to a slaughtering establishment.~~

~~All swine movement from infected herds must be directly to slaughter according to 64.154(2)"c," unless exempted by a "feeder pig cooperator" plan.~~

When a herd is designated a noninfected herd, or has been depopulated, by procedures detailed in Iowa Code section 166D.9, the plan is completed.

ARC 9552A

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners gives Notice of Intended Action to amend Chapter 1, "Definitions," Iowa Administrative Code.

The Board of Dental Examiners ratified a recommendation by the Dental Hygiene Committee of the Board of Dental Examiners to proceed with rule making, which affirmatively allows dental hygienists to perform the activities described in the rules. However, the rules do not preclude the performance of such activities by other dental auxiliary.

Any interested person may make written suggestions or comments on these proposed amendments on or before January 4, 2000. Such written comments should be directed to Constance L. Price, Executive Director, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687.

There will be a public hearing at 1 p.m. on Wednesday, January 5, 2000, in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The proposed amendments are intended to implement Iowa Code section 153.15.

The following amendments are proposed.

Amend 650—1.1(153), definition of "Practice of dental hygiene," as follows:

"Practice of dental hygiene" as defined in Iowa Code section 153.15 includes assisting the dental profession in providing oral health care by performing the following services; means the performance of the following educational, therapeutic, preventive and diagnostic dental hygiene procedures.

1. Educational: Issuing written and oral instructions for optimal oral health, including the teaching of proper brushing techniques and interdental stimulation; assess the need for, plan, implement and evaluate oral health education programs for individual patients and community groups. Assessing the need for, planning, implementing, and evaluating oral health education programs for individual patients and community groups; conducting workshops and in-service training sessions on dental health for nurses, school personnel, institutional staff, community groups and other agencies providing consultation and technical assistance for promotional, preventive and educational services.

2. Therapeutic: Perform oral prophylaxis including removing supragingival and subgingival deposits and polishing restorations and removable prostheses; application or administration of medicaments prescribed by a licensed dentist; remove excess restorative materials, recognize and assist in management of medical and dental emergencies. Identifying and evaluating factors which indicate the need for and performing oral prophylaxis, which includes supra-gingival and subgingival debridement of plaque, and detection and removal of calculus with instruments or any other

devices; periodontal scaling and root planing; removing and polishing hardened excess restorative material; administering local anesthesia with the proper permit; applying or administering medicaments prescribed by a dentist, including chemotherapeutic agents and medicaments or therapies for the treatment of periodontal disease and caries.

3. Preventive: The topical application of medicaments and other methods for caries control. Applying pit and fissure sealants and other medications or methods for caries and periodontal disease control; organizing and administering fluoride rinse or sealant programs.

4. Diagnostic: Provide diagnostic aids including taking and recording medical and dental histories; making impressions for diagnostic models; exposing radiographs; making occlusal registrations for mounting study casts; testing pulp vitality; recording vital signs; making and analyzing dietary surveys; and indexing dental and periodontal disease, and any other abnormal conditions; perform oral inspection. Reviewing medical and dental health histories; performing oral inspection; indexing dental and periodontal disease; making occlusal registrations for mounting study casts; testing pulp vitality; analyzing dietary surveys.

ARC 9553A

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 10, "General," and Chapter 29, "Deep Sedation/General Anesthesia, Conscious Sedation and Nitrous Oxide Inhalation Analgesia," Iowa Administrative Code.

The Board proposes to amend subrule 10.3(1) and to rescind subrules 29.6(4) and 29.6(5) relating to dental hygienists and the monitoring of nitrous oxide inhalation analgesia. These subrules were considered by the members of the Administrative Rules Review Committee on September 15, 1999, and the Committee voted to impose a session delay on ARC 9274A. The Board does not propose rescinding subrule 29.6(6), which was also part of ARC 9274A.

Any interested person may make written suggestions or comments on these proposed amendments on or before January 4, 2000. Such written comments should be directed to Constance L. Price, Executive Director, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687.

There will be a public hearing on January 5, 2000, at 1 p.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The proposed amendments are intended to implement Iowa Code sections 153.33 and 153.34.

The following amendments are proposed.

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

10.3(1) The monitoring of nitrous oxide inhalation analgesia pursuant to 650—29.6(153) and the administration of local anesthesia shall only be provided under the direct su-

DENTAL EXAMINERS BOARD[650](cont'd)

pervision of a dentist. Direct supervision of the dental hygienist requires that the supervising dentist be present in the treatment facility, but it is not required that the dentist be physically present in the treatment room.

ITEM 2. Rescind and reserve subrules 29.6(4) and 29.6(5).

ARC 9531A

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 17, "Open Enrollment," Iowa Administrative Code.

The proposed amendments eliminate the "good cause" deadline of June 30 from the rules and create uniform language between the rules and the Iowa Code.

These rules reflect statutory provisions. Therefore, a waiver of this rule or any portion of this rule would conflict with state law.

Any interested person may submit written comments on or before January 6, 2000, by addressing them to Jim Tyson, Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146 or by fax (515)281-7700. Comments should be restricted to the subject of the proposed amendments.

There will be a public hearing on January 6, 2000, beginning at 1 p.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. Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Education and advise of the specific needs prior to January 3, 2000.

These proposed amendments are intended to implement Iowa Code section 282.18.

The following amendments are proposed.

ITEM 1. Amend rule 281—17.2(282), definitions of "good cause" and "timely filed application," as follows:

"Good cause" is a condition that occurs after the open enrollment filing deadline of ~~October 30~~ related to change in the status of a pupil's residence or change in the status of a pupil's resident district that qualifies the parent/guardian to file a request for open enrollment which shall be considered in the same manner as if the deadline had been met.

"Timely filed application" includes an open enrollment request postmarked or hand-delivered on or before January 1, an open enrollment request for "good cause" as defined in Iowa Code section 282.18(18) ~~postmarked or hand-delivered on or before June 30, and an open enrollment request filed for a continuation of an educational program postmarked or hand-delivered on or before the third Thursday of the following September, and an open enrollment request for an entering kindergarten student postmarked or hand-delivered on or before June 30.~~

ITEM 2. Amend subrule 17.3(1) as follows:

~~17.3(1) Parent/guardian responsibilities. Between July 1 and Before January 1 of the school year preceding the school year for which open enrollment is requested, a parent/guardian shall formally notify the district of residence of the request for open enrollment. The request for open enrollment shall be made on forms provided by the department of education. The parent/guardian is required to indicate on the form if the request is for a pupil requiring special education, as provided by Iowa Code chapter 256B. The forms for open enrollment application are available from each public school district, area education agency, and the state department of education.~~

ITEM 3. Amend subrule 17.3(2), second unnumbered paragraph, as follows:

As an alternative procedure, either the resident board or the receiving board may by policy authorize the superintendent to approve, but not deny, timely filed applications. The board shall have the discretion to determine the scope of the authorization. The authorization may be for regular applications filed by January 1, good cause applications ~~filed by June 30~~, kindergarten applications ~~filed by June 30~~, and continuation applications filed by the third Thursday of the following September, or any combination that the board determines. The same timelines for approval, forwarding, and notification shall apply.

ITEM 4. Amend rule 281—17.4(282), introductory paragraph, as follows:

~~281—17.4(282) Filing after the January 1 deadline—good cause. A parent/guardian may apply for open enrollment after the filing deadline of January 1 and until June 30 of the school year preceding the school year for which open enrollment is requested if good cause exists for the failure to meet the deadline. Good cause is a change in the status of the pupil's residence or a change in the status of the pupil's resident district taking place after January 1, or the closing or loss of accreditation of a nonpublic school of attendance after January 1 resulting in the desire of the parent/guardian to obtain open enrollment for the following school year. If good cause can be established, the parent/guardian shall be permitted to apply for open enrollment in the same manner as if the deadline had been met.~~

ITEM 5. Amend subrule 17.4(1), paragraph "a," as follows:

17.4(1) Good cause related to change in the pupil's residence shall include:

a. A change in the family residence due to the family's moving from the district of residence anytime ~~from~~ after January 1 ~~through June 30~~ of the school year preceding the school year for which open enrollment is requested.

ITEM 6. Rescind subparagraph 17.4(2)"a"(4).

ITEM 7. Amend rule 281—17.7(282), introductory paragraph, as follows:

~~281—17.7(282) Open enrollment for kindergarten. While the regular time frame in requesting open enrollment is that an application should be made no later than January 1 of the school year preceding the school year for which the enrollment is requested, a parent/guardian requesting to enroll a kindergarten pupil in a district other than the district of residence may make such application through June 30 the third Thursday of September of that school year. In considering an application for a kindergarten pupil the resident and the receiving district are not precluded from administering board-adopted policies related to enrollment loss caps, insufficient~~

EDUCATION DEPARTMENT[281](cont'd)

classroom space or the requirements of a desegregation plan or order.

ARC 9530A

ITEM 8. Amend subrule 17.8(6) as follows:

17.8(6) Change in residence when participating in open enrollment. If the parent/guardian of a pupil who is participating in open enrollment changes the school district of residence during the term of the agreement, the parent/guardian shall have the option to leave the pupil in the receiving district under open enrollment, *open enroll to another school district*, or to enroll the pupil in the new district of residence, thus terminating the open enrollment agreement. If the choice is to leave the pupil under open enrollment or *open enroll to another school district*, the original district of residence shall be responsible for payment of the cost per pupil plus any applicable weightings or special education costs for the balance of the school year, if any, in which the move took place, providing the move took place after the third Friday in September. The new district of residence shall be responsible for these payments during succeeding years of the agreement.

If the move takes place between the end of one school year and the third Friday in September of the following school year, the new district of residence shall be responsible for that year's payment as well as succeeding years.

If the pupil is to remain under open enrollment or *open enroll to another school district*, the parent/guardian shall write a letter, delivered by mail or by hand prior to the third Thursday of the next September, to notify the original resident district, the new resident district, and the receiving district of this decision.

Timely requests under this rule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2).

ITEM 9. Amend subrule 17.8(7) as follows:

17.8(7) Change in residence when not participating in open enrollment. If a parent/guardian moves out of the school district of residence, and the pupil is not currently under open enrollment, the parent/guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the education program or *open enroll to another school district*. The parent/guardian exercising this option shall file an open enrollment request form with the new district of residence for processing and record purposes. This request shall be made no later than the third Thursday of the following September. Timely requests under this subrule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2). If the move is after the third Friday in September, the new district of residence is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment transfer.

ITEM 10. Amend subrule 17.10(7) as follows:

17.10(7) Late transfers. The resident district and the receiving district boards by mutual agreement may effectuate the transfer of an open enrollment pupil at any time following receipt of a petition for transfer which is approved by the two boards. *A transfer due to good cause is a late transfer*. If ~~this~~ any transfer is made after the third Friday in September, the resident district is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment transfer.

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 69, "Waiver of School Breakfast Program Requirement," Iowa Administrative Code.

The new rules reflect the statutory changes made to the school breakfast program by 1999 Iowa Acts, chapter 147. These proposed rules are intended to become effective July 1, 2000.

Currently, a school district must provide a breakfast program at each school building within the district unless granted a waiver by the State Board of Education. Beginning July 1, 2000, a school district will be allowed to provide a school breakfast program at an alternative school building without applying for a waiver if the alternative site meets certain criteria. The local school board must adopt a plan to operate a school breakfast program at another attendance center within the school district. The school board must certify annually to the Department of Education that the plan meets certain criteria as identified in 1999 Iowa Acts, chapter 147. A waiver provision is not included as the rule reflects the new statute.

Any interested party may make written or oral comments on the proposed rules on or before January 11, 2000. Comments should be directed to Julia Thorius, Chief, Bureau of Food and Nutrition, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319; telephone (515)281-5356; fax (515)281-6548.

A public hearing will be held on January 11, 2000, at 1 p.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa.

These rules are intended to implement 1999 Iowa Acts, chapter 147.

The following amendments are proposed.

ITEM 1. Amend 281—Chapter 69 by reserving rules **69.9** and **69.10** and designating rules **281—69.1(283A)** to **281—69.10** as Division I.

ITEM 2. Further amend 281—Chapter 69 by adopting the following new rules:

DIVISION II

ACCESS TO A SCHOOL BREAKFAST PROGRAM

(Effective July 1, 2000)

281—69.11(78GA,ch147) General statement. Effective July 1, 2000, a school district shall operate or provide for the operation of a school breakfast program at all attendance centers in the district or provide access to a school breakfast program at an alternative site if the district meets the criteria established in 69.14(78GA,ch147).

281—69.12(78GA,ch147) Definitions. The following definitions are used in these rules:

EDUCATION DEPARTMENT[281](cont'd)

"Attendance center" means a public school of high school grade or under.

"Department" means the state department of education.

"Nutritionally adequate breakfast" means a meal which meets the minimum criteria for eligibility for federal reimbursement under the federal National School Lunch Act of 1946 and the federal Child Nutrition Act of 1966.

"School board" means a board of school directors regularly elected by the registered voters of a school corporation or district of the state of Iowa.

"School breakfast program" means a program under which breakfasts are served by any public school in the state of Iowa on a nonprofit basis to children in attendance, including any such program under which a school receives assistance out of funds appropriated by the Congress of the United States.

281—69.13(78GA,ch147) Institutions impacted. Iowa Code section 283A.2 as amended by 1999 Iowa Acts, chapter 147, states that a school district shall operate or provide for the operation of school breakfast programs serving nutritionally adequate breakfasts at all attendance centers in the district. However, a school district that meets the requirements of rules 69.14(78GA,ch147) through 69.16(78GA, ch147), may provide access to a school breakfast program at an alternative site to students who wish to participate in a school breakfast program.

281—69.14(78GA,ch147) Criteria for a plan to provide safe, reasonable student access to a school breakfast program. A school board that wishes to provide safe, reasonable student access to a school breakfast program, rather than operate or provide for the operation of a school breakfast program at a specific attendance center within the district shall develop an alternative site plan to operate the school breakfast program at another attendance center within the school district and shall annually certify to the department that the plan meets the following criteria:

1. Provides safe travel routes to and from the alternative breakfast site for all eligible students.
2. Minimizes student travel time between the student's attendance center and the alternative breakfast site.
3. Provides for a reasonable relationship between the time breakfast is offered, the time the student is required to arrive at the attendance center and alternative site, and the daily school start time.
4. Provides an alternative breakfast site facility adequate for the number of students participating in the breakfast program.

281—69.15(78GA,ch147) Notification requirements. The school board that wishes to provide access to a school breakfast program in accordance with this provision shall notify the parent, guardian, or legal or actual custodian of a child enrolled in the school district of the school district's intention to develop and implement a plan to provide school breakfast programs only in certain attendance centers. At any time in which the school district proposes to make substantive changes to a plan certified with the department, the notification requirements of this rule shall apply.

281—69.16(78GA,ch147) Certification requirements. The school board shall annually certify to the department that the plan meets the criteria outlined in rule 69.14(78GA, ch147). The certification shall be submitted to the department of education, on forms provided, not later than May 1 each year for the school year beginning July 1. Any changes

to the plan requiring a new notification must be certified with the department within 30 days of adoption of the new plan.

These rules are intended to implement 1999 Iowa Acts, chapter 147.

ARC 9536A

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Notice of Intended Action

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

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

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

The purpose of this rule making is to change the maximum annual Title V Operating Permit fee that the Department can charge from the current fixed dollar amount of \$24 to \$29.

The Commission will continue to be asked annually to approve the Title V fee that is charged to permit applicants as justified by the Air Quality Bureau's projected budget and the reported tonnage of air contaminant emissions.

Due to the projected need for additional revenue to support the operating permit program and the protracted time frame necessary for any rule making, the proposal to raise the fee cap to \$29 will provide the Department and the Commission with additional flexibility for setting the annual fee to be charged permit applicants without requiring specific rule making.

Any person may make written suggestions or comments on the proposed amendment on or before January 14, 2000. Written comments should be directed to Doug Campbell, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, fax (515) 242-5094.

A public hearing will be held at 1 p.m. on January 14, 2000, in Conference Rooms 1 to 4 in the Air Quality Bureau's office at 7900 Hickman Road, Urbandale, Iowa, at which time comments may be submitted orally or in writing.

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

This amendment may impact small business.

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

The following amendment is proposed.

Amend subrule 22.106(1) as follows:

22.106(1) Fee established. Any person required to obtain a Title V permit shall pay an annual fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994. Beginning July 1, 1996, Title V operating permit fees will be paid on July 1 of each year. The fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

The department and the commission will review the fee structure on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the programs required by the Act. The department shall submit the proposed budget for the following fiscal year to the commission no later than the March meeting. The commission shall set the fee based on the reasonable cost to run the program and the proposed budget no later than the May commission meeting of each year. The commission shall provide an opportunity for public comment prior to setting the fee. The commission shall not set the fee higher than \$24 \$29 per ton without adopting the change pursuant to formal rule making.

ARC 9535A

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 23, "Emission Standards for Contaminants," Iowa Administrative Code.

The purpose of this rule making is to adopt by reference 13 national emission standards for hazardous air pollutants (NESHAPs) and four generic national standards for emission control that were promulgated by the Environmental Protection Agency.

This rule making updates the reference to 40 CFR Part 63 through June 29, 1999, and amends the list of federal regulations excepted from adoption by reference. Part 63 was amended through this date by the promulgation of 13 national emission standards for hazardous air pollutants and four generic standards for emission control.

This rule making adopts by reference new NESHAPs that were promulgated for: Portland cement manufacturing; phosphoric acid manufacturing; phosphate fertilizer production; wool fiberglass manufacturing; generic maximum achievable control technology; oil and gas production; natural gas transmission and storage; pesticide active ingredients production; ferroalloys production: ferromanganese and silicomanganese; polyether polyols production; steel pickling—HCL process facilities and hydrochloric acid regeneration plants; mineral wool production; and primary lead smelting. New generic emission control standards that will be referenced in future rule makings are also adopted by reference. The four generic emission control standards relate to: closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process; equipment leaks—control level 1; equipment leaks—control level 2; and storage vessels (tanks)—control level 2.

Any person may make written suggestions or comments on the proposed amendments on or before January 14, 2000. Written comments should be directed to Doug Campbell, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515) 242-5094.

A public hearing will be held at the conclusion of the comment period on January 14, 2000, at 10 a.m. in Conference Rooms 1 to 4 in the Air Quality Bureau's office at 7900 Hickman Road, Urbandale, Iowa, at which time comments may be submitted orally or in writing.

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

These amendments may impact small business.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

Amend subrule 23.1(4) as follows:

23.1(4) Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended through ~~December 28, 1998~~ June 29, 1999, are adopted by reference, except 40 CFR §§63.6(g) and (h)(9), 63.7(c)(2)(i), 63.7(e)(2)(ii) and (f), 63.8(f), 63.10(f), 63.12, 63.14, 63.15, 63.40(a), 63.42(a), (b), 63.43(c) and (f) to (m), 63.177, 63.560(b) and (e)(2) and (3), and 63.562(c) and (d), 63.772, 63.777, 63.1157, 63.1158, 63.1161(d)(1), 63.1162(a)(2) to (5), 63.1162(b)(1) to (3), 63.1165, 63.1282, and 63.1287 and shall apply to the following affected facilities. The corresponding 40 CFR Part 63 Subpart designation is in parentheses. 40 CFR Part 63 Subpart B incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, "hazardous air pollutant" has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an "area source" means any stationary source of hazardous air pollutants that is not a major stationary source as defined in this paragraph. Paragraph 23.1(4)"a," general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

a. to y. No change.

z. to ab. Reserved.

aa. Emission standards for hazardous air pollutants for phosphoric acid manufacturing. These standards apply to all new and existing major sources of phosphoric acid manufacturing. Affected processes include, but are not limited to, wet process phosphoric acid process lines, superphosphoric acid process lines, phosphate rock dryers, phosphate rock calciners, and purified phosphoric acid process lines. (Subpart AA)

ab. Emission standards for hazardous air pollutants for phosphate fertilizers production. These standards apply to all new and existing major sources of phosphate fertilizer production plants. Affected processes include, but are not

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

limited to, diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings. (Subpart BB)

ac. to ag. No change.

ah. ~~Reserved~~ Emission standards for hazardous air pollutants for oil and natural gas production. These standards apply to all new and existing major sources of oil and natural gas production. Affected sources include, but are not limited to, processing of liquid or gaseous hydrocarbons, such as ethane, propane, butane, pentane, natural gas, and condensate extracted from field natural gas. (Subpart HH)

ai. to ak. No change.

al. to bf. ar. Reserved.

as. Emission standards for closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process. These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4) "a," general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart SS)

at. Emission standards for equipment leaks—control level 1. These provisions apply to the control of air emissions from equipment leaks for which another paragraph under this rule references the use of this paragraph for such emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4) "a," general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart TT)

au. Emission standards for equipment leaks—control level 2 standards. These provisions apply to the control of air emissions from equipment leaks for which another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4) "a," general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart UU)

av. Reserved.

aw. Emission standards for storage vessels (tanks)—control level 2. These provisions apply to the control of air emissions from storage vessels for which another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards for storage vessels are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4) "a," general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart WW)

ax. Reserved.

ay. Emission standards for hazardous air pollutants: generic maximum achievable control technology (Generic MACT). These standards apply to new and existing major sources of acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production and polycarbonate (PC) production. Affected processes

include, but are not limited to, producers of homopolymers and copolymers of alternating oxymethylene units, acrylic fiber, modacrylic fiber synthetics composed of acrylonitrile (AN) units, hydrogen fluoride and polycarbonate. (Subpart YY)

az. to bb. Reserved.

bc. Emission standards for hazardous air pollutants for steel pickling—HCL process facilities and hydrochloric acid regeneration plants. Unless exempted, these standards apply to all new and existing major sources of hydrochloric acid process steel pickling facilities and hydrochloric acid regeneration plants. Affected processes include, but are not limited to, equipment and tanks configured for the pickling process, including the immersion, drain and rinse tanks and hydrochloric acid regeneration plants. (Subpart CCC)

bd. Emission standards for hazardous air pollutants for mineral wool production. These standards apply to all new and existing major sources of mineral wool production. Affected processes include, but are not limited to, cupolas and curing ovens. (Subpart DDD)

be. and bf. Reserved.

bg. No change.

bh. ~~Reserved~~ Emission standards for hazardous air pollutants for natural gas transmission and storage. These standards apply to all new and existing major sources of natural gas transmission and storage. Natural gas transmission and storage facilities are those that transport or store natural gas prior to its entering the pipeline to a local distribution company. Affected sources include, but are not limited to, mains, valves, meters, boosters, regulators, storage vessels, dehydrators, compressors and delivery systems. (Subpart HHH)

bi. and bj. No change.

bk. Reserved.

bl. Emission standards for hazardous air pollutants for Portland cement manufacturing operations. These standards apply to all new and existing major and area sources of Portland cement manufacturing unless exempted. Cement kiln dust (CKD) storage facilities, including CKD piles and landfills, are excluded from this standard. Affected processes include, but are not limited to, all cement kilns and in-line kiln/raw mills, unless they burn hazardous waste. (Subpart LLL)

bm. Emission standards for hazardous air pollutants for pesticide active ingredient production. These standards apply to all new and existing major sources of pesticide active ingredient production that manufacture organic pesticide active ingredients (PAI), including herbicides, insecticides and fungicides. Affected processes include, but are not limited to, processing equipment, connected piping and ducts, associated storage vessels, pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves and connectors. Exempted sources include research and development facilities, storage vessels already subject to another 40 CFR Part 63 NESHAP, production of ethylene, storm water from segregated sewers, water from fire-fighting and deluge systems (including testing of such systems) and various spills. (Subpart MMM)

bn. Emission standards for hazardous air pollutants for wool fiberglass manufacturing. These standards apply to all new and existing major sources of wool fiberglass manufacturing. Affected processes include, but are not limited to, all glass-melting furnaces, rotary spin (RS) manufacturing lines that produce bonded building insulation, flame attenuation (FA) manufacturing lines producing bonded pipe insulation

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

and new FA manufacturing lines producing bonded heavy-density products. (Subpart NNN)

bo. Reserved.

bp. Emission standards for hazardous air pollutants for polyether polyols production. These standards apply to all new and existing major sources of polyether polyols. Polyether polyols are compounds formed through polymerization of ethylene oxide, propylene oxide or other cyclic ethers with compounds having one or more reactive hydrogens to form polyethers. Affected processes include, but are not limited to, storage vessels, process vents, heat exchange systems, equipment leaks and wastewater operations. (Subpart PPP)

bq. to bs. Reserved.

bt. Emission standards for hazardous air pollutants for primary lead smelting. These standards apply to all new and existing major sources of primary lead smelting. Affected processes include, but are not limited to, sintering machines, blast furnaces, dross furnaces and process fugitive sources. (Subpart TTT)

bu. to bw. Reserved.

bx. Emission standards for hazardous air pollutants for ferroalloys production: ferromanganese and silicomanganese. These standards apply to all new and existing major sources of ferroalloys production of ferromanganese and silicomanganese. Affected processes include, but are not limited to, submerged arc furnaces, metal oxygen refining (MOR) processes, crushing and screening operations, and fugitive dust sources. (Subpart XXX)

ARC 9526A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 514I.5(8), the Department of Human Services proposes to amend Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," appearing in the Iowa Administrative Code.

These amendments change the way in which income is considered for self-employed persons applying for the HAWK-I program by allowing a deduction for the depreciation of capital assets as a cost of doing business and provide that no cost sharing shall be imposed on eligible American Indian or Alaskan Native children regardless of family income. In addition, these amendments provide that no copayment for an emergency room visit shall be imposed when family income is less than 150 percent of the federal poverty level for a family of the same size or when the child is an eligible American Indian or Alaskan Native.

Public support has been expressed for allowing the deduction for the depreciation of capital assets as it will help farmers who are experiencing financial problems due to the current farm crisis.

In the first six months of the HAWK-I program, approximately 10 percent of the children applying for the program were denied coverage due to excess income. It is estimated that about 20 percent of those children would be eligible for

the program with a deduction for depreciation of assets applied to self-employment income. This projects to 372 children annually, for a total state and federal cost of approximately \$436,000.

The Department received instructions from the Health Care Financing Administration on October 6, 1999, that no cost sharing shall be imposed on eligible American Indian or Alaskan Native children regardless of family income. States that impose cost sharing on these children are not in compliance with Section 2102(b)(3) of the Balanced Budget Act of 1997 (Public Law 105-33).

These amendments do not provide for waivers in specified situations because these amendments confer a client benefit. It is not anticipated there will be requests for waivers of these amendments.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before January 5, 2000.

These amendments are intended to implement Iowa Code chapter 514I.

The following amendments are proposed.

ITEM 1. Amend subrule 86.2(2), paragraph "a," subparagraph (1), numbered paragraph "2," as follows:

2. Earned income from self-employment. Earned income from self-employment means the net profit determined by comparing gross income with the allowable costs of producing the income. The net profit from self-employment income shall be determined according to the provisions of 441—paragraph subparagraphs 75.57(2)"f,"(1) through (7). Additionally, the cost of depreciation of capital assets identified for income tax purposes shall be allowed as a cost of doing business for self-employed persons. A person is considered self-employed when the person:

- Is not required to report to the office regularly except for specific purposes such as sales training meetings, administrative meetings, or evaluation sessions; or
- Establishes the person's own working hours, territory, and methods of work; or
- Files quarterly reports of earnings, withholding payments, and FICA payments to the Internal Revenue Service.

ITEM 2. Amend subrules 86.8(1) and 86.8(7) as follows:

86.8(1) Income limit. No premium shall be assessed when countable income is less than 150 percent of the federal poverty level for a family of the same size. When countable income is equal to or greater than 150 percent of the federal poverty level for a family of the same size, participation in the program is contingent upon the payment of a monthly premium.

EXCEPTION: No cost sharing shall be imposed on eligible American Indian or Alaskan Native children regardless of family income.

86.8(7) Copayment. There shall be a \$25 copayment for each emergency room visit if the child's medical condition does not meet the definition of emergency medical condition.

EXCEPTION: A copayment shall not be imposed when family income is less than 150 percent of the federal poverty level for a family of the same size or when the child is an eligible American Indian or Alaskan Native.

ARC 9529A

LANDSCAPE ARCHITECTURAL
EXAMINING BOARD[193D]

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 544B.5, the Landscape Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 3, "Continuing Education," Iowa Administrative Code.

The amendments reflect changes to the continuing education requirements which specify that hours be earned in public protection subjects. The board feels these changes will safeguard the health, safety and welfare of the public.

Waivers from provisions of these rules may be sought pursuant to 193D—Chapter 7.

Interested parties may submit written comment on these proposed amendments not later than January 4, 2000, to Glenda Loving, Landscape Architectural Examining Board, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

These amendments are intended to implement Iowa Code section 544B.8.

The following amendments are proposed.

ITEM 1. Amend rule 193D—3.1(544B,17A) as follows:

193D—3.1(544B,17A) Definitions. As used in these rules, the following ~~definition~~ definitions shall apply.

"Hours" of continuing education means a contact hour *spent in either structured educational activities or individually planned activities intended to increase the landscape architect's knowledge and competence in public protection subjects and related practice subjects.* ~~in actual attendance at and completion of an approved continuing education activity.~~ Contact hour is defined as the typical 50-minute classroom instructional session or its equivalent. One Continuing Education Unit (C.E.U.) offered by an accredited sponsor shall be considered equivalent to ten hours of continuing education.

Further amend 193D—3.1(544B,17A) by adding the following **new** definitions in alphabetical order:

"Individually planned education" means educational activities in which the landscape architect personally addresses public protection subjects or related practice subjects which are not systematically presented by others, including reading or writing articles on such subjects, studying or researching landscape architecture, designs or building types, rendering services to the public, advancing the profession's and public's understanding of the practice of landscape architecture and the like.

"Public protection subjects" means technical and professional subjects which the board deems appropriate to safeguard directly the public's health, safety, and welfare. Such subjects include environmental or site design, land use analyses, landscape architecture programming, grading and drainage, storm water management, erosion control, site and soils analyses, accessibility, building codes, evaluation and selection of products and materials, construction methods, contract documentation, construction administration and the like.

"Related practice subjects" means technical and professional subjects other than public protection subjects which the board deems appropriate to safeguard indirectly the public's health, safety, and welfare. Such subjects include cost analysis, construction contract negotiation, construction phase office procedures, project management, review of state registration laws including rules of professional conduct.

"Structured educational activities" means educational activities in which the teaching methodology consists primarily of systematic presentation of public protection subjects or related practice subjects by qualified individuals or organizations including monographs, courses of study taught in person or by correspondence, organized lectures, presentations or workshops and other means through which identifiable technical and professional subjects are presented in planned manner.

ITEM 2. Amend subrule 3.2(1) as follows:

3.2(1) Hours required. Each registrant shall complete during each two-year registration term a minimum of 36 hours of continuing education approved by the board. Compliance with the requirement of continuing education is a prerequisite for registration renewal. ~~No continuing education is required for first renewal if registration granted by examination.~~

ITEM 3. Rescind subrules 3.2(2) to 3.2(4) and adopt the following **new** subrules in lieu thereof:

3.2(2) Within any 24-month biennial renewal period during which 36 contact hours must be acquired, at least 12 contact hours shall be in public protection subjects acquired in structured educational activities (all 36 hours may be acquired in public protection subjects and activities). Twenty-four hours may be in related practice subjects acquired through either individually planned activities or structured educational activities. Hours acquired in any 24-month biennial renewal period may not be carried over to a subsequent 24-month renewal period. Continuing education hours need not be acquired in this state, but may be acquired at any location.

3.2(3) A landscape architect who holds registration in Iowa for less than 12 months from the date of initial registration, shall not be required to report continuing education at the first registration renewal. A landscape architect who holds registration in Iowa for more than 12 months, but less than 24 months from the date of initial registration, shall be required to report 18 contact hours (including 6 hours in public protection) earned in the preceding 12 months at the first registration renewal.

3.2(4) Sources of continuing education. The following suggested list may be used by all registrants in determining the types of activities which may fulfill the continuing education requirements.

a. Contact hours in attendance at short courses or seminars dealing with landscape architectural subjects and sponsored by colleges or universities.

b. Contact hours in attendance at presentations on landscape architectural subjects which are held in conjunction with conventions or at seminars related to materials use and function. Such presentations as those presented by the Council of Landscape Architecture Registration Boards (CLARB), American Society of Landscape Architects, Construction Specification Institute, Construction Products Manufacturers Council or similar organizations devoted to landscape architecture education may qualify.

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D](cont'd)

c. Contact hours in attendance at short courses or seminars relating to business practice or new technology and offered by colleges, universities, professional organizations or system suppliers.

d. Three preparation hours for each class hour spent teaching landscape architectural courses or seminars. College or university faculty members may not claim credit for teaching regular curriculum courses.

e. Contact hours spent in professional service to the public which draws upon the registrant's professional expertise on boards and commissions such as: serving on planning commissions, building code advisory boards, urban renewal boards, or code study committees.

f. Contact hours spent in landscape architectural research which is published or is formally presented to the profession or public.

g. Contact hours spent in landscape architectural self-study courses such as those sponsored by the American Society of Landscape Architects, Council of Landscape Architect Registration Boards (CLARB), or similar organizations.

h. College or university course dealing with landscape architectural subjects or business practice. Each semester hour shall equal 15 contact hours. A quarter hour shall equal 10 contact hours.

i. Contact hours spent in educational tours or landscape architecturally significant areas, where the tour is sponsored by college, university or professional organizations. Self-guided tours do not qualify.

ITEM 4. Rescind rule 193D—3.3(544B,17A) and adopt the following **new** rule in lieu thereof:

193D—3.3(544B,17A) Reporting. Each registrant shall file with the board a signed report, under penalty of perjury, on forms provided by the board, setting forth the continuing education in which the registrant has participated and request approval of completed continuing education activities. The report shall be filed with the renewal application for each two-year renewal period in which claimed continuing education hours were completed. The information in the report shall include:

1. School, firm, or organization conducting the course.
2. Location of the course.
3. Title of the course and description of the content.
4. Principal instructor(s).
5. Dates attended.
6. Hours claimed.

Landscape architect's forms may be selected for review by the board for verification of compliance with these requirements. Evidence of compliance shall be maintained by the landscape architect for two years after the period for which the form was submitted. If the board disallows any continuing education hours, unless the board finds following notice and hearing that the landscape architect willfully disregarded these requirements, then the landscape architect shall have six months from notice of such disallowance to make up the deficiency by acquiring the required number of contact hours. Such hours shall not again be used for the next renewal.

ITEM 5. Rescind and reserve rule 193D—3.5(544B,17A).

ITEM 6. Amend rule 193D—3.7(544B,17A) as follows:

193D—3.7(544B,17A) Physical disability, illness, hardships or extenuating circumstances. The board may, in individual cases involving physical disability, illness (*certified by a medical doctor*), hardship, or extenuating circum-

stances, grant waivers of the continuing education requirements for a period of time not to exceed one year. No waiver or extension of time shall be granted unless the registrant makes a written request to the board for such action.

ARC 9541A

PHARMACY EXAMINERS
BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.10, 17A.22, 124.301, 147.76, and 272C.3, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 1, "Purpose and Organization," Chapter 3, "License Fees, Renewal Dates, Fees for Duplicate Licenses and Certification of Examination Scores," Chapter 4, "Pharmacist-Intern Registration and Minimum Standards for Evaluating Practical Experience," Chapter 6, "General Pharmacy Licenses," Chapter 7, "Hospital Pharmacy Licenses," Chapter 15, "Correctional Facility Pharmacy Licenses," Chapter 16, "Nuclear Pharmacy," and Chapter 19, "Nonresident Pharmacy Licenses," Iowa Administrative Code, and to adopt new Chapter 34, "Uniform Rules for Waivers and Variances."

The amendments were approved at the November 16, 1999, regular meeting of the Board of Pharmacy Examiners.

The amendments rescind the Board's current rule regarding procedures for petitions for waiver or variance from rules, adopt uniform rules regarding petitions for waiver or variance from provisions of Board rules, and change references directing persons to the appropriate rules. Executive Order Number 11 directs state rule-making authorities to adopt uniform rules regarding waivers and variances from rules of the authority. These proposed amendments are in response to that order.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 4, 2000. Such written materials should be sent to Lloyd K. Jessen, Executive Secretary/Director, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

These amendments are intended to implement Iowa Code sections 17A.22, 124.301, 126.17, 147.76, 155A.2, 205.11, 205.13, 272C.3, and 272C.4.

The following amendments are proposed.

ITEM 1. Rescind rule 657—1.3(17A,124,126,147,155A, 205,272C).

ITEM 2. Amend rule 657—3.4(155A), introductory paragraph; subrule 4.6(1); rule 657—6.3(155A), introductory paragraph; rule 657—6.4(155A); subrule 6.5(3); rule 657—7.3(155A), introductory paragraph; rule 657—7.4(155A); rule 657—15.2(124,126,155A); rule 657—15.3(124,126,155A), introductory paragraph; rule 657—15.4(124,126,155A); rule 657—16.5(155A), introductory paragraph; rule 657—16.6(155A), introductory paragraph; and rule 657—19.6(155A), introductory paragraph, by

PHARMACY EXAMINERS BOARD[657](cont'd)

striking references to “rule 657—1.3(17A,124,126,147,155A,205,272C)” and inserting in lieu thereof “657—Chapter 34.”

ITEM 3. Adopt new 657—Chapter 34 as follows:

CHAPTER 34

UNIFORM RULES FOR WAIVERS AND VARIANCES

657—34.1(17A,124,126,147,155A,205,272C) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the board.

34.1(1) Board authority. A waiver or variance from rules adopted by the board may be granted in accordance with this chapter if:

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

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

34.1(2) Interpretive rules. These uniform waiver and variance rules shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the board does not possess delegated authority to bind the courts to any extent with its definition.

657—34.2(17A,124,126,147,155A,205,272C) Compliance with statute. No waiver or variance may be granted from a requirement that is imposed by statute. Any waiver or variance must be consistent with statute.

657—34.3(17A,124,126,147,155A,205,272C) Criteria for waiver or variance. The board may issue an order, in response to a completed petition or on its own motion, granting a waiver or variance from a rule adopted by the board, in whole or in part, as applied to the circumstances of a specified person if the board finds that:

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

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

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

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

34.3(1) Board discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the board upon consideration of all relevant factors.

34.3(2) Mandatory waivers or variances. In response to the timely filing of a completed petition requesting a waiver or variance, the board shall grant a waiver or variance from a rule, in whole or in part, as applied to the particular circumstances of a specified person, if the board finds that the application of the rule or portion thereof to the circumstances of that specified person would not, to any extent, advance or serve any of the purposes of the rule.

34.3(3) Burden of persuasion. The petitioner shall assume the burden of persuasion when a petition is filed for a waiver or variance from a board rule.

34.3(4) Special waiver or variance rules not precluded. These uniform waiver and variance rules shall not preclude the board from granting waivers or variances in other contexts or on the basis of other standards if a statute or other board rule authorizes the board to do so and the board deems it appropriate to do so.

34.3(5) Administrative deadlines. When the rule from which a waiver or variance is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees, registrants, and permittees.

657—34.4(17A,124,126,147,155A,205,272C) Filing of petition. A petition for a waiver or variance must be submitted in writing to the board as follows:

34.4(1) License, registration, or permit application. If the petition relates to a license, registration, or permit application, the petition shall be made in accordance with the filing requirements for the license, registration, or permit in question.

34.4(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding.

34.4(3) Other. If the petition does not relate to a license, registration, or permit application or to a pending contested case, the petition may be submitted to the board’s executive secretary/director.

657—34.5(17A,124,126,147,155A,205,272C) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the petitioner:

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

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

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

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

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

6. Any information known to the petitioner regarding the board’s treatment of similar cases.

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

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

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

PHARMACY EXAMINERS BOARD[657](cont'd)

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

657—34.6(17A,124,126,147,155A,205,272C) Additional information. Prior to issuing an order granting or denying a waiver or variance, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive secretary/director, a committee of the board, or a quorum of the board.

657—34.7(17A,124,126,147,155A,205,272C) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the board attesting that notice has been provided.

657—34.8(17A,124,126,147,155A,205,272C) Hearing procedures. The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings shall apply to any petition for a waiver or variance of rule filed within a contested case and shall otherwise apply to agency proceedings for a waiver or variance only when the board so provides by rule or order or is required to do so by statute.

657—34.9(17A,124,126,147,155A,205,272C) Ruling. An order granting or denying a waiver or variance shall be in writing and shall contain:

1. A reference to the particular person and rule or portion thereof to which the order pertains;
2. A statement of the relevant facts and reasons upon which the action is based; and
3. A description of the precise scope and operative period of the waiver if one is issued.

34.9(1) Conditions. The board may condition the granting of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

34.9(2) Time for ruling. The board shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

34.9(3) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board.

34.9(4) Service of order. Within seven days of its issuance, any order issued under these uniform rules shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

657—34.10(17A,124,126,147,155A,205,272C) Public availability. Subject to the provisions of Iowa Code subsection 17A.3(1), paragraph "e," the board shall maintain a record of all orders granting and denying waivers and variances under these uniform rules. All final rulings in response to

petitions for waivers or variances shall be indexed and available to members of the public at the board office.

657—34.11(17A,124,126,147,155A,205,272C) Voiding or cancellation. A waiver or variance is void if the material facts upon which the petition is based are not true or if material facts have been withheld. The board may, at any time, cancel a waiver or variance upon appropriate notice and hearing if the board finds:

1. That the facts as stated in the petition are not true;
2. That material facts have been withheld;
3. That the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute; or
4. That the petitioner has failed to comply with the conditions of the order.

657—34.12(17A,124,126,147,155A,205,272C) Violations. Violation of conditions in the waiver or variance is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

657—34.13(17A,124,126,147,155A,205,272C) Defense. After the board issues an order granting a waiver or variance, the order is a defense for the person to whom the order pertains, within the terms and the specific facts indicated therein, in any proceeding in which the rule in question is sought to be invoked.

657—34.14(17A,124,126,147,155A,205,272C) Appeals. Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A and board rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the petition unless rule or statute provides a contrary time.

These rules are intended to implement Iowa Code sections 17A.22, 124.301, 126.17, 147.76, 155A.2, 205.11, 205.13, 272C.3, and 272C.4.

ARC 9542A

PHARMACY EXAMINERS
BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 3, "License Fees, Renewal Dates, Fees for Duplicate Licenses and Certification of Examination Scores," Iowa Administrative Code.

The amendment was approved at the November 16, 1999, regular meeting of the Board of Pharmacy Examiners.

The amendment is intended to clarify information regarding original pharmacist license certificates and the means of obtaining additional certificates. Current language is confusing, appearing to provide for the photocopying of or other means of duplicating a pharmacist license certificate. The intent is to provide for the purchase of pharmacist license

PHARMACY EXAMINERS BOARD[657](cont'd)

certificates in addition to the original certificate provided at the time of initial licensure.

The Board does not find it necessary to include specific provisions for waiver or variance of this rule. The Board's general waiver and variance provisions in rule 657—1.3(17A,124,126,147,155A,205,272C) would be applicable to this rule and available to any petitioner wishing to present a case for waiver or variance.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on January 4, 2000. Such written materials should be sent to Lloyd K. Jessen, Executive Secretary/Director, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

This amendment is intended to implement Iowa Code section 155A.10.

The following amendment is proposed.

Amend rule 657—3.2(155A) as follows:

657—3.2(155A) Fees. Only original or duplicate license certificates for licensed pharmacists issued by the board of pharmacy examiners for licensed pharmacists are valid. Duplicate Additional original license certificates for licensed pharmacists may be issued obtained from the board of pharmacy examiners for a prepaid fee of \$5 each.

This rule is intended to implement Iowa Code section 155A.10.

ARC 9543A**PHARMACY EXAMINERS BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 155A.6, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 4, "Pharmacist-Intern Registration and Minimum Standards for Evaluating Practical Experience," Iowa Administrative Code.

The amendment was approved at the November 16, 1999, regular meeting of the Board of Pharmacy Examiners.

The amendment modifies the definition of "pharmacist preceptor" by removing the prohibition against a pharmacist who has been the subject of disciplinary action within the past three years from serving as a preceptor. In addition to being difficult to enforce, this provision makes it difficult for pharmacist-interns to determine the eligibility and qualifications of a potential preceptor. Historically, the Board has agreed to modify the probationary terms of pharmacists currently under disciplinary probation to permit the pharmacist to serve as a preceptor. Current language would require those same pharmacists to request a waiver of this prohibition following completion of the probationary period in order to continue to serve as a pharmacist preceptor.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on January 4, 2000. Such written materials should be sent to Lloyd K. Jessen, Executive Secretary/

Director, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

This amendment is intended to implement Iowa Code section 155A.6.

The following amendment is proposed.

Amend rule 657—4.1(155A), definition of "pharmacist preceptor," as follows:

"Pharmacist preceptor" or "preceptor" means a pharmacist licensed to practice pharmacy whose license is current and in good standing. Preceptors shall meet the conditions and requirements of rule 4.9(155A). No pharmacist shall serve as a preceptor if the pharmacist's license to practice pharmacy has been the subject of an order of the licensing authority having jurisdiction over the pharmacist's license imposing any disciplinary sanctions during the time the pharmacist is serving as preceptor or within the three year period immediately preceding the time the pharmacist begins serving as a preceptor. Provided, however, a pharmacist who has been the subject of such disciplinary order may petition the board in writing for approval to act as preceptor.

ARC 9539A**PHARMACY EXAMINERS BOARD[657]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 124.301, 147.76, and 155A.13, the Board of Pharmacy Examiners terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on June 2, 1999, as **ARC 9048A**, proposing to amend Chapter 7, "Hospital Pharmacy Licenses," Iowa Administrative Code.

The Notice proposed to amend the requirement in subrule 7.13(1), paragraph "e," for a prescriber's timely signed authorization on a hospital patient's medication order to permit the institution to set, by policy, a period within which such orders be cosigned by the prescriber.

The Board is terminating the rule making commenced in **ARC 9048A** based on comments received from the Hospital Licensing Board, Department of Inspections and Appeals.

ARC 9544A**PHARMACY EXAMINERS BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 155A.13, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 8, "Minimum Standards for the Practice of Pharmacy," Iowa Administrative Code.

The amendments were approved at the November 16, 1999, regular meeting of the Board of Pharmacy Examiners.

PHARMACY EXAMINERS BOARD[657](cont'd)

The amendments require that pharmacies dispose of waste materials containing patient-specific or confidential information in a manner to preserve patient confidentiality, clarify patient counseling requirements by defining and describing "not practicable," and correct a reference contained in subrule 8.32(6). Concerns regarding improper or haphazard disposal of pharmacy waste, particularly that containing confidential and patient-specific information, have prompted the Board to direct pharmacies to determine appropriate means of ensuring patient confidentiality when disposing of such materials. Confusion or misinterpretation of the Board's rules regarding patient counseling, particularly those pertaining to when a pharmacist may use alternative forms of counseling in lieu of oral counseling, has prompted the Board to further clarify the intent of the rule by defining "not practicable."

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 4, 2000. Such written materials should be sent to Lloyd K. Jessen, Executive Secretary/Director, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

These amendments are intended to implement Iowa Code sections 147.55, 155A.12, 155A.13, and 155A.15.

The following amendments are proposed.

ITEM 1. Amend subrule 8.5(5) as follows:

8.5(5) Confidentiality. In the absence of express consent from the patient or order or direction of a court, except where the best interests of the patient require, a pharmacist shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, another licensed pharmacist, or a person duly authorized by law to receive such information, *any of the following*:

a. ~~the~~ *The* contents of any prescription or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient;

b. ~~the~~ *The* nature, extent, or degree of illness suffered by any patient; or

c. ~~any~~ *Any* medical information furnished by the prescriber.

This shall not prevent pharmacists from ~~doing any of the following~~: transferring a prescription to another pharmacy, providing a copy of a nonrefillable prescription to the person for whom the prescription was issued which *copy* is marked "For Information Purposes Only," providing drug therapy information to physicians for their patients, or providing information to the board or its representative.

Disposal of any materials containing or including patient-specific or confidential information shall be conducted in a manner to preserve patient confidentiality.

ITEM 2. Amend subrule 8.20(2) as follows:

8.20(2) If in the pharmacist's professional judgment oral counseling is not practicable, the pharmacist may use alternative forms of patient information. "*Not practicable*" refers to patient variables including, but not limited to, the absence of the patient or patient's caregiver, the patient's or caregiver's hearing impairment, or a language barrier. "*Not practicable*" does not include pharmacy variables such as inadequate staffing, technology failure, or high prescription volume. Alternative forms of patient information may include written information leaflets, pictogram labels, video programs, or information generated by electronic data processing equipment. When used in place of oral counseling, alternative forms of patient information shall advise the

patient or caregiver that the pharmacist may be contacted for consultation in person at the pharmacy by toll-free telephone or collect telephone call. A combination of oral counseling and alternative forms of counseling is encouraged.

ITEM 3. Amend subrule 8.32(6) as follows:

8.32(6) Labeling—interior. All drugs contained in the emergency/first dose drug supply shall be labeled in accordance with subrule 8.3(2) or 657—subrule ~~23.12(3)~~ 23.12(2), as appropriate.

ARC 9538A

PHARMACY EXAMINERS
BOARD[657]

Notice of Termination

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on June 2, 1999, as ARC 9052A, proposing to amend Chapter 21, "Confidential and Electronic Data in Pharmacy Practice," Iowa Administrative Code.

The Notice proposed to add provisions in new subrules 21.3(3) and 21.5(4) and rule 657—21.6(124,155A) for patients to transmit prescriptions to a pharmacy via facsimile or other electronic means provided the original signed prescription is delivered to the pharmacy before the prescription medication is delivered to the patient.

The Board is terminating the rule making commenced in ARC 9052A. Although the proposed amendments would make it more convenient for patients by permitting a patient to electronically transmit a prescription to the pharmacy of their choice, the amendments would place a greater burden on the pharmacist to ensure that the patient delivered the original prescription prior to receiving the medication. Based on comments received from interested parties and on the Board's own assessment, the proposed amendments could adversely impact the operations and practices of Iowa pharmacies and pharmacists and do not confer sufficient benefit to override these concerns.

ARC 9545A

PHARMACY EXAMINERS
BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 124.301, 147.76, and 272C.4, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 36, "Discipline," Iowa Administrative Code.

The amendment was approved at the November 16, 1999, regular meeting of the Board of Pharmacy Examiners.

The amendment provides for a time limit for the reporting, by a licensee, registrant, or permittee, of disciplinary action against a license, registration, or permit taken by another

PHARMACY EXAMINERS BOARD[657](cont'd)

state, territory, or country. The amendment clarifies what is required to be reported and that timely reporting means reporting within 30 days of final disciplinary action.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on January 4, 2000. Such written materials should be sent to Lloyd K. Jessen, Executive Secretary/Director, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

This amendment is intended to implement Iowa Code sections 124.304, 124B.12, 155A.6, 155A.12, 155A.13A, 155A.15, and 155A.17.

The following amendment is proposed.

Amend subrule **36.1(4)**, paragraph "k," as follows:

k. Failure to ~~report~~ *notify the board within 30 days after a final decision entered by the licensing authority of another state, territory, or country which decision resulted in a license or registration revocation, suspension, or other disciplinary action taken by another state, territory or country sanction.*

ARC 9547A**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners hereby gives Notice of Intended Action to amend Chapter 300, "Board of Speech Pathology and Audiology Examiners," and Chapter 301, "Speech Pathology and Audiology Continuing Education and Disciplinary Procedures," Iowa Administrative Code.

These proposed amendments allow the licensee to obtain continuing education credit for educational presentations, make a slight modification for renewal of an initial license, and make a modification in procedures for accredited sponsors.

Any interested person may make written comments on the proposed amendments not later than January 4, 2000, addressed to Rosalie Steele, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on January 4, 2000, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Department of Public Health, Lucas State Office Building, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of Iowa Code section 17A.31.

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

The proposed amendments are intended to implement Iowa Code chapters 147 and 272C.

The following amendments are proposed.

ITEM 1. Amend subrule 300.6(2) as follows:

300.6(2) Beginning January 1, 2000, the continuing education requirements will coincide with the renewal compliance period. The licensee shall submit to the board office 30 days before licensure expiration the application and continuing education report form with the renewal fee as specified in rule 300.7(147). Individuals who were issued their initial licenses within six months of the start of the next renewal period will not be required to renew their licenses until the next renewal two years later. The new licensee is exempt from meeting the continuing education requirements for the continuing education biennium in which the license is originally issued. Individuals will be required to report 30 hours of continuing education for the first renewal and every renewal thereafter.

ITEM 2. Adopt new paragraph **301.4(1)"e"** as follows:

e. All accredited sponsors shall notify the board if there is a change of address or telephone number or if the contact person changes. Such changes should be sent to the board within 60 days of the change.

ITEM 3. Amend subrule 301.4(3) as follows:

301.4(3) Independent study. The independent study plan must be submitted and approved prior to beginning the study. The projected date of completion must be recorded on the board-provided application form. An independent study report must be filed within 30 days after the projected date of completion. One 30-day extension may be granted upon the condition that such a request in writing is received within 30 days of the projected date of completion. A reminder will not be sent by the board.

~~Program presenters will not receive continuing education credit for programs presented. Presenters may request independent study credit for preparation. A maximum of ten hours of credit will be given for presenting professional programs that meet the criteria as listed in 301.3(2). Two hours of credit will be awarded for each hour of new presentation material. A course schedule or brochure must be maintained for audit, and an independent study plan must be submitted and approved prior to the presentation. An independent study report shall be filed within 30 days after the completion of the presentation.~~

~~The maximum independent study which can be accrued during any biennium is six hours of the required 30 hours. The maximum number of independent study hours that can be accrued during any biennium is 16 hours of the 30 hours required. Ten hours of independent study can be accrued for presentations, and 6 hours can be accrued for other independent study activities.~~

ARC 9537A

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 1, "Organization and Operation," Chapter 10, "Thoroughbred Racing," and Chapter 26, "Rules of the Games," Iowa Administrative Code.

Item 1 adopts the waiver rule required by Executive Order Number 11.

Item 2 defines a certified bleeder.

Item 3 allows a trial period to evaluate a proposed new gambling game.

Any person may make written suggestions or comments on the proposed amendments on or before January 4, 2000. 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 January 4, 2000, 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 491—Chapter 1 by adopting the following new rule:

491—1.8(17A,99D,99F) Waivers or variances from rules. This rule outlines a uniform process for the granting of waivers or variances from rules adopted by the commission.

1.8(1) Commission authority. A waiver or variance from rules adopted by the commission may be granted in accordance with this rule if: (1) the commission has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

1.8(2) Interpretive rules. This uniform waiver and variance rule shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the commission does not possess delegated authority to bind the courts to any extent with its definition.

1.8(3) Compliance with statute. No waiver or variance may be granted from a requirement that is imposed by statute. Any waiver or variance must be consistent with statute.

1.8(4) Criteria for waiver or variance. The commission may issue an order, in response to a completed petition or on its own motion, granting a waiver or variance from a rule adopted by the commission, in whole or in part, as applied to

the circumstances of a specified person if the commission finds that:

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

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

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

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

a. Commission discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the commission, upon consideration of all relevant factors.

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

c. Burden of persuasion. The petitioner shall assume the burden of persuasion when a petition is filed for a waiver or variance from a commission rule.

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

e. Administrative deadlines. When the rule from which a waiver or variance is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees.

1.8(5) Filing of petition. A petition for a waiver or variance must be submitted in writing to the commission as follows:

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

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

c. Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the commission's administrator.

1.8(6) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester:

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

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

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

d. The relevant facts that the petitioner believes would justify a waiver or variance. This statement shall include a signed statement from the petitioner attesting to the accuracy

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

of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance.

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

f. Any information known to the requester regarding the commission's treatment of similar cases.

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

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

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

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

1.8(7) Additional information. Prior to issuing an order granting or denying a waiver or variance, the commission may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the commission may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the commission's administrator, a committee of the commission, or a quorum of the commission.

1.8(8) Notice. The commission shall acknowledge a petition upon receipt. The commission shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the commission may give notice to other persons. To accomplish this notice provision, the commission may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the commission attesting that notice has been provided.

1.8(9) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver or variance of rule filed within a contested case, and shall otherwise apply to commission proceedings for a waiver or variance only when the commission so provides by rule or order or is required to do so by statute.

1.8(10) Ruling. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

a. Conditions. The commission may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

b. Time for ruling. The commission shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is

filed in a contested case, the commission shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

c. When deemed denied. Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission.

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

1.8(11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)"e," the commission shall maintain a record of all orders granting and denying waivers and variances under this uniform rule. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the commission office.

1.8(12) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The commission may at any time cancel a waiver or variance upon appropriate notice and hearing if the commission finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

1.8(13) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

1.8(14) Defense. After the commission issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

1.8(15) Appeals. Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A and commission rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

ITEM 2. Amend subrule **10.6(1)**, paragraph "g," as follows:

g. In order for a horse to be placed on the bleeder list in Iowa through reciprocity, that horse must be certified as a bleeder in another state or jurisdiction ~~by a recognized official.~~ *A certified bleeder is a horse that has raced with lasix in another state or jurisdiction in compliance with the laws governing lasix in that state or jurisdiction.*

ITEM 3. Rescind rule 491—26.18(99F) and adopt in lieu thereof the following new rule:

491—26.18(99F) Other gambling games approved by the commission.

26.18(1) The commission must approve the conducting of any gambling game on a licensed riverboat.

26.18(2) Requests to conduct gambling games must be accompanied by a complete set of rules, which must be approved by the administrator prior to commencement of the game.

26.18(3) Trial period. Prior to commission approval and after completing a review of a proposed gambling game, the administrator is authorized to allow a trial period of up to 180 days to test the gambling game in a licensed gaming estab-

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ishment. During the trial period, minor changes in the operation or design of the gambling game may be made with prior approval of the administrator. During the trial period, a gambling game distributor shall not be entitled to receive revenue of any kind whatsoever from the operation of that gambling game.

ARC 9528A

SOIL CONSERVATION
DIVISION[27]

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 161A.4(1), the Division of Soil Conservation gives Notice of Intended Action to amend Chapter 10, "Iowa Financial Incentive Program for Soil Erosion Control," Iowa Administrative Code.

These amendments are being proposed to allow cost-sharing on grade stabilization structures with other public funds at a cost-share rate greater than 50 percent, but not exceeding 75 percent. A corrective change for Chapter 10 summer construction incentive dates is also made.

Any interested person may submit written suggestions or comments on the amendments proposed in this Notice of Intended Action. Such written materials should be directed to William McGill, Chief, Financial Incentives Bureau, Division of Soil Conservation, Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319, and must be received by the Division no later than 4:30 p.m., Tuesday, January 11, 2000. To telephone comments, contact the Financial Incentives Bureau at (515)281-5851 or fax comments to (515)281-6170.

These amendments will not be subject to a waiver due to the need for consistent application of the program statewide. Additionally, a waiver is not necessary since application of the rule is at the discretion of the local soil and water conservation district.

A public hearing will be held on Tuesday, January 11, 2000, at 2 p.m. in the south half of the Second Floor Conference Room of the Wallace State Office Building, East Ninth and Grand Avenue, Des Moines, Iowa. Comments at the hearing may be presented either orally or in writing.

These amendments are intended to implement Iowa Code chapter 161A.

The following amendments are proposed.

ITEM 1. Amend rule 27—10.41(161A), second unnumbered paragraph, to read as follows:

Except for the programs authorized in subrules 10.41(2), 10.41(4), 10.41(5), and 10.41(8), and 10.41(10), these funds shall not be used alone or in combination with other public funds to provide a financial incentive payment greater than 50 percent of the approved cost for permanent soil conservation practices.

ITEM 2. Adopt new subrule 10.41(10) as follows:

10.41(10) Funds distributed to annual programs and provided to districts may be used in combination with other pub-

lic funds on grade stabilization structures, in accordance with the following:

a. The maximum cost-share rate realized by the landowner shall not exceed 75 percent when state cost-share funds appropriated to the division and districts are utilized in combination with other public funds.

b. Funds utilized by districts in conjunction with such projects shall come from the district's regular allocation.

c. Only grade stabilization structures established in accordance with procedures pursuant to the rules shall be eligible for financial incentive programs.

d. The recipient will be required to sign an agreement as stated in subrule 10.74(5).

ITEM 3. Amend subrule 10.60(2) as follows:

10.60(2) Summer construction incentives. Commissioners may enter agreements providing for cost sharing up to 60 percent of the cost of establishing approved, permanent soil and water conservation practices where the establishment of that practice involves a construction project which begins after June 1 but before ~~August 15~~ September 15 of any calendar year. Commissioners shall not use state cost-sharing funds to pay such incentives when requests for cost sharing at the 50 percent level are sufficient to use all of the district's allocation for that fiscal year.

ARC 9527A

TRANSPORTATION
DEPARTMENT[761]

Notice of Intended Action

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 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to adopt Chapter 717, "General Aviation Airport Infrastructure Program," Iowa Administrative Code.

This program provides funding for improvements to the vertical infrastructure at general aviation airports in Iowa. The source of funds is a \$500,000 appropriation in 1999 Iowa Acts, chapter 204, section 11, subsection 2, from the rebuild Iowa infrastructure fund. The legislation requires the Department to adopt rules to administer a program for disbursement of these funds.

These rules do not provide for waivers. The Department developed these rules in consultation with an airport advisory committee and believes the rules are workable as written.

Any person or agency may submit written comments concerning these proposed rules or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: rules@iadot.e-mail.com.

TRANSPORTATION DEPARTMENT[761](cont'd)

5. Be received by the Director's Staff Division no later than January 4, 2000.

A meeting to hear requested oral presentations is scheduled for Thursday, January 6, 2000, at 10 a.m. in the Operations and Finance Division Conference Room, which is located on the second floor of the Administration Building, Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These rules are intended to implement Iowa Code chapter 328 and 1999 Iowa Acts, chapter 204, section 11, subsection 2.

Proposed rule-making action:

Adopt the following new chapter:

CHAPTER 717
GENERAL AVIATION AIRPORT
INFRASTRUCTURE PROGRAM

761—717.1(328) Purpose. The purpose of the general aviation airport infrastructure program is to provide funding for improvements to the vertical infrastructure at Iowa's 103 general aviation airports. The source of funds is an appropriation in 1999 Iowa Acts, chapter 204, section 11, subsection 2, from the rebuild Iowa infrastructure fund.

761—717.2(328) Definitions. The definitions in Iowa Code section 328.1 and rule 761—700.1(328) apply to these rules. In addition:

"General aviation airport" means a public airport that is owned by a governmental subdivision of the state of Iowa and that does not have scheduled commercial air service.

"Primary general aviation airport" is an airport identified as such in the 1999 Iowa Aviation System Plan.

"Vertical infrastructure" is defined in Iowa Code section 8.57, subsection 5.

761—717.3(328) Information. Program information, instructions, and forms may be obtained from the Office of Program Management, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1190.

761—717.4(328) Eligible airports. Eligible airports are those general aviation airports that are listed in the 1999 Iowa Aviation System Plan and that have a current airport layout plan.

761—717.5(328) Eligible project activities. Activities that are eligible for reimbursement include, but are not limited to, the following:

717.5(1) Hangar renovation or construction including associated design, land acquisition, grading, foundation work, floor slabs and utilities.

717.5(2) Fuel facilities including associated design, land acquisition, grading, foundation work, floor slabs and utilities.

717.5(3) Terminal building renovation or construction including associated design, land acquisition, grading, foundation work, floor slabs and utilities.

761—717.6(328) Ineligible project activities. Activities that are not eligible for reimbursement include, but are not limited to, the following:

717.6(1) Runway, taxiway, or apron paving. This includes any apron paving directly adjacent to terminal buildings or hangars.

717.6(2) Automobile parking lot grading, paving, or lighting.

717.6(3) Routine maintenance of pavements or buildings.

761—717.7(328) Funding.

717.7(1) The funding ratio for all projects is 70/30 (70 percent state funds, 30 percent local funds).

717.7(2) Maximum state participation. Using the appropriated funds, the maximum state participation is \$50,000 per airport per year.

761—717.8(328) Project priorities. Priority shall be given to projects which produce revenue for the airport such as hangars and fuel facilities. Rehabilitation of existing infrastructure where feasible shall have priority over new construction. Primary general aviation airports shall have priority over other general aviation airports. The department shall rank projects as shown in the following table, with number 1 having the highest priority:

<u>Project Type</u>	Primary General Aviation Airport	Other General Aviation Airport
Rehabilitation of aircraft storage or maintenance hangars	1	2
New or expanded aircraft storage or maintenance hangars	3	4
New or expanded fuel facilities	5	6
Rehabilitation of office, terminal, vehicle or service facilities	7	8
New or expanded office, terminal, vehicle or service facilities	9	10

761—717.9(328) Project applications.

717.9(1) Project applications shall be submitted through the local transportation center planners to the office of program management.

717.9(2) Each application shall contain:

a. General information, including the airport sponsor's name, contact person, mailing address and telephone number.

b. A capital improvement program (CIP) data sheet. The CIP data sheet shall include a sketch of the project, a brief description of the project and its purpose, and cost information including total project cost and an itemized breakdown of project components.

c. A resolution from the airport sponsor endorsing the project and authorizing the necessary local match funding.

761—717.10(328) Review and approval. Department staff shall review and rate project applications and submit its recommendations to the transportation commission. The transportation commission shall be responsible for determining the projects to be funded and the amount to be funded for each project. If two or more projects have the same priority ranking, but not all of those projects can be funded, priority may be given to those projects at airports that have the larger numbers of based aircraft.

TRANSPORTATION DEPARTMENT[761](cont'd)

761—717.11(328) Project administration.

717.11(1) After a project has been approved by the commission, the department shall enter into an agreement with the airport sponsor.

717.11(2) Payments. Payments to the airport sponsor for eligible project costs shall be made on a cost reimbursement basis.

717.11(3) Cost overruns. Costs in excess of the percentage match and the total amount approved by the commission are the responsibility of the airport sponsor.

These rules are intended to implement Iowa Code sections 8.57 and 328.12 and 1999 Iowa Acts, chapter 204, section 11, subsection 2.

ARC 9534A

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 84A.1B(9) and 96.11, the Department of Workforce Development hereby gives Notice of Intended Action to amend Chapter 2, "Mission and Structure," Iowa Administrative Code.

On November 17, 1999, the Workforce Development Board approved the proposed new rule which allows for waivers in compliance with Executive Order Number Eleven and is intended to provide greater access to Division programs and services.

Written comments concerning the proposed rule will be accepted until 4:30 p.m. on January 4, 2000. Interested persons may submit written or oral comments by contacting JoAnn Callison, Office of Workforce Development Policy, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319; telephone (515) 242-0057; E-mail: joann.s.callison@iwd.state.ia.us.

A public hearing to receive comments about the proposed rule will be held at 10 a.m. on January 4, 2000, at the above address in the Stanley Conference Room, First Floor. Individuals interested in providing comments at the hearing should contact JoAnn Callison at (515)242-0057 by 4 p.m. on January 3, 2000, to be placed on the hearing agenda.

This proposed rule is intended to implement Iowa Code chapter 17A and Executive Order Number Eleven.

The following amendment is proposed.

Amend 877—Chapter 2 by adopting the following new rule:

877—2.4(17A,ExecOrd11) Requests for waiver of rules. Requests for waiver of a rule of the Workforce Development Board/Services Division[877] of the Iowa Administrative Code shall be made to the Division Administrator, Division of Workforce Development Center Administration, 150 Des Moines Street, Des Moines, Iowa 50309.

2.4(1) Waivers from division rules shall not be granted unless the following circumstances are met:

- a. The department has exclusive rule-making authority to promulgate the rule from which waiver is requested; and
- b. No statute or rule otherwise controls the grant of a waiver from the rule from which waiver is requested.

2.4(2) The person that requests waiver of the rule must provide clear and convincing evidence that:

- a. Compliance with the rule will create an undue hardship on the person requesting the waiver.
- b. Substantially equal protection of health and safety will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.
- c. The waiver will not harm other persons and will not adversely affect the public interest.

2.4(3) The director shall grant or deny the waiver within 60 days of the date the request is filed with the department after review and recommendation of the division administrator. A denial of a request for a waiver is absolutely final and is not appealable. The director shall deny the request for waiver of a state or federal statute. If the request for waiver relates to a time requirement of a rule, the request must be received before the time specified in the rule has expired. The director may deny the request if the request does not comply with the provisions of this rule.

2.4(4) Waivers are granted at the complete discretion of the director after consideration of all relevant factors including, but not limited to, the following:

- a. The need of the person or entity directly affected by the exception. Exceptions will be granted only in cases of extreme need.
- b. Whether there are exceptional circumstances justifying an exception to the general rule applicable in otherwise similar circumstances.
- c. Whether granting the exception would result in a net savings to the state or promote efficiency in the administration of programs or service delivery. Net savings or efficiency will make an exception more likely.
- d. In the case of services, assistance, or grants, whether other possible sources have been exhausted. Exceptions will not generally be granted if other sources are available.
- e. The cost of the exception to the state and availability of funds in the department's budget.

2.4(5) All requests for waiver must substantially conform to the following form:

(Name of person requesting waiver).	REQUEST FOR WAIVER OF (SPECIFY RULE FOR WHICH WAIVER IS REQUESTED).
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Reasons for requesting waiver:

Name, address, telephone number and signature of person submitting waiver request.

The specific rule to which an exception is requested or the substance thereof.

The specific waiver requested.

The nature of the waiver requested, including any alternative means or other proposed condition or modification proposed to achieve the purpose of the rule.

2.4(6) The director may condition the grant of a waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

2.4(7) A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director may, at any time, cancel a waiver

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

upon appropriate notice if the director finds the facts as stated in the request appear not true, material facts have been withheld, the alternative means of compliance provided in the waiver has failed to achieve the objectives of the statute, or the person requesting the waiver has failed to comply with conditions set forth in the waiver approval.

2.4(8) All grants of waivers shall be indexed and available to members of the public in the Division of Workforce

Development Center Administration, 150 Des Moines Street, Des Moines, Iowa 50309. In addition, the director shall notify the workforce development board of any ruling to grant a waiver at its next regularly scheduled meeting following the ruling.

This rule is intended to implement Iowa Code chapter 17A and Executive Order Number Eleven.

ARC 9533A

ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF [261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 58, "New Jobs and Income Program," Iowa Administrative Code.

The amendments implement legislative revisions. Item 1 amends the rules to include legislative revisions that authorize eligible insurance businesses to claim an insurance premium tax credit. The amendment also clarifies that for businesses claiming an investment tax credit under Iowa Code section 15.333 as amended by 1999 Iowa Acts, chapter 172, section 1, real property and any buildings and structures located on the real property will be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the business sells, disposes of, razes, or otherwise renders the land, buildings or existing structures unusable, its income tax credit liability will be increased as detailed in the statute and reflected in the amendment.

Item 2 extends the time period within which nonresident aliens may receive land ownership exemptions as authorized by Iowa Code section 15.331B(3).

Item 3 rescinds a paragraph that contains a sunset date that has since been repealed.

Notice of Intended Action was published in the Iowa Administrative Bulletin as ARC 9397A on October 6, 1999. The Iowa Department of Economic Development Board adopted these amendments on November 18, 1999.

A public hearing was held on October 26, 1999. No comments were received. The final amendments are identical to the proposed amendments.

These amendments are intended to implement Iowa Code section 15.333 as amended by 1999 Iowa Acts, chapter 172, section 1, and Iowa Code sections 15.331B and 15.333A.

The amendments will become effective on January 19, 2000.

The following amendments are adopted.

ITEM 1. Amend subrule 58.4(3) as follows:

58.4(3) Investment tax credit and insurance premium tax credit.

a. Investment tax credit. A business may claim an investment tax credit as provided in Iowa Code section 15.333. A corporate income tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

b. Insurance premium tax credit. If the business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15.333A. An Iowa insurance premium tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business. Any credit in excess of tax liability for

the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

c. Eligible capital expenditures. For purposes of this rule, the capital expenditures eligible for the investment tax credit or the insurance premium tax credit under the program are the costs of machinery and equipment as defined in Iowa Code section 427A.1(1) "e" and "j" purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles, and the cost of improvements made to real property which is used in the operation of the business and which receives a partial property tax exemption for the actual value added as described in Iowa Code section 15.332.

d. Real property. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333 as amended by 1999 Iowa Acts, chapter 172, section 1, the purchase price of real property and any buildings and structures located on the real property will also be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells or disposes of, razes, or otherwise renders unusable the land, buildings, or other existing structures for which tax credit was claimed under Iowa Code section 15.333 as amended by 1999 Iowa Acts, chapter 172, section 1, the income tax liability of the eligible business for the year in which the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

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

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

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

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

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

ITEM 2. Amend paragraph 58.4(8)"d" as follows:

d. An eligible business, if owned by nonresident aliens, may only receive the land ownership exemptions under this subrule provided the business has received final approval of a New Jobs and Income Program application before July 1, 1998 2002.

ITEM 3. Rescind paragraph 58.7(4)"c."

ITEM 4. Amend 261—Chapter 58, implementation clause, as follows:

These rules are intended to implement Iowa Code chapter 15 as amended by 1996 Iowa Acts, chapters 1158 and 1199 1999 Iowa Acts, chapter 172, section 1.

[Filed 11/18/99, effective 1/19/00]

[Published 12/15/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/99.

ARC 9532A

ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF [261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 59, "Enterprise Zones," Iowa Administrative Code.

The amendments implement legislative revisions and clarify program requirements. Item 1 clarifies that after July 1, 2000, the size of an enterprise zone cannot be increased through the zone amendment process. July 1, 2000, is, by statute, the deadline for seeking zone certification.

Item 2 revises a requirement related to the value-added property tax exemption benefit. The amendment brings the rule into compliance with Iowa Code section 15.332 and property assessment practices.

Item 3 amends the paragraph to include legislative revisions (Iowa Code section 15.333 as amended by 1999 Iowa Acts, chapter 172, section 1) that authorize eligible insurance businesses to claim an insurance premium tax credit. The amendment also clarifies that real property and any buildings and structures located on the real property will be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the business sells, disposes of, razes, or otherwise renders the land, buildings or existing structures unusable, its income tax credit liability will be increased as detailed in the statute and reflected in the amendment.

Notice of Intended Action was published in the Iowa Administrative Bulletin as ARC 9398A on October 6, 1999. The Iowa Department of Economic Development Board adopted these amendments on November 18, 1999.

A public hearing was held on October 26, 1999. No comments were received. These amendments are identical to the proposed amendments.

These amendments are intended to implement Iowa Code section 15.333 as amended by 1999 Iowa Acts, chapter 172, section 1, and Iowa Code section 15E.196 as amended by 1999 Iowa Acts, chapter 172, section 2.

The amendments will become effective on January 19, 2000.

The following amendments are adopted.

ITEM 1. Amend paragraph 59.3(3)"d" as follows:

d. *Amendments and decertification.* A certified enterprise zone may be amended or decertified upon application of the city or county originally applying for the zone designation. However, an amendment shall not extend the zone's ten-year expiration date, as established when the zone was initially certified by the board. *After July 1, 2000, the statutory deadline for cities and counties to request zone certification, an amendment shall not add area to a certified enterprise zone.* An amendment or decertification request shall include, but is not limited to, the following information: reason(s) for the amendment or decertification and confirmation that the amended zone meets the requirements of the Act and these rules. The board will review the request and may approve, deny, or defer the proposed amendment or decertification.

ITEM 2. Amend paragraph 59.6(3)"b" as follows:

b. Value-added property tax exemption.

(1) The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which is used in the operation of the eligible business. This exemption shall be authorized by the city or county that would have been entitled to receive the property taxes, but is electing to forego the tax revenue for an eligible business under this program. The amount of value added for purposes of Iowa Code Supplement section 15E.196 shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone.

(2) If an exemption is made applicable only to a portion of the property within an enterprise zone, there must be approved uniform criteria which further some planning objective established by the city or county zone commission. These uniform criteria must also be approved by the eligible city or county. Examples of acceptable "uniform criteria" that may be adopted include, but are not limited to, wage rates, capital investment levels, types and levels of employee benefits offered, job creation requirements, and specific targeted industries. "Planning objectives" may include, but are not limited to, land use, rehabilitation of distressed property, or "brownfields" remediation.

(3) The exemption may be allowed for a period not to exceed ten years beginning the year the eligible business enters into an agreement with the county or city to locate or expand operations value added by improvements to real estate is first assessed for taxation in an enterprise zone.

ITEM 3. Amend paragraph 59.6(3)"c" as follows:

c. Investment tax credit and insurance premium tax credit.

(1) *Investment tax credit.* A business may claim an investment tax credit as provided in Iowa Code section 15.333. A corporate tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.12(15E). An eligible business may instead seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures, or may elect to submit a new application within the enterprise zone. ~~For purposes of this rule, the capital expenditures eligible for the investment tax credit under the enterprise zone program are the costs of machinery and equipment used in the operation of the eligible business and the cost of improvements to real property which is used in the operation of the business and which receives a partial property tax exemption for the value added as described in Iowa Code section 15.332.~~

(2) *Insurance premium tax credit.* The insurance premium tax credit benefit is available for a business that submits an application for enterprise zone participation on or after July 1, 1999. If the business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15E.196 as amended by 1999 Iowa Acts, chapter 172, section 2. An Iowa insurance pre-

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

mium tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.12(15E). An eligible business may instead seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures, or may elect to submit a new application within the enterprise zone.

(3) *Eligible capital expenditures.* For purposes of this rule, the capital expenditures eligible for the investment tax credit or the insurance premium tax credit under the enterprise zone program are the costs of machinery and equipment used in the operation of the eligible business and the cost of improvements to real property which is used in the operation of the business and which receives a partial property tax exemption for the value added as described in Iowa Code section 15.332.

(4) *Real property.* For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333 as amended by 1999 Iowa Acts, chapter 172, section 1, the purchase price of real property and any buildings and structures located on the real property will also be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells or disposes of, razes, or otherwise renders unusable the land, buildings, or other existing structures for which tax credit was claimed under Iowa Code section 15.333 as amended by 1999 Iowa Acts, chapter 172, section 1, the income tax liability of the eligible business for the year in which the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

1. One hundred percent of the tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.
2. Eighty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.
3. Sixty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.
4. Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.
5. Twenty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

ITEM 4. Amend 261—Chapter 59, implementation clause, as follows:

These rules are intended to implement Iowa Code Supplement sections 15E.191 through ~~15E.196~~ 15E.195, as amended by 1998 Iowa Acts, House Files 2164, 2395, section 17, and 2538 section 15E.196 as amended by 1999 Iowa

Acts, chapter 172, section 2, and section 15.333 as amended by 1999 Iowa Acts, chapter 172, section 1.

[Filed 11/18/99, effective 1/19/00]
[Published 12/15/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/99.

ARC 9554A

HISTORICAL DIVISION[223]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 303.1A, the Historical Division of the Department of Cultural Affairs amends Chapter 49, "Historical Resource Development Program," Iowa Administrative Code.

These amendments to the historic preservation, museum, and documentary collection grant programs remove the general requirement that, for 60 months after the final disbursement, request recipients must make the resources which benefit from the grant accessible to the public for 96 hours per year or provide a statement in the next 36 months to provide minimal access to the resource; add a new subrule stating that applicants funded in two consecutive fiscal years in a grant category are not eligible to receive funding for the next fiscal year in the same grant category; change the number of copies of the application to be submitted from six to ten; allow a designee of the grant administrator to approve a grant contract; add language that requires completion of contract within 30 months of date of grant administrator's signature as well as administrator's signature; and clarify that grant acknowledgement signs must be displayed for at least 36 months from the contract end date. A new rule adds the one-room schoolhouse grant program to implement Iowa Code section 303.16 as amended by 1999 Iowa Acts, chapter 205, section 44.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 6, 1999, as **ARC 9391A**. A public hearing was held October 26, 1999. No members of the public attended.

Comments on the proposed amendments were received from the Grout Museum and the Amana Historical Society on October 26, 1999. As a result of these comments, subrule 49.4(10) was clarified to indicate that the funding applies only to grants in the same category. Also, the length of ineligibility after receiving two consecutive grant awards was reduced from two following consecutive fiscal years to the next fiscal year.

These amendments are intended to implement Iowa Code section 303.16 as amended by 1999 Iowa Acts, chapter 205, section 44.

These amendments will become effective on January 19, 2000.

The following amendments are adopted.

ITEM 1. Amend subrule 49.4(5) as follows:

49.4(5) All private corporations, businesses, and individual applicants shall demonstrate that the historical resources which benefit from being acquired, developed or preserved, or the portions of the historical resource so benefited, shall be accessible to the public no less than an average of 96 hours per year or provide a statement concerning actions to be taken in the forthcoming 36 months to provide this minimal accessibility of the funded project to the public, unless access is

HISTORICAL DIVISION[223](cont'd)

restricted by specific federal or state code. ~~This shall be in effect for 60 months after approval of the final disbursement request.~~ Archaeological sites that are part of funded projects are not required by this program to be accessible to the public.

ITEM 2. Adopt new subrule 49.4(10) as follows:

49.4(10) Applicants funded in two consecutive fiscal years in the same grant category are not eligible to receive funding in the same grant category during the next fiscal year.

ITEM 3. Amend **49.5(3)**"a" as follows:

a. Applicants shall submit the original application and ~~six~~ *ten* copies to the REAP/HRDP coordinator.

ITEM 4. Amend **49.7(1)**"b"(4) as follows:

(4) All contracts shall be approved by the administrator, *or designee*, and the legally authorized representative of the grantee. The legally authorized representative of the grantee shall be clearly identified and shall be the only contact with the society on financial matters concerning the grant.

ITEM 5. Amend **49.7(1)**"b"(7) as follows:

(7) All contracts shall be completed within 30 months from the date of the signature by the administrator, *or designee*, of the society.

ITEM 6. Amend **49.7(2)**"f" as follows:

f. All grantees shall submit documentation of the issuance of funding acknowledgments to local legislators and press releases to local media, describing projects or programs funded with REAP/HRDP funds, specifically to include the following credit line: "This project was partially supported by a Resource Enhancement and Protection (REAP)/Historical Resource Development Program (HRDP) grant from the State Historical Society of Iowa." Permanent signage will be provided by the state to each grantee. All signs shall be displayed in a public area for a time period of no less than 36 months *from contract end date*.

ITEM 7. Adopt new rule 223—49.9(303) as follows:

223—49.9(303) One-room schoolhouse grant program.

49.9(1) Purpose. This program will provide up to \$25,000 per year for the preservation of one-room and two-room buildings once used as country schools in Iowa.

49.9(2) Eligible applicants. Participation in the grant program is open to any government or nonprofit organization and to traditional tribal societies of recognized resident American Indian tribes in Iowa.

49.9(3) Application deadline. Applicants shall submit an original application and ten copies to the REAP/HRDP coordinator. All applications must have a United States Postal Service postmark dated on or before January 15 or be delivered to the REAP/HRDP office during regular business hours on or before January 15.

49.9(4) Annual application review and selection. Each application will be reviewed by the program coordinator for eligibility. All eligible applications will be reviewed by an appropriate review panel existing within the HRDP grant program, based upon the activities outlined in the application. The documentary collections, museum or historic preservation review panel will individually read and score and collectively review the applications and make funding recommendations to the state historical society board of trustees. The board of trustees shall review and make funding recommendations no later than June 1 of each year. The administrator will make awards final no later than June 15 of each year.

49.9(5) Selection criteria. Projects shall be evaluated on the basis of the following equally weighted criteria:

a. Planned educational activities within a country school.

b. Use as a facility to interpret the history of country schools.

c. Plans for the preservation and maintenance of a country school.

d. Plans for incorporating curriculum development and teacher activities with area school systems.

e. Degree to which the budget is reasonable and appropriate to the project and meets a match requirement of dollar-for-dollar basis, of which at least one-half of the match must be in cash.

49.9(6) Financial management.

a. No more than \$5,000 may be awarded to any one applicant in each year.

b. No applicant may be awarded more than one grant per year.

49.9(7) Contracts. Upon certification of the grant award, the society shall, within 30 days, provide a contract to the grantee. The contract shall state the terms and conditions of the grant as well as the amount of the award and required match. The grantee must be ready to accept the terms of the contract within 60 days of the grant award. Failure to meet the deadline may result in termination of the grant award.

[Filed 11/24/99, effective 1/19/00]

[Published 12/15/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/99.

ARC 9558A

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 505.8, the Division of Insurance amends Chapter 15, "Unfair Trade Practices," Iowa Administrative Code.

This rule mandates insurers requiring the use of aftermarket parts to clearly notify policyholders that aftermarket parts are used in the repair of damaged vehicles.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 16, 1999, as **ARC 9090A**. Written comments have been received. A public hearing was held on September 7, 1999. This rule differs from the rule published under the Notice of Intended Action. A substantive change was made to the disclosure notice.

This rule was adopted by the Division of Insurance on November 23, 1999.

This rule is intended to implement Iowa Code section 505.8 and Iowa Code chapter 507B.

This rule shall become effective July 1, 2000.

The following rule is adopted.

Amend 191—Chapter 15 by adding the following new rule:

191—15.15(507B) Use of aftermarket crash parts in automobile insurance policies—notice required.

15.15(1) Contents of notice. Any automobile insurance policy delivered in this state that pays benefits based on the cost of aftermarket crash parts as defined in Iowa Code chapter 537B or that requires the insured to pay the difference be-

INSURANCE DIVISION[191](cont'd)

tween the cost of original equipment manufacturer parts and the cost of aftermarket crash parts shall include a notice which contains and is limited to the following language:

NOTICE—PAYMENT FOR AFTERMARKET CRASH PARTS

Physical damage coverage under this policy includes payment for aftermarket crash parts. If you repair the vehicle using more expensive original equipment manufacturer (OEM) parts, you may pay the difference. Any warranties applicable to these replacement parts are provided by the manufacturer or distributor of these parts rather than the manufacturer of your vehicle.

15.15(2) Form of notice. Notice may be provided on a separate form or may be printed prominently on the declaration page of the policy. The notice shall be provided in conjunction with all new policies issued. Notice may be provided at the time of application, but shall in no case be provided later than the time of delivery of the new policy. Insurers may inform applicants that the insurance division requires the notice in this rule.

[Filed 11/24/99, effective 7/1/00]

[Published 12/15/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/99.

ARC 9556A

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 502.607, the Insurance Division hereby amends Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

These rules impose examination requirements upon those wishing to register as investment advisers or investment adviser representatives within the state of Iowa. A waiver provision is also included herein which applies specifically to these rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 22, 1999, as ARC 9365A. Several nonsubstantive comments were received. These rules are identical to those published under Notice.

These rules will become effective on January 19, 2000.

These rules are intended to implement Iowa Code sections 502.302 and 502.305.

The following rules are adopted.

Amend 191—Chapter 50 by adopting the following new rules:

191—50.109(502) Examination requirements.

50.109(1) A person applying to be registered as an investment adviser or investment adviser representative under the Act shall provide the administrator with proof that the person has obtained a passing score on one of the following examinations:

- a. The Uniform Investment Adviser Law Examination (Series 65 examination); or
- b. The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

50.109(2) Any individual who is registered as an investment adviser or investment adviser representative in any ju-

isdiction in the United States on or after January 19, 2000, shall not be required to satisfy the examination requirements for continued registration, except that the administrator may require additional examinations for any individual found to have violated the uniform securities Act.

An individual who has not been registered in any jurisdiction for a period of two years shall be required to comply with the examination requirements of this rule.

50.109(3) The examination requirement shall not apply to an individual who currently holds one of the following professional designations:

- a. Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;
- b. Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;
- c. Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;
- d. Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;
- e. Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or
- f. Such other professional designation as the administrator may by order recognize.

This rule is intended to implement Iowa Code sections 502.302 and 502.305.

191—50.110(502) Waivers. The administrator may grant a waiver of a rule pertaining to examination requirements for investment advisers or investment adviser representatives.

50.110(1) No waiver shall be granted from a requirement imposed by statute. Any waiver must be consistent with statutory requirements.

50.110(2) A waiver under this subrule may be granted only upon a showing of all the following:

- a. Because of special circumstances, applying the rule would impose an undue burden or extreme hardship on the requester;
- b. Granting the waiver would not adversely affect the public interest and the protection of investors; and
- c. Granting the waiver would provide substantially equal protection of public health and safety as would compliance with the rule.

50.110(3) A request for waiver shall be made at any time within 60 days of the initial application and shall include the following information:

- a. The name, address and telephone number of the person requesting the waiver;
- b. The specific rule from which a waiver is requested;
- c. The nature of the waiver requested;
- d. An explanation of all facts relevant to the waiver request, including all material facts necessary for the administrator to evaluate the criteria for granting a waiver as provided by subrule 50.110(2); and
- e. A description of any prior communication between the administrator and the requester regarding the proposed waiver.

50.110(4) The administrator shall rule upon all waiver requests and transmit the ruling to the requester. The ruling shall include the reason for granting or denying the request. The administrator's ruling shall constitute final agency action for the purposes of Iowa Code chapter 17A.

50.110(5) The administrator may impose reasonable conditions when granting a waiver to achieve the objectives of the particular rule being waived.

50.110(6) If at any time the administrator finds the facts as stated in the waiver request are not true, that material facts have been withheld, or that the requester has failed to comply

INSURANCE DIVISION[191](cont'd)

with conditions set forth in the waiver, the administrator may cancel the waiver and seek additional sanctions against the issuer and agent as provided by this chapter and Iowa Code chapter 502.

50.110(7) Any request for an appeal from a decision granting, denying, or canceling a waiver shall comply with the procedures provided in Iowa Code chapter 17A. An appeal shall be made within 30 days after the administrator's ruling in response to the waiver requested.

50.110(8) All final rulings in response to waiver requests shall be indexed and available to members of the public at the administrator's office.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 11/24/99, effective 1/19/00]

[Published 12/15/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/99.

ARC 9540A**PHARMACY EXAMINERS
BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners hereby amends Chapter 8, "Minimum Standards for the Practice of Pharmacy," Iowa Administrative Code.

The amendments provide for the dispensing of prescription medications in customized patient medication packaging and include requirements for labeling, record keeping, and packaging. The amendments also provide for an emergency drug supply to be maintained in an inpatient hospice facility and require policies and procedures for secure delivery of prescription medications shipped or otherwise delivered to Iowa patients.

Notice of Intended Action was published in the June 2, 1999, Iowa Administrative Bulletin as **ARC 9049A**. The adopted amendments differ from those published under Notice as follows:

In Item 1, proposed requirements for the retention of records pertaining to the delivery of controlled substances are not adopted because those requirements would impose an excessive burden on Iowa pharmacies. Certain proposed requirements in Item 2 regarding label information have been deleted or modified because they would have served no good purpose as stated, they would have been impossible to complete under certain circumstances or for certain drugs, or a better means of providing the intended information was determined. Terms and descriptions have also been modified to clarify the intent and the applicability of the rule. Item 3 is identical to the proposed amendment.

The amendments were approved during the November 16, 1999, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on January 19, 2000.

The Board does not find it necessary to include specific provisions for waiver or variance within these amendments. The Board's general waiver and variance provisions in rule 657—1.3(17A,124,126,147,155A,205,272C) are applicable to these amendments.

These amendments are intended to implement Iowa Code sections 124.306, 155A.15, and 155A.28.

The following amendments are adopted.

ITEM 1. Adopt **new** rule 657—8.12(124,155A) as follows:

657—8.12(124,155A) Delivery of drugs and devices. Every pharmacy shipping or otherwise delivering prescription drugs or devices to Iowa patients shall develop and implement policies and procedures to ensure accountability, safe delivery, and compliance with 657—subrule 6.7(2).

This rule is intended to implement Iowa Code sections 124.306 and 155A.15.

ITEM 2. Rescind rule 657—8.13(126,155A) and adopt the following **new** rule in lieu thereof:

657—8.13(126,155A) Patient med paks. In lieu of dispensing prescribed drug products in conventional prescription containers, a pharmacist may, with the consent of the patient, the patient's caregiver, or the prescriber, provide a customized patient medication package (patient med pak) pursuant to the requirements of this rule.

8.13(1) Definition. A patient med pak is a customized patient medication package prepared for a specific noninstitutionalized patient which comprises a series of immediate containers containing prescribed solid oral dosage forms, each container being labeled with the time or the appropriate period for the patient to take its contents. A patient med pak may also be prepared for a specific institutionalized patient when the prescriber's orders specifically indicate that the resident is capable of self-administering the medication contained therein.

8.13(2) General procedures. The following shall apply when patient med paks are employed:

a. The pharmacist shall be responsible for determining the classification, as directed by USP General Chapter entitled <671> Containers—Permeation, for containers used by the pharmacy to repackage nonsterile drugs into patient med paks.

b. Packaging for all nonsterile solid oral dosage forms stored and dispensed in patient med paks shall:

(1) Preserve and protect the identity and integrity of the drug from the point of packaging to the point of administration, and

(2) Be clean and free of extraneous matter when the drugs are placed into the package.

c. Drugs dispensed to patients in patient med paks may not be returned to the pharmacy stock and reissued except to the same patient as provided in subrule 8.13(4).

d. There is no special exemption for patient med paks from the requirements of the Poison Prevention Packaging Act. Thus, the patient med pak, if it does not meet child-resistant standards, shall be placed in an outer package that does comply, or the necessary consent of the purchaser or physician to dispense in a container not intended to be child-resistant, shall be obtained.

8.13(3) Re-use of patient med pak containers. Notwithstanding requirements that all prescription medications be dispensed in a new container conforming with standards established in the official compendia, a pharmacist may dispense and refill a prescription for nonliquid oral products in a clean patient med pak provided:

- a. A patient med pak is reused only for the same patient; and
- b. No more than a one-month supply is dispensed at one time.

PHARMACY EXAMINERS BOARD[657](cont'd)

8.13(4) Repackaging of patient med paks. In the event a drug is added to or discontinued from a patient's drug regimen, when a container within the patient med pak has more than one drug within it, the pharmacist may repackage the patient's med pak and either add to or remove from the patient medication packaged as ordered by the prescriber. The same drugs returned by the patient for repackaging must be reused by the pharmacist in the design of the new patient med pak for the new regimen, and any drug removed must either be disposed of in compliance with board rules or returned to the patient properly labeled. Under no circumstances may a drug within a container of a patient med pak be returned to the pharmacy stock.

8.13(5) Labeling requirements.

a. Except as provided in subrule 8.13(6), the patient med pak shall be labeled with the following:

- (1) The name of the patient;
- (2) The unique identification number for the patient med pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;
- (3) The name, strength, dosage form, and total quantity of each drug product contained therein;
- (4) The directions for use for each drug product contained therein;
- (5) The name of the prescriber of each drug product;
- (6) The date of preparation of the patient med pak and the beyond-use date assigned to the patient med pak;
- (7) The name, address, and telephone number of the pharmacy; and
- (8) The initials of the responsible pharmacist.

b. The patient med pak shall be accompanied by a patient package insert, in the event that any drug contained therein is required to be dispensed with such insert as accompanying labeling. Alternatively, such required information may be incorporated into a single, overall educational insert provided by the pharmacist for the total patient med pak.

c. If the patient med pak allows for the removal or separation of the intact containers therefrom, each individual container shall bear a label identifying the patient, the unique identification number for the patient med pak, and the name and telephone number of the dispensing pharmacy.

d. If a pharmacist selects a generically equivalent drug product for a brand-name drug product prescribed by a practitioner, the label must identify the generic drug and may identify the brand name drug for which the selection is made. The dual identification allowed under this paragraph must take the form of the following statement on the label: "(generic name) Generic for (brand-name product)".

8.13(6) Alternate labeling. If the patient med pak container is not of sufficient size to accommodate the label information as required in subrule 8.13(5) in a legible font, a patient package insert shall be prepared and delivered with the patient med pak. The patient package insert shall contain all label information required in subrule 8.13(5). In such case, the label affixed to the patient med pak shall minimally include:

- a. The name of the patient;
- b. The unique identification number for the patient med pak;
- c. The beyond-use date assigned to the patient med pak;
- d. A statement directing the patient or patient's caregiver to the patient package insert; and
- e. The name and telephone number of the dispensing pharmacy.

8.13(7) Expiration/beyond-use dating. Beyond-use date or period of time shall be not longer than the shortest recommended beyond-use date for any dosage form included therein or not longer than 60 days from the date of preparation of the patient med pak and shall not exceed the shortest expiration date on the original manufacturer's bulk containers for the dosage forms included therein. Alternatively, the package label shall state the date of the prescriptions or the date of preparation of the patient med pak, provided the package is accompanied by a record indicating the start date and the beyond-use date.

8.13(8) Record keeping.

a. The record of each patient med pak shall contain, as a minimum:

- (1) The name and address of the patient;
- (2) A unique identification number for each of the prescription drug orders for each of the drug products contained therein;
- (3) A unique identification number for the patient med pak;
- (4) Information identifying or describing the design, characteristics, or specifications of the patient med pak sufficient to allow subsequent preparation of an identical patient med pak for the patient;
- (5) The date of preparation of the patient med pak and the beyond-use date that was assigned;
- (6) Any special labeling instructions; and
- (7) The name or initials of the responsible pharmacist.

b. The record of the individual prescription drug orders for each of the drug products packaged in a patient med pak shall include the unique identification number for the patient med pak wherein the prescription drug is dispensed.

This rule is intended to implement Iowa Code sections 124.306, 126.10, 155A.15 and 155A.28.

ITEM 3. Amend rule 657—8.31(124,155A), introductory paragraph, as follows:

657—8.31(124,155A) Home health agency/hospice emergency drugs. Recognizing the emergency and unanticipated need for certain legend drugs to be available to qualified individuals authorized to administer drugs and employed by a home health agency or hospice, an Iowa-licensed pharmacy may provide certain medications pursuant to this rule. The emergency drug supply may be carried by such qualified individual. *An inpatient hospice facility may have an emergency drug supply provided by an Iowa-licensed pharmacy which supply may be maintained within the facility pursuant to 657—8.32(124,155A).*

[Filed 11/23/99, effective 1/19/00]

[Published 12/15/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/99.

ARC 9548A

PROFESSIONAL LICENSURE
DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 158.15, the Board of Barber Examiners hereby amends Chapter 20, "Barber Examiners," Iowa Administrative Code.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

This amendment changes the renewal fee for barbershops to reflect 1999 Iowa Acts, chapter 141, section 29, which became effective July 1, 1999. Barbershop licenses will now be renewed biennially instead of annually.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 11, 1999, as **ARC 9269A**. A public hearing was held on August 31, 1999, from 8 to 9 a.m. in the Fifth Floor Conference Room, Iowa Department of Public Health, Bureau of Professional Licensure, Lucas State Office Building, Des Moines, Iowa. There were no written or oral comments received in response to the proposed amendment. This amendment is identical to the Notice of Intended Action.

This amendment was adopted by the Board of Barber Examiners at a Board meeting on November 2, 1999.

This amendment will become effective January 19, 2000.

This amendment is intended to implement Iowa Code section 158.9.

The following amendment is adopted.

Amend subrule 20.214(9) as follows:

20.214(9) Renewal *Biennial renewal* of barbershop license is ~~\$30~~ \$60. Penalty for late renewal is \$10, in addition to renewal fee if not postmarked by the July 1 expiration date.

[Filed 11/24/99, effective 1/19/00]

[Published 12/15/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/99.

ARC 9549A**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 157.14, the Board of Cosmetology Arts and Sciences Examiners hereby amends Chapter 61, "Licensure of Salons and Schools of Cosmetology Arts and Sciences," and Chapter 62, "Fees," Iowa Administrative Code.

These amendments change the salon license period from annual to biennial due to 1999 Iowa Acts, chapter 141, section 28, which became effective on July 1, 1999. The renewal fee is revised to reflect the biennial renewal.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 11, 1999, as **ARC 9270A**. A public hearing was held on August 31, 1999, from 8 to 9 a.m. in the Professional Licensure Board Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. There were no written or oral comments received in response to the amendments.

The Board of Cosmetology Arts and Sciences Examiners adopted these amendments at a Board meeting on November 16, 1999.

These amendments will become effective January 19, 2000.

These amendments are intended to implement Iowa Code section 157.11 as amended by 1999 Iowa Acts, chapter 141, section 28.

The following amendments are adopted.

ITEM 1. Adopt new paragraph **61.1(6)"f"** as follows:

f. A salon license shall be renewed on a biennial basis.

ITEM 2. Amend subrule 62.1(10) as follows:

62.1(10) Renewal of a salon license ~~and change of location of an existing salon is \$35 annually~~ is \$70 biennially.

ITEM 3. Amend subrule 62.1(20) as follows:

62.1(20) Fee for a name change of salon is \$15. *Fee for change of location of an existing salon is \$35.*

[Filed 11/24/99, effective 1/19/00]

[Published 12/15/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/99.

ARC 9557A**REGENTS BOARD[681]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 262.9(3) and 262.9(16), the Board of Regents, on June 16, 1999, amended Chapter 11, "Administrative Procedures," Chapter 12, "University of Iowa Procedures," Chapter 13, "Iowa State University of Science and Technology Procedures," Chapter 14, "The University of Northern Iowa," Chapter 15, "Iowa Braille and Sight Saving School," Chapter 16, "Iowa School for the Deaf," and adopted Chapter 18, "Declaratory Orders," Chapter 19, "Procedure for Rule Making," and Chapter 20, "Contested Cases," Iowa Administrative Code.

These amendments bring the Board's rules on administrative rule making, declaratory orders and contested cases into conformance with 1998 Iowa Acts, chapter 1202, which amended the Iowa Administrative Procedure Act.

The amendment to Chapter 11 clarifies the purpose of the chapter by amending the title and rescinds rules 11.2(262) through 11.5(262) which are replaced by new Chapters 18, 19, and 20.

The amendment to Chapter 12 clarifies the purpose of the chapter by amending the title and rescinds rules 12.2(262) through 12.5(262) which are replaced by new Chapters 18, 19, and 20.

The amendment to Chapter 13 clarifies the purpose of the chapter by amending the title and rescinds rules 13.2(262) through 13.5(262) which are replaced by new Chapters 18, 19, and 20.

The amendment to Chapter 14 clarifies the purpose of the chapter by amending the title.

The amendment to Chapter 15 clarifies the purpose of the chapter by amending the title and rescinds rules 15.2(262) through 15.5(262) which are replaced by new Chapters 18, 19, and 20.

The amendment to Chapter 16 clarifies the purpose of the chapter by amending the title and rescinds rules 16.2(262) through 16.5(262) which are replaced by new Chapters 18, 19, and 20.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 7, 1999, as **ARC 8877A**. The text of these amendments is identical to that published under Notice.

These amendments will become effective January 19, 2000.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the

REGENTS BOARD[681](cont'd)

Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Chs 11 to 16, amend titles; rescind rules 11.2 to 11.5, 12.2 to 12.5, 13.2 to 13.5, 15.2 to 15.5, 16.2 to 16.5; adopt Chs 18 to 20] is being omitted. These rules are identical to those published under Notice as **ARC 8877A**, IAB 4/7/99.

[Filed 11/23/99, effective 1/19/00]
[Published 12/15/99]

[For replacement pages for IAC, see IAC Supplement 12/15/99.]

ARC 9550A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue and Finance hereby adopts amendments to Chapter 5, "Public Records and Fair Information Practices," and Chapter 6, "Organization, Public Inspection," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXII, Number 8, page 679, on October 20, 1999, as **ARC 9433A**.

Item 1 amends the introductory paragraph to 701—Chapter 5 to provide clarity regarding the rules adopted in the chapter. Items 2, 3, and 4 amend 701—subrule 5.14(6), paragraphs "i," "l," and "hh," to provide Iowa Code reference updates and delete obsolete information. Item 5 amends 701—paragraph 6.1(3)"b" by rescinding the organizational charts for the Department and sets forth text describing the organization and duties of the Department and its various subdivisions in order to provide accurate references and eliminate obsolete information. Item 5 also amends the implementation clause. Item 6 amends rule 701—6.2(17A) to provide an accurate rule reference. Item 7 amends rule 701—6.3(17A) to implement changes regarding the release of tax information pursuant to subpoena made in Iowa Code section 422.72. Item 8 amends rule 701—6.6(422) at the implementation clause to update an Iowa Code reference.

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

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

These amendments will become effective January 19, 2000, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapters 421, 422, 452A and 453A.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Ch 5, introductory paragraph, 5.14(6), 6.1(3), 6.2, 6.3, 6.6] is being omitted. These amendments are identical to those published under Notice as **ARC 9433A**, IAB 10/20/99.

[Filed 11/24/99, effective 1/19/00]
[Published 12/15/99]

[For replacement pages for IAC, see IAC Supplement 12/15/99.]

ARC 9551A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue and Finance hereby adopts amendments to Chapter 48, "Composite Returns," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 53, "Determination of Net Income," Chapter 54, "Allocation and Apportionment," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXII, Number 6, page 428, on September 22, 1999, as **ARC 9359A**.

Changes have been made to the Notice of Intended Action. In Item 4, in subrule 52.10(2), the words "For purchases of real property made in conjunction with the location or expansion of an eligible business on or after July 1, 1999," have been changed to "For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333," to conform with rules adopted by the Iowa Department of Economic Development.

Also, the number of years the net operating loss from construction could be carried back was changed from "5 years" to "2 years" in Example 2 of Item 7 to correctly implement 1999 Iowa Acts, chapter 95.

These amendments will become effective March 29, 2000, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 422 as amended by 1999 Iowa Acts, chapters 95 and 151, and Iowa Code section 15.333 as amended by 1999 Iowa Acts, chapter 172.

The following amendments are adopted.

ITEM 1. Amend rule 701—48.1(422) to read as follows:

701—48.1(422) Composite returns. For tax years of non-resident partners, *members*, shareholders, or beneficiaries which begin on or after January 1, 1987, a partnership, *limited liability company*, S corporation, or trust may be allowed or be required to file a composite return and pay the tax due on behalf of the nonresident partners, *members*, shareholders, or beneficiaries. *For tax years of nonresident partners, members, shareholders, or beneficiaries which begin on or after January 1, 1999, a partnership, limited liability company, S corporation, or trust may elect or may be required to file a composite return and pay the tax due on behalf of the nonresident partners, members, shareholders, or beneficiaries.* For tax years beginning on or after January 1, 1995, professional athletic teams may be allowed or required to file a composite return and pay the tax due on behalf of nonresident team members.

This rule is intended to implement Iowa Code section 422.13 as amended by 1999 Iowa Acts, chapter 151.

ITEM 2. Amend rule 701—52.1(422), unnumbered paragraphs, to read as follows:

For tax years beginning on or after January 1, 1989, every corporation organized under the laws of Iowa, doing business within Iowa, or deriving income from sources consisting of real or tangible property located or having a situs within Iowa, shall file a true and accurate return of its income or

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

loss for the taxable period. The return shall be signed by the president or other duly authorized officer.

For tax years beginning on or after January 1, 1995, every corporation organized under the laws of Iowa, doing business within Iowa, or deriving income from sources consisting of real, tangible, or intangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. *For tax years beginning on or after January 1, 1999, every corporation doing business within Iowa, or deriving income from sources consisting of real, tangible, or intangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer.*

ITEM 3. Amend the implementation clause of rule 701—52.1(422) to read as follows:

This rule is intended to implement Iowa Code sections 422.21, 422.32, 422.33 as amended by 1999 Iowa Acts, chapter 151, 422.34, 422.34A as amended by 1997 Iowa Acts, House File 354, and 422.36.

ITEM 4. Amend subrule 52.10(2) to read as follows:

52.10(2) 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 on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333, the cost of land and any buildings and structures located on the land will be considered to be a 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 subrule, 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 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 claimed by an 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.

ITEM 5. Amend the implementation clause of rule 701—52.10(15) to read as follows:

This rule is intended to implement Iowa Code sections 15.333 as amended by 1999 Iowa Acts, chapter 172, and section 15.335 as amended by 1996 Iowa Acts, House File 2481.

ITEM 6. Amend 701—Chapter 52 by adopting the following new rule 701—52.16(422):

701—52.16(422) Franchise tax credit. For tax years beginning on or after January 1, 1998, a shareholder in a financial institution as defined in Section 581 of the Internal Revenue Code which has elected to have its income taxed directly to the shareholders may take a tax credit equal to the shareholder's pro-rata share of the Iowa franchise tax paid by the financial institution.

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.33 by reducing the shareholder's taxable income by the shareholder's pro-rata share of the items of income and expenses of the financial institution and deducting from the recomputed tax the credits allowed by Iowa Code section 422.33. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.33 reduced by the credits allowed in Iowa Code section 422.33.

The resulting amount, not to exceed the shareholder's pro-rata share of the franchise tax paid by the financial institution, is the amount of tax credit allowed the shareholder.

This rule is intended to implement Iowa Code section 422.33 as amended by 1999 Iowa Acts, chapter 95.

ITEM 7. Amend subrule 53.2(3) by adopting the following new paragraph "d":

d. For tax years beginning on or after January 1, 1998, for 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 including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss. If the taxpayer has elected for federal income tax purposes to carry a net operating loss from the trade or business of farming back two years, the taxpayer must carry the Iowa net operating loss from the trade or business of farming back two years. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa.

When the taxpayer carries on more than one trade or business within a corporate shell or files a consolidated Iowa corporation income tax return, the income or loss from each trade or business must be combined to determine the amount of net operating loss that exists and whether it is a net operating loss from the trade or business of farming.

EXAMPLE 1. The taxpayer carries on the trade or business of farming and also the trade or business of trucking for entities outside the corporate shell. For the tax year, the taxpayer had a net operating loss from farming of \$25,000 and net income from trucking of \$10,000 for a net operating loss for the year of \$15,000 which is a net operating loss from the trade or business of farming which may be carried back 5 tax years and forward 20 tax years.

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EXAMPLE 2. The taxpayer carries on the trade or business of farming and the trade or business of construction. For the tax year, the taxpayer had income from farming of \$12,000 and a net operating loss from construction of \$45,000 for a net operating loss for the year of \$33,000 which is a net operating loss from the trade or business of construction which may be carried back 2 tax years and forward 20 tax years.

EXAMPLE 3. The taxpayer carries on the trade or business of farming and the trade or business of construction. During the tax year, the taxpayer had a net operating loss of \$18,000 from farming and a net operating loss of \$9,000 from construction for a total net operating loss of \$27,000. Of this net operating loss, \$18,000 is from farming and may be carried back 5 years and forward 20 years and \$9,000 is from construction and may be carried back 2 years and forward 20 years.

ITEM 8. Amend the implementation clause of rule **701—53.2(422)** to read as follows:

This rule is intended to implement Iowa Code section 422.35 as amended by ~~1998~~ 1999 Iowa Acts, ~~Senate File 2357~~ chapter 95.

ITEM 9. Amend rule 701—54.1(422), introductory paragraphs, to read as follows:

701—54.1(422) Basis of corporate tax. Iowa Code section 422.33 imposes a tax on all corporations incorporated under the laws of Iowa and upon every foreign corporation doing business in Iowa. *For tax years beginning on or after January 1, 1999, Iowa Code section 422.33 imposes a tax on all corporations doing business in Iowa.* For corporations or other entities subject to the tax (as corporations), the tax is levied and collected only on such income as may accrue or be recognized to the corporation from business done or carried on in the state plus net income from certain sources without the state which by law follows the commercial domicile of the corporation.

If a corporation carries on its trade or business entirely within the state of Iowa, no allocation or apportionment of its income may be made. The corporation will be presumed to be carrying on its business entirely within the state of Iowa if its sales or other activities are carried on only in Iowa, even though it received income from sources outside the state in the form of interest, dividends, royalties and other sources of income from intangibles. For tax years beginning on or after January 1, 1995, an Iowa-domiciled corporation may apportion its income if it has income from intangibles that have acquired a business situs outside Iowa even if it has no other activities outside the state. *For tax years beginning on or after January 1, 1999, an Iowa-domiciled corporation may apportion its income if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state.* (See subrules 52.1(1) and 52.1(4).)

For tax years beginning on or after January 1, 1986, the income from the operation of a farm may be allocated and apportioned within and without the state if the business activities of the corporation are carried on partly within and partly without the state. For tax years beginning on or after January 1, 1995, an Iowa-domiciled corporation may apportion its income if it has income from intangibles that have acquired a business situs outside Iowa even if it has no other activities outside the state. *For tax years beginning on or after January 1, 1999, an Iowa-domiciled corporation may apportion its income if the trade or business is carried on partly within and partly without the state or if income is derived*

from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state. (See subrules 52.1(1) and 52.1(4).)

See subrule 54.1(4) for the definition of carrying on a trade or business partly within and partly without the state.

ITEM 10. Amend the implementation clause of rule **701—54.1(422)** to read as follows:

This rule is intended to implement Iowa Code Supplement section 422.33(1) *as amended by 1999 Iowa Acts, chapter 151.*

[Filed 11/24/99, effective 3/29/00]

[Published 12/15/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/99.

ARC 9555A**UTILITIES DIVISION[199]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 476.1 and 476.2, the Utilities Board (Board) gives notice that on November 23, 1999, the Board issued an order in Docket No. RMU-99-6, Rule-Making Procedures, "Order Adopting Rules," by which the Board adopted certain revisions to the Board's existing rule-making procedures. The Board is revising its existing procedures to implement changes required by amendments to the Iowa Administrative Procedure Act, 1998 Iowa Acts, chapter 1202.

The Board previously conducted a rule-making inquiry, identified as Uniform Rules On Agency Procedure, Docket No. RMU-99-2, in which the Board sought public comment concerning the possible adoption of the state's uniform rule-making procedures. The comments received did not support adoption of the uniform rules; instead, they favored minimal modification of the Board's existing rules to accommodate the statutory changes. The Board adopted the approach favored by the public comments, that is, modification of its existing rules, and commenced this rule-making procedure.

The Board is revising and substantively updating all of its rule-making procedures. As a part of that process, various editorial and grammatical changes are being adopted that do not affect the substance of the rules. The changes are intended to simplify the rules and make the language more consistent.

Notice of Intended Action for the proposed rule making was published in the Iowa Administrative Bulletin on August 11, 1999, as **ARC 9272A**. Written comments were filed on or before September 3, 1999, and a public hearing to receive oral comments was held on September 15, 1999.

Written comments were filed by MidAmerican Energy Company, the Consumer Advocate Division of the Department of Justice, Missouri River Energy Services, and the Iowa Telecommunications Association (ITA). The comments generally supported the proposed changes to the Board's existing rule-making procedures, although the commenters suggested a variety of minor revisions described below.

One of the proposed new rules is a revision of the Board's existing general waiver provision, rule 199—1.3(17A,474), to clarify that it can apply in all proceedings, rather than just contested cases. MidAmerican asserted that the Board's

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rules contain three separate waiver provisions, in rule 191—1.3(17A,474) and subrule 3.1(3) and an unspecified part of Chapter 7. MidAmerican suggested these rules can be combined into a single rule. Consumer Advocate suggested the Board revise the waiver rule to add that waiver may be granted only if application of the rule would result in hardship or injustice, would be consistent with the public interest, and would not prejudice the substantial rights of any other person.

The Board has not adopted the suggested changes. The Board's intent in proposing revisions to the waiver rule was to clarify the rule, which could have been interpreted to apply only to "parties" in a contested case. The Board does not intend to implement substantive changes to the rule at this time.

MidAmerican also suggested the creation of a mechanism for serving copies of all written statements on all commenters in each proceeding, either by creating a service list after comments are filed and requiring each commenter to serve each other participant, or through distribution of a summary of all written comments to be prepared by the Board.

The Board has not adopted either of these suggestions. The Board already creates a service list in every rule-making docket, and the Board serves its orders on every person appearing on that list. Requiring that every person filing comments must serve copies of those comments on every other person on the list, however, could impose a significant burden on smaller commenters participating in large proceedings. This could discourage public input in some proceedings, a result the Board is anxious to avoid. The Board notes that all comments filed with the Board are readily available for public inspection and copying at the Board's office, and for a cost-based charge the Board will mail copies of the comments to anyone asking for them. These mechanisms should be sufficient to make all filed comments available to any interested person without imposing a service burden that could discourage public participation in some proceedings.

Distribution of a summary of comments would be another possible mechanism to encourage parties to be aware of the comments filed, but it may be difficult to accomplish in a timely manner in most proceedings. Moreover, it could lead to disputes with various parties regarding the manner in which their comments were summarized, which would only distract from the substance of the proceeding. The Board has not adopted either of these suggested revisions.

Similarly, Missouri River suggested the Board should develop a mechanism for notifying interested persons of the commencement of any rule making that may be of interest to them. Missouri River suggested the Board could maintain a mailing list of persons wishing to be so notified.

While the Board is always interested in encouraging public participation in its rule-making proceedings, the Board has not adopted Missouri River's suggestion. Notice of every Board rule making is published in the Iowa Administrative Bulletin; the order commencing each proceeding is published on the Board's Web site and the Board's electronic bulletin board; and any interested person can receive all Board orders, by mail, for an annual fee. Moreover, many industry associations independently notify their members of Board rule makings of potential interest. These mechanisms appear to be sufficient to inform the public of Board rule-making proceedings, although the Board will continue to consider additional mechanisms for encouraging public participation.

The amendments include a new provision incorporating the requirement of Iowa Code section 25B.6 that a fiscal im-

pact statement be prepared whenever a proposed rule mandates additional combined expenditures of more than \$100,000 by all affected political subdivisions or agencies and entities that contract with political subdivisions to provide services. MidAmerican offered the interpretation that, because utilities sometimes contract to sell power to political subdivisions, they are included in the group of entities that can require performance of a fiscal impact analysis. Thus, in MidAmerican's view, any rule that requires a combined expenditure of more than \$100,000 by all of the utilities in the state would have to be the subject of a fiscal impact statement.

The Board does not agree with MidAmerican's interpretation of the statute. The phrase "agencies and entities which contract with political subdivisions to provide services" does not refer to all entities that sell anything to a political subdivision on contract. Instead, it refers to entities that, pursuant to a contract, provide services to the public on behalf of the political subdivision, that is, that are fulfilling the role of the political subdivision. Using MidAmerican's interpretation would mean that the Board would have to incorporate a fiscal impact statement in nearly every rule-making proceeding conducted by the Board. This is not the intended effect of Iowa Code section 25B.6, which is intended to address the problem of unfunded mandates, not to impose a fiscal impact statement requirement on every single rule making.

MidAmerican also suggested that rule 199—3.7(17A, 474) and renumbered subrule 3.7(4), both of which state that the Board may schedule an oral presentation on its own motion, may be redundant. The Board concurred and has rescinded renumbered subrule 3.7(4).

Consumer Advocate suggested the Board add three additional statements to its rule-making rules to establish certain principles that would guide the Board's future actions. The first would be a policy in favor of establishing law by rule making rather than by adjudicatory process whenever feasible. The second would be a statement that a notice of inquiry proceeding can never result in either a rule or an adjudicatory order. The third would add the same restriction to "notice and comment" proceedings.

The Board rejected all three proposed revisions. The first principle, favoring rule making over contested cases as a policy development tool, is now a statutory requirement. See Iowa Code section 17A.3(1)"c," as amended by 1998 Iowa Acts, chapter 1202, section 7. Copying the statute into the Board's rules will not add anything to the rules other than length.

The second and third principles, restricting the Board's use of notice of inquiry proceedings, would interfere with Board decision making to an excessive degree. The new rules describing notice of inquiry proceedings are intended to be flexible; they should cover both a notice of inquiry and a "notice and comment" proceeding. This flexibility is the factor that makes an NOI or INU docket a useful tool for the Board; if the dockets cannot ever result in any final Board action, it is hard to see why the Board would ever want to invest resources in conducting them. Of course, Consumer Advocate is correct that a notice of inquiry will not normally result in the adoption of rules without a subsequent rule-making proceeding; that can happen only if the Board finds, for good cause, that it can adopt rules without notice and public participation pursuant to Iowa Code section 17A.4(2).

Missouri River suggested the Board should increase the minimum time between the publication of a Notice of Intended Action and the deadline for filing written statements, from 20 days to 45 days. Similar extensions should be ap-

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plied to the time for requesting an oral presentation and for requesting an extension of the schedule, although no specific time frame was suggested.

The requirement of a minimum of 20 days between publication of the Notice and filing of written statements is statutory in accordance with Iowa Code section 17A.4(1)"b." The Board has allowed longer time periods in many rule-making dockets when the subject matter of the docket makes it appropriate. There seems to be little benefit to mandating a substantial extension of the minimum time frame in all dockets when a longer time can always be allowed on a case-by-case basis. The Board has not adopted Missouri River's suggested addition.

Further, Missouri River suggested the second sentence of renumbered subrule 3.5(2) is unnecessary and should be omitted. The sentence provides that, if publication of a notice of rule making is not required by law, written statements may be filed as authorized by the Board. However, renumbered subrule 3.4(3) provides that the Board will always publish a notice of rule making, even if not required by law. The Board finds merit in this suggested revision and has rescinded subrule 3.5(2) and renumbered subsequent subrules accordingly.

The ITA suggested that renumbered subrule 3.6(2) should be revised. As proposed, the subrule requires that any written counterstatements of position must be filed prior to the oral presentation, if one is scheduled. The ITA suggested that filing of counterstatements should be encouraged prior to the oral presentation, but should not be required, because the time between the filing of initial statements and the oral presentation is sometimes rather short.

The Board has not adopted the ITA's suggested revision. The proposed language requiring that written counterstatements be filed before the oral presentation was a purposeful addition to the rules, intended to prevent the situation where an interested person submits a written counterstatement containing contested statements after the oral presentation, depriving other persons of the opportunity to respond. While it can be difficult to prepare a written counterstatement and file it in the interval between the filing of initial statements and the oral presentation, any person can request an extension or a waiver of the deadline in appropriate cases. In ruling on the request for waiver, the Board will be able to make any appropriate provision for further responses as well.

These amendments are intended to implement Iowa Code section 476.2.

These amendments will become effective on January 19, 2000.

The following amendments are adopted.

ITEM 1. Rescind 199 IAC 1.3(17A,474) and adopt the following new rule in lieu thereof:

199—1.3(17A,474) Waiver of any rule. The board may, on its own motion or at the request of any person, waive any of its rules for good cause shown, unless otherwise provided by law.

ITEM 2. Amend 199 IAC 3 as follows:

CHAPTER 3
RULE MAKING

199—3.1(17A,474) Purpose and scope.

3.1(1) In general. These rules shall govern the practice and procedure in all rule-making proceedings of the Iowa utilities board (board).

3.1(2) Rules of construction. If any provision of a rule or the application of a rule to any person or circumstance is itself or through its enabling statute held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of the rule are severable.

3.1(3) Waiver. *The board may waive the application of any of these rules pursuant to 199 IAC 1.3(17A,474).*

3.1(4) Forms and filing requirements. *All rule-making filings shall substantially comply with the forms prescribed in 199 IAC 2.2(17A,474). All filings shall include an original and ten copies.*

199—3.2(17A,474) Notice of inquiry. *In addition to seeking information by other methods, the board may solicit comments from the public on the subject matter of possible rule making by the board by causing notice of the subject matter to be published in the Iowa Administrative Bulletin, indicating where, when, and how persons may comment.*

199—3.2 3(17A,474) Petition for adoption of rules.

3.2(1) Petitioner. Any interested person may petition the board for the adoption, amendment, or repeal of a rule.

3.2(2) Form of petition. ~~A petition for rule making shall substantially comply with the form prescribed in 199—subrule 2.2(1). The original and ten copies of the petition shall be filed with the board.~~

~~This rule is intended to implement Iowa Code section 476.2.~~

199—3.3 4(17A,474) Commencement of proceedings.

3.3 4(1) Commenced by order. Rule-making proceedings shall be commenced only upon written order of the board. The board may commence a rule-making proceeding by order upon its own motion or upon the filing of a petition for rule making by any interested person.

3.3 4(2) Board action on petition. Within 60 days after the filing of a petition for rule making, the board shall either deny the petition by written order on the merits, stating the reasons therefor, commence by written order a rule-making proceeding, or adopt by written order a rule pursuant to Iowa Code section 17A.4(2).

3.3 4(3) Notice of rule making. Upon the commencement by written order of a rule-making proceeding, the board shall, ~~if required by law,~~ cause the required notice of the proceeding to be published in the Iowa Administrative Bulletin.

3.4(4) Fiscal impact statement. *Pursuant to Iowa Code section 25B.6, a proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions, or agencies and entities which contract with political subdivisions to provide services, shall be accompanied by a fiscal impact statement outlining the costs associated with the proposed rule. If the board determines at the time it adopts a rule that the earlier fiscal impact statement contains errors or that a fiscal impact statement should have been prepared but was not, the board will issue a corrected or delayed fiscal impact statement.*

199—3.4 5(17A,474) Written statements of position.

3.4 5(1) Persons. Any interested person may file a written statement of position containing data, views, comments, or arguments concerning the proposed adoption, amendment, or repeal of a rule.

3.4(2) Filing. ~~The time period, as directed by the board, for filing of written statements of position shall be not less than 20, nor more than 30 calendar days after publication of the notice of rule making in the Iowa Administrative Bulletin.~~

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~~tin. If the publication of a notice of rule making is not required by law, written statements of position may be filed as authorized by the board.~~

~~3.4(3) Form of written statement of position. A written statement of position shall substantially comply with the form prescribed in 199—subrule 2.2(2). The original and ten copies of a written statement of position shall be filed with the board.~~

~~3.4 5(4 2) Service. Written statements of position shall be served by the author upon the petitioner, if any, and consumer advocate at the time of filing.~~

~~This rule is intended to implement Iowa Code section 476.2.~~

199—3.5 6(17A,474) Counterstatements of position.

~~3.5 6(1) Petitioner. The petitioner, if any, may file a counterstatement of position with the board in response to written statements of position.~~

~~3.5 6(2) Filing. Counterstatements of position, if any, shall be filed with the board prior to the oral presentation or, if no oral presentation is scheduled, not later than 15 calendar days after the petitioner's receipt of the written statement of position to which the petitioner is responding.~~

~~3.5(3) Form of counterstatements of position. A counterstatement of position shall substantially comply with the form prescribed in 199—subrule 2.2(3). The original and ten copies of a counterstatement of position shall be filed with the board.~~

~~3.5 6(4 3) Service. Counterstatements of position shall be served by the petitioner at the time of filing upon the authors of written statements of position to which the petitioner is responding and to consumer advocate.~~

~~This rule is intended to implement Iowa Code section 476.2.~~

199—3.6 7(17A,474) Requests for oral presentation. *If an oral presentation is not scheduled by the board on its own motion, any interested person may file a request for an oral presentation.*

~~3.6 7(1) Filing. The time period, as directed by the board, for filing of requests for oral presentation shall be not less than 20, nor more than 30 calendar days after the publication of the notice of rule making in the Iowa Administrative Bulletin.~~

~~3.6(2) Form of requests for oral presentation. A request for oral presentation shall substantially comply with the form prescribed in 199—subrule 2.2(4). The original and ten copies of a request for oral presentation shall be filed with the board.~~

~~3.6 7(3 2) Action on proper request. Within 15 calendar days of the filing of a request for oral presentation, the board shall determine if the request is in accordance with Iowa Code section 17A.4. If the board determines that the request complies with section 17A.4, the board shall by written order schedule oral presentation on the rule making and shall cause a notice of the oral presentation to be published in the Iowa Administrative Bulletin. The notice shall state the date, time, and place of the oral presentation and shall briefly describe the subject matter of the rule-making proceeding. The oral presentation on the rule making shall be not less than ten calendar days after the publication of the notice. The board shall serve a similar notice on the party requesting oral presentation, on any other persons filing written comments, and on the petitioner, if any.~~

~~3.6 7(4 3) Action on improper request. If the board determines that a request for oral presentation does not comply with Iowa Code section 17A.4, it may by written order deny~~

such request stating the reasons therefor, or it may, in its discretion, grant the request and schedule an oral presentation in accordance with the procedures hereinbefore prescribed.

~~3.6(5) Action on own motion. The board may, on its own motion, schedule oral presentation on the rule making in accordance with the procedures hereinbefore prescribed.~~

~~This rule is intended to implement Iowa Code section 476.2.~~

199—3.7 8(17A,474) Rule-making oral presentation.

~~3.7 8(1) Written appearance. Upon the filing of a written appearance, any Any interested person may participate in rule-making oral presentations in person or by counsel. A written appearance shall may be filed not less than five calendar days prior to oral presentation. The board may, in its discretion, waive the filing of a written appearance as a condition precedent to participation in said oral presentation. The general counsel shall not be required to file a written appearance.~~

~~3.7(2) Form of written appearance. A written appearance shall substantially comply with the form prescribed in 199—subrule 2.2(15). The original and ten copies of a written appearance shall be filed with the board.~~

~~3.7 8(3 2) Oral presentations. Participants in rule-making oral presentations may submit exhibits and present oral statements of position which may include data, views, comments, or arguments concerning the proposed adoption, amendment, or repeal of the rule. Participants shall not be required to take an oath and shall not be subject to cross-examination, provided however, that the The board may, in its discretion, permit the questioning of participants by any interested person, and provided further, that but no participant shall be required to answer any question.~~

~~3.7 8(4 3) Rebuttal and limitations. The board may, in its discretion, permit rebuttal statements of position and request the filing of written statements of position subsequent to the adjournment of the rule-making oral presentation. The board may limit the time of any oral presentation and the length of any written presentation.~~

~~This rule is intended to implement Iowa Code section 476.2.~~

199—3.8 9(17A,474) Rule-making decisions.

~~3.8 9(1) Adoption, amendment, or repeal. The board shall by written order adopt, amend, or repeal the rule pursuant to the rule-making proceeding, or dismiss the proceeding in accordance with Iowa Code section 17A.4. The written order shall include a preamble to the adopted rules explaining the principal reasons for the action taken and, if applicable, a brief explanation of any decision not to permit waiver of the adopted rules. The board may, by order, specify the effective date of the adoption, amendment, or repeal of the rule.~~

~~3.9(2) Variance between adopted rule and proposed rule. The board may adopt a rule that differs from the rule proposed in the Notice of Intended Action in the following situations:~~

~~a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in the Notice;~~

~~b. The differences are a logical outgrowth of the contents of the Notice and the comments submitted in response thereto;~~

~~c. The Notice indicated that the outcome of the rule making could be the rule in question;~~

~~d. The differences are so insubstantial as to make additional notice and comment proceedings unnecessary; or~~

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e. As otherwise permitted by law.

3.8 9(23) Statements. Upon the adoption, amendment, or repeal of a rule or termination of a rule-making proceeding, and if timely written request is filed by any interested person pursuant to Iowa Code section 17A.4(1) "b," the board shall, within 35 days of the request, issue a formal written statement of the principal reasons for and against the adoption, amendment, or repeal of the rule, or termination of the rule-making proceeding, including the reasons why the board overruled the positions in opposition to the board's decision. A request for statement shall substantially comply with the form prescribed in 199—subrule 2.2(5).

199—3.9(17A,474) Regulatory flexibility analysis.

3.9(1) For purposes of these rules "small business" shall have the same definition as in Iowa Code section 17A.31(1).

3.9(2) Published notice of small business impact. If the board proposes a rule which may have an impact on small business, the notice of intended action shall expressly recite this possibility and describe the procedure to be followed for making a timely request for a regulatory flexibility analysis to the board.

3.9(3) Registration for the small business impact list. Small businesses or small business organizations as defined in Iowa Code section 17A.31 may register to be included on the board's small business impact list by making a specific, written request addressed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The request for registration shall state:

- a. The name of the small business or small business organization.
- b. Its address.
- c. The name of a person authorized to transact business for the requesting party.
- d. A description of the requesting party's business or its organizational purposes.

The board may request additional information from the applicant to determine whether the applicant is qualified as a small business or a small business organization. The board will send a letter every year to each small business or small business organization on the list asking whether the small business or organization wishes to remain on the list. The name of the small business or organization will be removed from the list if a negative response is received or if no response is received within one month after the letter is sent.

3.9(4) Mailed notice of small business impact. Prior to the publication of a notice of intended action described in subrule 3.9(2), the board shall notify small businesses or small business organizations on the small impact list, by ordinary first-class mail, of the changes it proposes to make to its rules. In the case of a rule made effective under Iowa Code section 17A.4(2) or 17A.5(2) "b," the board shall provide mailed notice to small businesses or small business organizations on the small business impact list within seven days after publication of the rule.

3.9(5) Request for regulatory flexibility analysis. Requests for regulatory flexibility analysis to reduce the impact of a rule on small business may be made within 20 days after the publication of the notice of intended action.

a. The board shall entertain a request for a regulatory flexibility analysis from:

- (1) The governor.
- (2) The administrative rules review committee.
- (3) A political subdivision of the state.
- (4) Twenty-five or more persons who sign the request, provided that each represents a different small business.

(5) An organization registered on the small business impact list which represents at least 25 persons.

b. A request for a regulatory flexibility analysis should specify the proposed rule or portion of the proposed rule for which the analysis is requested.

c. Upon the receipt of a timely valid request for a regulatory flexibility analysis, the board shall consider whether it may reduce the impact of the proposed rule on small business by considering each of the following methods:

- (1) Establishing less stringent compliance or reporting requirements.
- (2) Establishing less stringent schedules or deadlines for compliance or reporting requirements.
- (3) Consolidating or simplifying compliance or reporting requirements.
- (4) Replacing design or operational standards with performance standards.
- (5) Exempting small business from any or all rule requirements.
- (6) Considering the nature and cost of preparation of any required reports weighed against the benefits to be gained from such reports.
- (7) Considering the nature and estimated cost of measures or investments required of small business for compliance, weighed against the benefits to be gained.
- (8) Considering the nature and estimated cost of professional, legal, consulting or accounting services incurred for compliance, weighed against the benefits to be gained.
- (9) Considering the probable cost to the board or any other agency of the implementation and enforcement of the rule and its anticipated effect on state revenue.
- (10) Comparing the possible cost and benefits which would accrue from a proposed rule as opposed to the probable effect of inaction.
- (11) Determining whether the purposes sought by the board might be achieved by other less costly or less intrusive methods.

(12) Describing alternative methods seriously considered by the board, and the reasons that such methods were rejected in favor of the proposed rule.

(13) Considering any other method provided by a requesting party which is legal and feasible in meeting the statutory objective which is the basis of the proposed rule.

d. When the board is required to issue a regulatory flexibility analysis of a proposed rule, the board shall cause to be published a concise summary of the regulatory flexibility analysis in the Iowa Administrative Bulletin at least 20 days prior to the adoption of the proposed rule. In the case of a rule made effective under Iowa Code section 17A.4(2) or 17A.5(2) "b," the board shall publish the summary within 90 days after the publication of the rule. The published summary shall state how interested persons may obtain the full text of the board's analysis at cost. The published summary shall also fix a time and place where interested persons may make an oral presentation on the analysis.

These rules are intended to implement Iowa Code sections 474.1, 474.10, 476.2 and 546.7.

199—3.10(17A,474) Regulatory analysis.

3.10(1) Regulatory analysis. The board shall issue a regulatory analysis of a proposed rule, or of a rule adopted without prior notice and opportunity for public participation, when required by 1998 Iowa Acts, chapter 1202, section 10.

3.10(2) Request for regulatory analysis. A request for a regulatory analysis shall be in writing and shall specify the

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proposed rule or adopted rule for which the analysis is requested.

3.10(3) Schedule extended. Upon receipt of a timely written request for a regulatory analysis of a proposed rule, the time periods for filing written comments and for requesting an oral proceeding are extended to a date 20 days after publication of a concise summary of the regulatory analysis in the Iowa Administrative Bulletin. Any oral proceeding that may already have been scheduled will be rescheduled by the board to a date at least 20 days after publication of the summary.

199—3.11(17A,474) Review of rules. Pursuant to Iowa Code section 17A.7, upon receipt from the administrative rules coordinator of a request for formal review of a specified rule, the board will determine whether the rule has been reviewed within the preceding five years. If such a review was

conducted, the board will report that fact to the administrative rules coordinator. If no such review has been conducted, the board will consider whether the rule should be repealed or amended or a new rule adopted in its place. The board will prepare a written report summarizing its findings, supporting reasons, and proposed course of action. Copies of the report will be sent to the administrative rules review committee and the administrative rules coordinator, and will be made available for public inspection.

These rules are intended to implement Iowa Code section 476.2.

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[Published 12/15/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/99.

AGENCY

Educational Examiners Board[282]

RULE

Ch 21
[IAB 10/6/99, **ARC 9407A**]

DELAY

Effective date of November 10, 1999, delayed until the adjournment of the 2000 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held November 9, 1999. [Pursuant to §17A.8(9)]

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