



# IOWA ADMINISTRATIVE BULLETIN

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Pages 1701 to 1824

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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 Rule 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 Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filing [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.

The ARC number which appears before each agency heading is assigned by the Administrative Rules Coordinator for identification purposes and should always be used when referring to this item in correspondence and other communications.

The Iowa Administrative Code Supplement is also published every other week in loose-leaf form, pursuant to Iowa Code section 17A.6. It contains replacement pages for the Iowa Administrative Code. These replacement pages incorporate amendments to existing rules, new rules or emergency or temporary rules which have been filed with the Administrative Rules Coordinator and published in the Iowa Administrative Bulletin.

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## SUBSCRIPTION INFORMATION

### Iowa Administrative Bulletin

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

First quarter	July 1, 1993, to June 30, 1994	\$221.00 plus \$11.05 sales tax
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Fourth quarter	April 1, 1994, to June 30, 1994	\$ 55.25 plus \$2.76 sales tax

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### Iowa Administrative Code

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**Iowa Administrative Code Supplement** - \$350.00 plus \$17.50 sales tax  
(Subscription expires June 30, 1994)

All checks should be made payable to the Iowa State Printing Division. Send all inquiries and subscription orders to:

**Iowa State Printing Division**  
**Grimes State Office Building**  
**Des Moines, IA 50319**  
**Phone: (515)281-5231**

NATURAL RESOURCE COMMISSION[571](cont'd)

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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 1994

FILING DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 3 '93	Dec. 22 '93	Jan. 11	Jan. 26	Feb. 16	Mar. 23	June 20
Dec. 17 '93	Jan. 5	Jan. 25	Feb. 9	Mar. 2	Apr. 6	July 4
Dec. 31 '93	Jan. 19	Feb. 8	Feb. 23	Mar. 16	Apr. 20	July 18
Jan. 14	Feb. 2	Feb. 22	Mar. 9	Mar. 30	May 4	Aug. 1
Jan. 28	Feb. 16	Mar. 8	Mar. 23	Apr. 13	May 18	Aug. 15
Feb. 11	Mar. 2	Mar. 22	Apr. 6	Apr. 27	June 1	Aug. 29
Feb. 25	Mar. 16	Apr. 5	Apr. 20	May 11	June 15	Sept. 12
Mar. 11	Mar. 30	Apr. 19	May 4	May 25	June 29	Sept. 26
Mar. 25	Apr. 13	May 3	May 18	June 8	July 13	Oct. 10
Apr. 8	Apr. 27	May 17	June 1	June 22	July 27	Oct. 24
Apr. 22	May 11	May 31	June 15	July 6	Aug. 10	Nov. 7
May 6	May 25	June 14	June 29	July 20	Aug. 24	Nov. 21
May 20	June 8	June 28	July 13	Aug. 3	Sept. 7	Dec. 5
June 3	June 22	July 12	July 27	Aug. 17	Sept. 21	Dec. 19
June 17	July 6	July 26	Aug. 10	Aug. 31	Oct. 5	Jan. 2 '95
July 1	July 20	Aug. 9	Aug. 24	Sept. 14	Oct. 19	Jan. 16 '95
July 15	Aug. 3	Aug. 23	Sept. 7	Sept. 28	Nov. 2	Jan. 30 '95
July 29	Aug. 17	Sept. 6	Sept. 21	Oct. 12	Nov. 16	Feb. 13 '95
Aug. 12	Aug. 31	Sept. 20	Oct. 5	Oct. 26	Nov. 30	Feb. 27 '95
Aug. 26	Sept. 14	Oct. 4	Oct. 19	Nov. 9	Dec. 14	Mar. 13 '95
Sept. 9	Sept. 28	Oct. 18	Nov. 2	Nov. 23	Dec. 28	Mar. 27 '95
Sept. 23	Oct. 12	Nov. 1	Nov. 16	Dec. 7	Jan. 11 '95	Apr. 10 '95
Oct. 7	Oct. 26	Nov. 15	Nov. 30	Dec. 21	Jan. 25 '95	Apr. 24 '95
Oct. 21	Nov. 9	Nov. 29	Dec. 14	Jan. 4 '95	Feb. 8 '95	May 8 '95
Nov. 4	Nov. 23	Dec. 13	Dec. 28	Jan. 18 '95	Feb. 22 '95	May 22 '95
Nov. 18	Dec. 7	Dec. 27	Jan. 11 '95	Feb. 1 '95	Mar. 8 '95	June 5 '95
Dec. 2	Dec. 21	Jan. 10 '95	Jan. 25 '95	Feb. 15 '95	Mar. 22 '95	June 19 '95
Dec. 16	Jan. 4 '95	Jan. 24 '95	Feb. 8 '95	Mar. 1 '95	Apr. 5 '95	July 3 '95
Dec. 30	Jan. 18 '95	Feb. 7 '95	Feb. 22 '95	Mar. 15 '95	Apr. 19 '95	July 17 '95

20 days from the publication date is the **minimum** date for a public hearing or cutting off public comment.

35 days from the publication date is the **earliest** possible date for the agency to consider a noticed rule for adoption. It is the regular effective date for an adopted rule.

180 days See 17A.4(1)"b." If the agency does not adopt rules within this time frame, the Notice should be terminated.

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<u>ISSUE NUMBER</u>	<u>PRINTING SCHEDULE FOR IAB</u>	<u>ISSUE DATE</u>
	<u>SUBMISSION DEADLINE</u>	
20	Friday, March 11, 1994	March 30, 1994
21	Friday, March 25, 1994	April 13, 1994
22	Friday, April 8, 1994	April 27, 1994

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**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.



# A T T E N T I O N

TO: Administrative Rules Coordinators and Text Processors of State Agencies  
 FROM: Phyllis Barry, Iowa Administrative Code Editor  
 SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Iowa Administrative Code Division is using a PC system to assist in the printing of the Iowa Administrative Bulletin. In order to most effectively transfer rules from the various agencies sending their rules on a diskette, please note the following:

1. We use a Windows environment with Lotus Ami Professional 3.0 as our word processing system and can import directly from any of the following:

Ami Pro 1.2	Excel 3.0, 4.0	Rich Text Format
Ami Pro Macro	Manuscript	Samna Word
dBase	Microsoft Word	SmartWare
DCA/FFT	MultiMate	SuperCalc
DCA/RFT	Navy DIF	Symphony Document
DIF	Office Writer	Windows Write
Display Write 4	Paradox	Word for Windows 1.x, 2.0
Enable	Peach Text	WordPerfect 4.1, 4.2, 5.0, 5.1
Exec MemoMaker	Professional Write	WordStar
		WordStar 2000 ver 1.0, 3.0

2. If you do not have any of the above, a file in an ASCII format is helpful.

3. Submit only 3 1/2" or 5 1/4" DOS-formatted diskettes. Please indicate on each diskette the agency name, file name, the format used for exporting, chapter or chapters of rules being amended.

4. **Deliver this diskette to the Administrative Code Division, 4th Floor, Lucas Building when documents are submitted to the Governor's Administrative Rules Coordinator.**

Diskettes from agencies will be returned **unchanged** by the Administrative Code Division. Please refer to the hard-copy document which is returned to your agency by the Governor's office. This document reflects any changes in the rules—update your diskettes accordingly.

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

**"A GUIDE TO RULE MAKING"** pamphlet available upon request from:

Administrative Code Division  
 Lucas State Office Building, 4th Floor  
 or  
 Administrative Rules Coordinator  
 Capitol, Ground Floor, Room 11

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
<b>EDUCATIONAL EXAMINERS BOARD[282]</b> Licenses and endorsements, 14.13, 14.17, 14.20(14), 14.24, 15.4 IAB 2/2/94 ARC 4583A	State Board Room Grimes State Office Bldg. Des Moines, Iowa	March 2, 1994 10 a.m.
<b>EDUCATION DEPARTMENT[281]</b> Special education, ch 41 IAB 3/2/94 ARC 4626A	Conference Rooms 1-4 Heartland Area Education Agency 6500 Corporate Drive Johnston, Iowa	April 25, 1994 6 p.m.
Fine Arts Center, High School 819 N. 16th St. Denison, Iowa	May 2, 1994 6 p.m.	
Auditorium Hempstead High School 3715 Pennsylvania Avenue Dubuque, Iowa	May 2, 1994 6 p.m.	
Vocational education —competency development by local school districts or community colleges, 46.7(2) IAB 3/2/94 ARC 4633A	State Board Room — 2nd Floor Grimes State Office Bldg. E. 14th and Grand Ave. Des Moines, Iowa	March 22, 1994 2 p.m.
Vocational education council, 47.1, 47.2 IAB 3/2/94 ARC 4632A	State Board Room — 2nd Floor Grimes State Office Bldg. E. 14th and Grand Ave. Des Moines, Iowa	March 22, 1994 1 p.m.
Innovative programs for at-risk early elementary students, 65.9(4) to 65.9(7) IAB 3/2/94 ARC 4630A	Conference Room 3 North Grimes State Office Bldg. E. 14th and Grand Ave. Des Moines, Iowa	March 31, 1994 1 p.m.
Child development coordinating council, 64.15, 64.20 IAB 3/2/94 ARC 4631A	Conference Room 3 North Grimes State Office Bldg. E. 14th and Grand Ave. Des Moines, Iowa	March 31, 1994 2 p.m.
<b>NATURAL RESOURCE COMMISSION[571]</b> Permits for private docks, amendments to ch 16 IAB 3/2/94 ARC 4638A	Conference Room Fourth Floor West Wallace State Office Bldg. Des Moines, Iowa	March 23, 1994 9 a.m.
Waterfowl and coot hunting seasons, 91.1 to 91.4 IAB 3/2/94 ARC 4643A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Nonresident deer hunting, 94.1, 94.2, 94.7, 94.8 IAB 3/2/94 ARC 4644A	Conference Room — 4th Floor Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.

## NATURAL RESOURCE COMMISSION[571](cont'd)

Pheasant, quail and gray (Hungarian) partridge hunting seasons, 96.1 to 96.3 IAB 3/2/94 ARC 4645A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Common snipe, Virginia rail, sora, woodcock and ruffed grouse hunting seasons, 97.1 to 97.4 IAB 3/2/94 ARC 4646A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Wild turkey fall hunting, 99.1, 99.4 IAB 3/2/94 ARC 4647A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Falconry regulations for hunting game, ch 102 IAB 3/2/94 ARC 4648A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Deer hunting, ch 106 IAB 3/2/94 ARC 4649A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Rabbit and squirrel hunting, 107.1 to 107.3 IAB 3/2/94 ARC 4650A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Mink, muskrat, raccoon, badger, opossum, weasel, striped skunk, fox, beaver, coyote, otter and spotted skunk seasons, 108.1 to 108.5 IAB 3/2/94 ARC 4651A	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.

## PETROLEUM UST FUND BOARD[591]

Installers and inspectors, ch 15 IAB 2/16/94 ARC 4604A	Conference Room — 6th Floor Lucas State Office Bldg. Des Moines, Iowa	March 8, 1994 9 a.m.
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## REAL ESTATE COMMISSION[193E]

Property condition disclosure; release of earnest money deposit; listings, 1.23, 1.27(7), 1.39 IAB 2/16/94 ARC 4611A	Conference Room — 1st Floor 1918 S.E. Hulsizer Ankeny, Iowa	March 10, 1994 9 a.m.
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Instructions to county auditors for optical scan ballots, 22.53(2), 22.53(6)"e" IAB 2/16/94 ARC 4610A	Office of Secretary of State Second Floor Hoover State Office Bldg. Des Moines, Iowa	March 22, 1994 1:30 p.m.
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Public transit — special projects, 920.5(5) IAB 2/16/94 ARC 4609A	Conference Room Air and Transit Division Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	March 10, 1994 10 a.m. (If requested)
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## AGENCY IDENTIFICATION NUMBERS

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].

Implementation of reorganization is continuing and the following list will be updated as changes occur:

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## REORGANIZATION—NOT IMPLEMENTED

Agencies listed below are identified in the Iowa Administrative Code with WHITE TABS\*. These agencies have not yet implemented government reorganization.

Citizens' Aide[210]

Iowa Advance Funding Authority[515]

Records Commission[710]

\* It is recommended that all white tabs be moved to a separate binder rather than interspersed with the colored tabs, which implemented state government reorganization.

**NOTICE—AGRICULTURAL  
CREDIT CORPORATION  
MAXIMUM LOAN RATE**

In accordance with the provisions of Iowa Code section 535.12, the Superintendent of Banking has determined that the maximum rate of interest that may be charged on loans by Agricultural Credit Corporations as defined in Iowa Code section 535.12, subsection 4, shall be:

April 1, 1992 – April 30, 1992	6.10%
May 1, 1992 – May 31, 1992	6.20%
June 1, 1992 – June 30, 1992	5.85%
July 1, 1992 – July 31, 1992	5.70%
August 1, 1992 – August 31, 1992	5.35%
September 1, 1992 – September 30, 1992	5.10%
October 1, 1992 – October 31, 1992	4.90%
November 1, 1992 – November 30, 1992	4.75%
December 1, 1992 – December 31, 1992	5.00%
January 1, 1993 – January 31, 1993	5.15%
February 1, 1993 – February 28, 1993	5.00%
March 1, 1993 – March 31, 1993	4.85%
April 1, 1993 – April 30, 1993	4.85%
May 1, 1993 – May 31, 1993	4.75%
June 1, 1993 – June 30, 1993	4.80%
July 1, 1993 – July 31, 1993	4.90%
August 1, 1993 – August 31, 1993	4.80%
September 1, 1993 – September 30, 1993	4.80%
October 1, 1993 – October 31, 1993	4.70%
November 1, 1993 – November 30, 1993	4.65%
December 1, 1993 – December 31, 1993	4.85%
January 1, 1994 – January 31, 1994	4.85%
February 1, 1994 – February 28, 1994	4.80%

**ARC 4634A**

**EDUCATION DEPARTMENT[281]**

**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 Iowa State Board of Education hereby gives Notice of Intended Action to rescind Chapter 14, "Shared Time," Iowa Administrative Code.

As this chapter of rules has not been applied for a number of years, no impact on the public or nonpublic schools in Iowa will occur by the rescission. No public hearing will be held.

Any interested person may make written suggestions or comments on this proposed amendment on or before March 22, 1994. Such written materials should be directed to Dwight Carlson, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319, (515)281-5811.

This amendment is intended to implement Iowa Code section 256.12.

The following amendment is proposed:

Rescind and reserve 281—Chapter 14.

**ARC 4626A**

**EDUCATION DEPARTMENT[281]**

**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 256.7(5) and 256B.3(15), the State Board of Education hereby gives Notice of Intended Action to rescind Chapter 41, "Education of Pupils Requiring Special Education," and to adopt a new Chapter 41, "Special Education," Iowa Administrative Code.

The proposed new chapter implements Iowa Code chapters 256B and 273, 20 U.S.C. §1401 et seq., and the regulations adopted thereunder found at 34 CFR Part 300. The chapter provides rules that reflect and support innovative changes in special education being implemented by Iowa schools and area education agencies and reorganizes and rewrites the rules in an effort to achieve more clarity. Also, to the extent possible, the proposed new chapter uses the language and organization of federal regulations.

Any interested party may make written suggestions or comments on the proposed new chapter on or before May 2, 1994, to Jeananne Hagen, Acting Chief, Bureau of Special Education, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, fax (515)242-6019. Persons who wish to convey their views orally should contact the Bureau of Special Education at (515)281-3176 or at the Special Education offices on the Third Floor of the Grimes State Office Building or attend one of six public hearings to be held around the state.

The public hearings are scheduled as follows: April 25, 1994, at 6 p.m. in Conference Rooms 1 to 4 of Heartland Area Education Agency, 6500 Corporate Drive, Johnston, Iowa; April 25, 1994, at 6 p.m. in the Mt. Pleasant High School Auditorium, 307 E. Monroe, Mt. Pleasant, Iowa; April 26, 1994, at 6 p.m. in the Red Oak High School Auditorium, 2011 N. 8th Street, Red Oak, Iowa; April 28, 1994, at 6 p.m. in the Beem Center Forum, North Iowa Area Community College, 500 College Drive, Mason City, Iowa; May 2, 1994, at 6 p.m. in the Denison High School Fine Arts Center, 819 North 16th Street, Denison, Iowa; and May 2, 1994, at 6 p.m. in the Auditorium of Hempstead High School, 3715 Pennsylvania Avenue, Dubuque, Iowa. If a sign language interpreter or other special accommodations are needed at one of these meetings, requests should be made to the Bureau of Special Education, (515)281-3176, no later than April 11, 1994.

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

Special Education, (515)281-3176, no later than April 11, 1994.

The proposed new chapter is intended to implement Iowa Code chapters 256B and 273 and 34 CFR Part 300.

The following new chapter is proposed.

Rescind 281—Chapter 41 and insert in lieu thereof the following new chapter:

CHAPTER 41  
SPECIAL EDUCATION

DIVISION I  
SCOPE AND GENERAL PRINCIPLES

**281—41.1(256B,34CFR300) Scope.** These rules apply to the provision of education to children requiring special education between birth and the age of 21, and to a maximum allowable age in accord with Iowa Code section 256B.8, who are enrolled or are to be enrolled in the public or nonpublic schools of this state or in state-operated education programs. In addition, they apply to children requiring special education and who are being educated at home, in hospitals or in facilities other than schools. Under the provisions of 34 CFR §§300.2, 300.134 and 300.600, July 1, 1993, all agencies offering special education within this state shall comply with these rules.

**281—41.2 Reserved.**

**281—41.3(256B) General principles.**

**41.3(1) Availability.** Special education must be made available to all children requiring special education. For all persons referred to in 41.1(256B,34CFR300), required services include early identification; the development and implementation of an IEP; assessment of student improvement resulting from the provision of special services; and instructional services, support services, supplemental services, special adaptations, related services, assistive technology, transportation and materials and equipment necessary to providing children requiring special education a free appropriate public education.

**41.3(2) Responsibility.** It is the responsibility of each eligible individual's resident local education agency (LEA) to provide or make provision for appropriate special education to meet the requirements of state and federal statutes and rules. This responsibility may be met by one or more of the following: by each LEA acting for itself; by action of two or more LEAs through the establishment and maintenance of joint programs; by the area education agency (AEA); by contract for services from approved public or private agencies offering the appropriate special education; or by any combination of these. The AEA shall support and assist LEAs in meeting their responsibilities in providing appropriate special education.

**41.3(3) Free appropriate public education.** LEAs and AEAs shall provide special education at public expense, under public supervision and direction, and at no cost to the parents. The special education provided shall meet the standards set forth in these rules and in 20 U.S.C. §§1401 et seq., applicable portions of 29 U.S.C. §794, and 42 U.S.C. §§2116 et seq.; includes early childhood, elementary, and secondary education; and is provided in conformity with an individualized education program (IEP) or individualized family service plan (IFSP) that meets the requirements of division VIII.

**41.3(4) Full educational opportunity.** Each LEA shall ensure the provision of full educational opportunity to children requiring special education. Full educational opportunity

includes the variety of educational programs and services and nonacademic and extracurricular services and activities that are available to individuals who do not require special education.

**41.3(5) Least restrictive environment.** Each agency shall ensure that to the maximum extent appropriate, children requiring special education are educated with individuals who do not require special education and that special classes, separate schooling or removal of children requiring special education from the general education environment occurs only when the nature or severity of the individual's disability is such that education in regular classes with the use of special education cannot be achieved satisfactorily in accord with division VI.

**41.3(6) Appropriate program.** Each child requiring special education shall be provided a specially designed education program that is based on the individual's specific educational needs. The development and provision of an appropriate program shall be consistent with divisions VI and VIII.

a. An appropriate program shall include all special education and related services that are necessary to address the individual's educational needs.

b. An appropriate program shall be consistent with applicable research findings and appropriate educational practices. In the absence of empirical evidence on the efficacy of any one intervention strategy, the LEA and AEA personnel and parents responsible for developing the individual's IEP shall outline a program of education which meets the educational needs of the individual.

c. An appropriate program shall not include practices which are precluded by statute or these rules.

d. The responsible agency shall provide special education in accord with the individual's IEP; but the agency, teacher, or other person is not held accountable if an individual does not achieve the growth projected in the annual goals and objectives of the IEP.

**41.3(7) Collaboration.** General education and special education personnel share responsibility in providing an appropriate program for eligible individuals and in providing intervention and prevention services to individuals who are experiencing learning or adjustment problems.

**281—41.4 Reserved.**

DIVISION II  
DEFINITIONS

**281—41.5(256B,34CFR300) Definitions.**

"Agency" is a public or nonpublic organization which offers special education and related services in one or more disability areas.

"Area education agency" or "AEA" is an intermediate educational unit created by Iowa Code chapter 273.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of eligible individuals.

"Assistive technology service" means any service that directly assists an eligible individual in the selection, acquisition, or use of an assistive technology device.

"At no cost" means that all special education is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program.

"Autism" is a developmental disability significantly affecting verbal and nonverbal communication and social in-

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

teraction, generally evident before the age of three, that adversely affects an eligible individual's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if an eligible individual's educational performance is adversely affected primarily because the eligible individual has a serious emotional disturbance.

"Behaviorally disordered" is the inclusive term for patterns of situationally inappropriate behavior which deviate substantially from behavior appropriate to one's age and significantly interfere with the learning process, interpersonal relationships, or personal adjustment of the individual to such an extent as to constitute a behavioral disorder.

1. Clusters of behavior characteristic of eligible individuals who are behaviorally disordered include: Cluster I—Significantly deviant disruptive, aggressive or impulsive behaviors; Cluster II—Significantly deviant withdrawn or anxious behaviors; and Cluster III—Significantly deviant thought processes manifested with unusual communication or behavioral patterns or both. An eligible individual's behavior pattern may fall into more than one of the above clusters.

2. The determination of significantly deviant behavior is the conclusion that the individual's characteristic behavior is sufficiently distinct from that of the individual's peer group to qualify the individual as requiring special education and related services on the basis of a behavioral disorder. The behavior of concern shall be observed in the school setting for school-aged individuals and in the home or center-based setting for preschool-aged individuals. It must be determined that the behavioral disorder is not maintained by primary intellectual, sensory, cultural or health factors.

3. In addition to those data required within the full and individual evaluation for each individual, data which describe the qualitative nature, frequency, intensity, and duration of the behavior of concern shall be gathered when identifying an individual as behaviorally disordered. If it is determined that any of the areas of data collection are not relevant in assessing the behaviors of concern, documentation must be provided explaining the rationale for such a decision. Such documentation will be reviewed and maintained by the director.

(a) "Setting analysis data" is information gathered through informal observations, anecdotal record review and interviews describing the setting from which an individual was referred; documented prior attempts to modify the individual's educational program so as to make behavioral and academic achievement possible in the current placement; and social functioning data that includes information, gathered from sources such as teacher interviews and sociometric measures, regarding the referred individual's interaction with peers.

(b) "Individual behavioral data" are measures of actual behavior that include the specific recording, through systematic formal observations, of an individual's behavior, including the frequency of behaviors of concern; and measures of reported behavior that include checklists or rating scales and interviews that document the perceptions of school personnel regarding the behavioral pattern of the referred individual and the perception of the individual's home and school behavior obtained from the parent or surrogate parent.

(c) "Individual trait data" is information about the unique personal attributes of the individual. This information, gathered through interviews with the referred individual and teachers and relevant personality assessments, describes any distinctive patterns of behavior which characterize the individual's personal feelings, attitudes, moods, perceptions, thought processes and significant personality traits.

"Board" means the Iowa state board of education.

"Children requiring special education" are those individuals handicapped in obtaining an education as specified in Iowa Code chapter 256B, as defined in these rules and referred to as an eligible individual.

"Children who are handicapped in obtaining an education" are those individuals with disabilities whose educational potential cannot be adequately realized in the general education experience without the provision of special education and related services as defined in these rules. In these rules, they are referred to as an eligible individual.

"Communication disability," a speech-language impairment, means a disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects an individual's educational performance.

"Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education and related services solely for individuals with deafness or individuals with blindness.

"Deafness," a physical disability, means a hearing impairment that is so severe that the individual is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects an individual's educational performance.

"Department" means the state department of education.

"Director" means the director of special education of the AEA.

"Director of education" means the state director of the department of education.

"Early childhood special education" or "ECSE" means special education and related services for those individuals below the age of six.

"Eligible individual" means an individual who is entitled to receive special education who is over 6 and under 16 years of age who, pursuant to the statutes of this state, is required to receive a public education; an individual under 6 or over 16 years of age who, pursuant to the statutes of this state, is entitled to receive a public education; and an individual between the ages of 21 and 24 who, pursuant to the statutes of this state, is entitled to receive special education. In federal usage, this refers to infants, toddlers, children and young adults.

"Head injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects an individual's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.



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

"Hearing impairment," a physical disability, means an impairment in hearing, whether permanent or fluctuating, that adversely affects an individual's educational performance but that is not included under the definition of deafness in this division.

"IEP team" is the group of individuals specified in division VIII which develops the IEP for an eligible individual.

"Individualized education program" or "IEP" is the written record of an eligible individual's special education developed in accord with division VIII.

"Individualized family service plan" or "IFSP" means a written plan for providing early intervention services to an individual eligible for such services under 34 CFR §300.303, July 1, 1993, and the individual's family.

"Intervention plan" means a written document describing systematic problem solving procedures for an individual. This step-by-step plan documents at a minimum:

1. A behavioral definition of the problem that identifies both the individual's current level of performance and expected level of performance for the behavior of concern.

2. Clearly stated, measurable goals.

3. A clear description of the specific intervention(s) and services that are employed to accomplish the stated goal(s).

4. Specification of personnel responsible for providing the intervention(s).

5. A description of progress monitoring procedures that are used.

6. Progress monitoring documentation of intervention results.

7. Documentation of parent involvement in the problem solving process.

"Learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to individuals who have learning problems that are primarily the result of physical or mental disabilities, behavioral disorder, or environmental, cultural, or economic disadvantage.

"Local education agency" or "LEA" is the local school district.

"Mental disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects an individual's educational performance.

"Multicategorical" means special education in which the individuals receiving special education have different types of disabilities.

"Multidisciplinary team" is the team or group of persons that conducts the full and individual evaluation. The team shall include individuals who are appropriately qualified to conduct and interpret evaluations in the areas to be assessed and who are knowledgeable about the individual, the AEA identification process, and service options.

"Multiple disabilities" means concomitant impairments (such as mental disabilities-blindness, mental disabilities-orthopedic impairments, etc.), the combination of which causes such severe educational problems that they cannot

be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

"Orthopedic impairment," a physical disability, means a severe orthopedic impairment that adversely affects an individual's educational performance. The term includes impairments caused by congenital anomaly (e.g., club-foot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

"Other health impairment," a physical disability, means having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects an individual's educational performance.

"Parent" means a parent, a guardian, a person acting as a parent of an individual, or a surrogate parent who has been appointed in accord with these rules. The term does not include the state if the child is a ward of the state. The term includes persons acting in the place of a parent, such as a grandmother or stepparent with whom an individual lives, as well as persons who are legally responsible for an individual's welfare.

"Physical disability" is the inclusive term used in denoting deafness, hearing impairments, orthopedic impairments, other health impairments, and vision impairments including blindness of eligible individuals.

"School district of the child's residence" or "district of residence of the child" is that school district in which the parent of the individual resides, with the following statutory and legal interpretations:

1. When full and complete control of the pupil is transferred from a parent to others for the purpose of acquiring a home rather than to obtain a free education, the district of residence of the pupil is the district in which the pupil and those who have accepted full and complete control of the pupil reside, and that district becomes responsible for providing and funding the special education.

2. If full and complete control of a pupil is transferred by a parent to others who reside in another LEA for the purpose of obtaining an education, the district of residence remains with the parents; therefore, the parents must pay tuition to the receiving district. The district of residence cannot be held responsible for tuition payment.

3. "Children living in a foster care facility" are individuals requiring special education who are living in a licensed child foster care facility as defined in Iowa Code section 282.19 or in a facility as defined in Iowa Code section 125.2.

4. "Children placed by the district court" are pupils requiring special education for whom parental rights have been terminated and who have been placed in a facility or home by a district court.

"Severely disabled" are individuals with any severe disability including individuals who are profoundly multiply disabled.

"Special education" is specially designed instruction provided at no cost to the parents to meet the unique needs of an eligible individual. It includes the specially designed instruction conducted in schools, in the home, in hospitals and institutions, and in other settings; instruction in physical education; and includes vocational education if

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it consists of specially designed instruction. The term includes the instructional services, support services, itinerant services, supplementary aids and services, assistive technology, and related services described in division IX if the services consist of specially designed instruction. The term also includes transportation, rehabilitation counseling and transition planning required to assist eligible individuals in taking advantage of, or responding to, educational programs and opportunities. Special education provides a continuum of alternative services in order to provide the least restrictive intervention needed to meet the educational needs of each eligible individual regardless of the nature or severity of the educational needs.

"Systematic problem solving process" means a set of procedures that is used to examine the nature and severity of an educationally related problem. These procedures primarily focus on variables related to developing effective educationally related interventions. Active parent participation is an integral aspect of this process. At a minimum, a systematic problem solving process includes:

1. A description of the educationally related problem in objective, measurable terms.
2. Data collected on the problem prior to intervention design.
3. Application of problem analysis, instructional design and behavior change principles to intervention design.
4. Systematic implementation of an educational intervention.
5. Frequent progress monitoring with program changes as needed.

6. Evaluation of intervention effects through comparisons with initial levels of performance.

"Systematic progress monitoring" means a systematic procedure for collecting and displaying an individual's performance over time for the purpose of making educational decisions. At a minimum, systematic progress monitoring includes:

1. A measurable definition of a behavior of concern.
2. Collection of preintervention student performance data.
3. Specification of a measurable goal.
4. A systematic decision-making plan documenting the criteria that will be used to evaluate program effectiveness.
5. Frequent and repeated data collection over time.
6. A summary of student performance over time so that decisions regarding student progress can be made.

"Visual impairment including blindness," a physical disability, means an impairment in vision that, even with correction, adversely affects an individual's educational performance. The term includes both partial sight and blindness. Individuals who have a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in braille reading and writing.

"Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

**281—41.6(256B,34CFR300) Acronyms.** Selected acronyms frequently used in these rules:

"AEA" is the area education agency.

"ECSE" means early childhood special education.

"FAPE" means free appropriate public education.

"IEP" means individualized education program.

"IFSP" means individualized family service plan.

"LEA" is the local education agency (school district).

"LRE" means least restrictive environment.

**281—41.7** Reserved.

DIVISION III  
PERSONNEL

**281—41.8(256B,34CFR300) Licensure (certification).** Special education personnel shall meet the board of educational examiners' licensure (certification) and endorsement or recognition requirements for the position for which they are employed and as required for the particular discipline areas of special education. In addition, personnel providing special education who do not hold board of educational examiners' licensure (certification) or other recognition required by its board, and who, by the nature of their work, are required to hold a professional or occupational license, certificate or permit in order to practice or perform the particular duties involved in this state shall be required to hold a license, certificate, or permit.

**281—41.9(256B,273,34CFR300) Authorized personnel.** An agency is authorized to employ the following types of special education personnel, as appropriate to the special education provided:

**41.9(1) Director of special education.** The director, as required by Iowa Code section 273.5, shall function as an advocate for eligible individuals and assist the state bureau of special education in meeting the intent of the special education mandate and complying with statutes and rules. The director shall be responsible for the implementation of special education for eligible individuals pursuant to Iowa Code section 273.5 and these rules. The director shall be employed on a full-time basis and shall not be assigned the responsibility for any other administrative unit within the AEA. It shall be the responsibility of the director to report any violation of these rules to the department for appropriate action.

**41.9(2) Special education instructional personnel.** Special education instructional personnel serve as teachers or instructional assistants at the preschool, elementary or secondary levels for eligible individuals.

**41.9(3) Special education support personnel.** The following positions are those of special education support personnel who provide special education as stated in each definition. These personnel work under the direction of the director and may provide identification, evaluation, remediation, consultation, systematic progress monitoring, continuing and referral services in accord with appropriate licensure (certification) and endorsement or approval, or statement of professional recognition. They may also engage in data collection, applied research and program evaluation.

a. "Assistant director of special education" provides specific areawide administrative, supervisory and coordinating functions as delegated by the director.

b. "Audiologist" applies principles, methods and procedures for analysis of hearing functioning in order to plan, counsel, coordinate and provide intervention strategies and services for individuals with deafness or hearing impairments.

c. "Consultant" is the special education instructional specialist who provides ongoing support to special and

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

general education instructional personnel delivering services to eligible individuals. The consultant participates in the identification process and program planning of eligible individuals as well as working to attain the least restrictive environment appropriate for each eligible individual. The consultant demonstrates instructional procedures, strategies, and techniques; assists in the development of curriculum and instructional materials; assists in transition planning; and provides assistance in classroom management and behavioral intervention.

d. "Educational strategist" provides assistance to general education classroom teachers in developing intervention strategies for individuals who are disabled in obtaining an education but can be accommodated in the general education classroom environment.

e. "Itinerant teacher" provides special education on an itinerant basis to eligible individuals.

f. "Occupational therapist" is a licensed health professional who applies principles, methods and procedures for analysis of motor or sensorimotor functioning to determine the educational significance of motor or sensorimotor problems within, but not limited to, areas such as fine motor manipulation and self-care in order to provide planning, coordination, and the implementation of intervention strategies and services for eligible individuals.

g. "Physical therapist" is a licensed health professional who applies principles, methods and procedures for analysis of motor or sensorimotor functioning to determine the educational significance of motor or sensorimotor problems within, but not limited to, areas such as mobility and positioning in order to provide planning, coordination, and the implementation of intervention strategies and services for eligible individuals.

h. "School psychologist" assists in the identification of needs regarding behavioral, social, emotional, educational and vocational functioning of individuals; analyzes and integrates information about behavior and conditions affecting learning; consults with school personnel and parents regarding planning, implementing and evaluating individual and group interventions; provides direct services through counseling with parents, individuals and families; and conducts applied research related to psychological and educational variables affecting learning.

i. "School social worker" enhances the educational programs of individuals by assisting in identification and assessment of individuals' educational needs including social, emotional, behavioral and adaptive needs; provides intervention services including individual, group, parent and family counseling; provides consultation and planning; and serves as liaison among home, school and community.

j. "Special education coordinator" facilitates the provision of special education within a specific geographic area.

k. "Special education media specialist" is a media specialist who facilitates the provision of media services to eligible individuals; provides consultation regarding media and materials used to support special education and related services for eligible individuals; and aids in the effective use of media by special education personnel.

l. "Special education nurse" is a professional registered nurse who assesses, identifies and evaluates the health needs of eligible individuals; interprets for the family and educational personnel how health needs relate to individuals' education; implements specific activities

commensurate with the practice of professional nursing; and integrates health into the educational program.

m. "Speech-language pathologist" applies principles, methods and procedures for an analysis of speech and language comprehension and production to determine communicative competencies and provides intervention strategies and services related to speech and language development as well as disorders of language, voice, articulation and fluency.

n. "Supervisor" is the professional discipline specialist who provides for the development, maintenance, supervision, improvement and evaluation of professional practices and personnel within a specialty area.

o. "Work experience coordinator" plans and implements, with LEA personnel, sequential secondary programs which provide on- and off-campus work experience for individuals requiring specially designed career exploration and vocational preparation when they are not available through the general education curriculum.

p. "Others (other special education support personnel)" may be employed as approved by the department.

**281—41.10(256B) Paraprofessionals.**

**41.10(1) Responsibilities.** Special education assistants may be employed to provide assistance to professionals in special education and shall:

a. Complete appropriate preservice and continuing education specific to the functions to be performed. The agency shall make provisions for or require such completion prior to the beginning of service wherever practicable and within a reasonable time of the beginning of service where the preentry completion is not practicable.

b. Work under the supervision of professional personnel who are appropriately authorized to provide direct services in the same area where the paraprofessional provides assistive services.

c. Not serve as a substitute for appropriately authorized professional personnel.

**41.10(2) Authorized special education assistants.** Authorized special education paraprofessional personnel include:

a. "Audiometrist" provides hearing screening and other specific hearing-related activities as assigned by the audiologist.

b. "Educational interpreter" interprets or translates spoken language into a sign system or language commensurate with the receiver's language comprehension and interprets or translates sign language into spoken language.

c. "Instructional assistants" are special education paraprofessional instructional personnel as described in 281—subrule 12.4(9).

d. "Occupational therapy assistant" is licensed to perform occupational therapy procedures and related tasks that have been selected and delegated by the supervising occupational therapist.

e. "Physical therapist assistant" is licensed to perform physical therapy procedures and related tasks that have been selected and delegated by the supervising physical therapist.

f. "Psychology assistant" collects screening data through records review, systematic behavior observations, standardized interviews, group and individual assessment techniques; implements psychological intervention plans; and maintains psychological records under supervision of the school psychologist.

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

g. "Speech-language pathology assistant" provides certain language, articulation, voice and fluency activities as assigned by the supervising speech-language pathologist.

h. "Vision assistant" provides materials in the appropriate medium for use by individuals with visual impairment including blindness and performs other duties as assigned by the supervising teacher of individuals with visual impairments.

i. "Others" as approved by the department.

**281—41.11** Reserved.

DIVISION IV  
RESPONSIBILITIES OF AGENCIES

**281—41.12(256B,273,34CFR300)** Responsibilities of all agencies. These provisions are applicable to each agency which provides special education.

**41.12(1)** Provision of special education. It is the responsibility of each agency to provide each resident individual appropriate special education except in those cases where it is not expressly otherwise provided by state statute. This responsibility may be fulfilled by using the alternative services described in division IX of these rules.

**41.12(2)** Compliance with Federal Code. Each agency shall adhere to the provisions of and implementing regulations to 20 U.S.C. §§1401 et seq., applicable portions of 29 U.S.C. §794 pertaining to eligible individuals and Title 42 U.S.C. §§2116 et seq.

**41.12(3)** Evaluation and improvement. Each agency, in conjunction with other agencies, the department, or both, shall implement activities designed to evaluate and improve special education. These activities shall document the individual performance resulting from the provision of special education.

**41.12(4)** Research. Each agency shall cooperate in research activities designed to evaluate and improve special education when such activities are sponsored by an LEA, AEA or the department, or another agency when approved by the department.

**41.12(5)** Records and reports. Each agency shall maintain sufficient records and reports for audit by the department. Records and reports shall include at a minimum:

a. Licensure (certification) and endorsements or recognition requirements for all special education personnel as per requirements described in rule 41.8 (256B,34CFR300).

b. All IEP and IFSP meetings and three-year reevaluations for each eligible individual.

**41.12(6)** Policies. Policies related to the provision of special education shall be developed by each agency and made available to the department upon request. Such policies shall include:

a. The provision of special education and related services pursuant to Iowa Code chapters 256B and 273 and these rules.

b. All requirements for protecting the confidentiality of personally identifiable information.

c. The graduation requirements of eligible individuals.

d. Requirements for administration of medications including a written medication administration record.

e. Special health services.

f. Transition from Part H to Part B, 41.75 (34CFR300,303) of these rules.

**41.12(7)** Procedures. Each agency shall develop written procedures pertinent to the provision of special educa-

tion and shall make such procedures available to the department upon request. At a minimum, such procedures shall include:

a. Procedures to ensure the provision of special education pursuant to Iowa Code chapters 256B and 273 and these rules.

b. Procedures for protecting the confidentiality of personally identifiable information.

c. Procedures for the graduation of eligible individuals.

d. Procedures for administration of medications including a written medication administration record.

e. Procedures for providing special health services.

f. A plan which contains emergency disaster procedures as required in subrule 41.25(3).

g. Procedures for providing continuing education opportunities.

h. Each agency shall establish a procedure for its continued participation in the development of the eligible individual's IEP in out-of-state placements and shall outline a program to prepare for the eligible individual's transition back to the LEA before the eligible individual is placed out of state.

i. Procedures for transition from Part H to Part B, 41.75(34CFR300,303) of these rules.

**41.12(8)** Contracts. Each agency contracting with other agencies to provide special education for individuals or groups of individuals shall maintain responsibility for individuals receiving such special education by:

a. Ensuring that all the requirements related to the development of each eligible individual's IEP are met.

b. Ensuring the adequacy and appropriateness of the special education provided by requiring and reviewing periodic progress reports.

c. Conditioning payments on delivery of special education in accord with the eligible individual's IEP and in compliance with these rules.

**41.12(9)** Out-of-state placements. When special education appropriate to an eligible individual's needs is not available within the state, or when appropriate special education in an adjoining state is nearer than the appropriate special education in Iowa, the director may certify an eligible individual for appropriate special education outside the state in accord with Iowa Code section 273.3 when it has been determined by the department that the special education meets standards set forth in these rules.

**41.12(10)** Department approval for out-of-state placement. Contracts may be negotiated with out-of-state agencies, in accord with Iowa Code section 273.3(5), with department approval. The department will use the following procedures to determine if an out-of-state agency meets the rules of the board:

a. When requested to determine an agency's approval status, the department will contact the appropriate state education agency to determine if that state's rules are comparable to those of the board and whether the specified out-of-state agency meets those rules.

b. If the appropriate state education agency's rules are not comparable, the out-of-state agency will be contacted by the department to ascertain if its special education complies with the rules of the board.

**41.12(11)** Medication administration. Each agency shall establish medication administration policy and procedures which include the following:

a. A statement on administration of prescription and nonprescription medication.

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

b. A statement on an individual health plan, developed by the licensed health personnel with the individual and the individual's parent, when administration requires ongoing professional health judgment.

c. A statement that persons administering medication shall include licensed registered nurses, physicians and persons who have successfully completed a medication administration course reviewed by the board of pharmacy examiners. Individuals who have demonstrated competency in administering their own medications may self-administer their medication.

d. Provision for a medication administration course and periodic update. A registered nurse or licensed pharmacist shall conduct the course. A record of course completion shall be maintained by the school.

e. A requirement that the individual's parent provide a signed and dated written statement requesting medication administration at school.

f. A statement that medication shall be in the original labeled container either as dispensed or in the manufacturer's container.

g. A written medication administration record shall be on file at school including:

- (1) Date.
- (2) Individual's name.
- (3) Prescriber or person authorizing administration.
- (4) Medication.
- (5) Medication dosage.
- (6) Administration time.
- (7) Administration method.
- (8) Signature and title of the person administering medication.

(9) Any unusual circumstances, actions or omissions.

h. A statement that medication shall be stored in a secured area unless an alternate provision is documented.

i. A requirement for a written statement by the individual's parent or guardian requesting individual coadministration of medication, when competency is demonstrated.

j. A requirement for emergency protocols for medication-related reactions.

k. A statement regarding confidentiality of information.

**281—41.13 and 41.14** Reserved.

**281—41.15(256B,34CFR300)** LEA responsibilities. These provisions are applicable to each LEA which provides special education.

**41.15(1)** Policies. Each LEA shall develop written policies pertinent to the provision of special education and shall make such policies available to the department upon request. At a minimum, such policies shall include those identified in 41.12(6).

**41.15(2)** Procedures. Each LEA shall develop written procedures pertinent to the provision of special education and shall make such procedures available to the department upon request. At a minimum, such procedures shall include those identified in 41.12(7).

**41.15(3)** LEA plan for special education. Each LEA shall develop a written board-adopted plan which makes provisions for special education and related services. The plan shall be reviewed by the AEA director of special education to ensure compliance with these rules. The LEA shall review the plan at least every three years and revise it as needed. The plan may be developed at each building within the LEA or may be an LEA plan which is

applicable to all buildings in the LEA. The plan shall include the procedures required in 41.15(2) and the following:

a. A description of how services will be provided to eligible individuals consistent with the requirements of divisions VI and IX of these rules.

b. Explicit provisions for coordinating special education with other educational programs and services in the building.

c. A description of provisions for ensuring meaningful parent involvement and communication.

d. A description of how interagency collaboration and coordination will be designed and implemented to ensure that special education is provided to eligible individuals in the least restrictive environment.

e. A description of how educational and extracurricular activities will be made accessible to eligible individuals.

f. A description of how the effects of special education on the performance of individuals receiving these services will be evaluated.

g. A description of a system and procedures for the continuing education of all personnel so that these personnel can meet the needs of eligible individuals; procedures for disseminating information and research; and procedures for adopting effective and appropriate practices, materials, and technologies.

h. A description of how the caseloads of special education teachers will be regularly reviewed to ensure that the IEPs of eligible individuals are able to be fully implemented.

**41.15(4)** Nonpublic schools. Each LEA shall provide special education and related services designed to meet the needs of nonpublic school students with disabilities residing in the jurisdiction of the agency in accord with Iowa Code sections 256.12(2) and 273.2.

**41.15(5)** Comprehensive system of personnel development (CSPD). The LEA, in conjunction with the AEA, the department, or both, shall assist with the procedures and activities described in 41.20(256B,34CFR300) to ensure an adequate supply of qualified personnel as defined in board of educational examiners[282]—Chapters 14 and 15, including special education and related services personnel and leadership personnel.

**281—41.16 and 41.17** Reserved.

**281—41.18(256B,273,34CFR300)** AEA responsibilities. These provisions are applicable to each AEA which provides special education.

**41.18(1)** Policies. Each AEA shall develop written policies pertinent to the provision of special education and shall make such policies available to the department upon request. At a minimum, such policies shall include those identified in 41.12(6) and the following:

a. Appointment of surrogate parents, 41.109(256B,34CFR300).

b. Provision of and payment for independent educational evaluation, 41.108(256B,34CFR300).

**41.18(2)** Procedures. Each AEA shall develop written procedures pertinent to the provision of special education and shall make such procedures available to the department upon request. At a minimum, such procedures shall include those identified in 41.12(7) and the following:

a. Appointment of surrogate parents, 41.109(256B,34CFR300).

b. Provision of and payment for independent educational evaluation, 41.108(256B,34CFR300).

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

**41.18(3)** Responsibility for provision of special education. AEAs contracting with LEAs or other agencies to provide special education for eligible individuals or groups of eligible individuals shall maintain responsibility for the provision of such special education by:

a. Ensuring that all the requirements related to the development of each eligible individual's IEP or IFSP are met.

b. Ensuring the adequacy and appropriateness of the special education provided by requiring and reviewing periodic progress reports.

c. Conditioning payments on the delivery of special education in accord with each eligible individual's IEP or IFSP and in compliance with these rules.

**41.18(4)** Responsibility for monitoring of compliance. The AEA shall conduct activities in each constituent LEA at least once every three years to monitor compliance with the provisions of all applicable federal and state statutes and regulations and rules applicable to the education of eligible individuals. A written report describing the monitoring activities, findings, corrective action plans, follow-up activities, and timelines shall be developed and made available for review by the department upon request. Monitoring of compliance activities shall meet all requirements of division XIV in these rules.

**41.18(5)** AEA reports. Each AEA shall provide the department with such data as are necessary to fulfill federal and state reporting requirements under the provisions of 20 U.S.C. §§1400 et seq. Data shall be provided in the format specified or on forms provided by the department and within timelines established by the department.

**281—41.19** Reserved.

**281—41.20(256B,34CFR300) Comprehensive system of personnel development (CSPD).** The AEA shall assist the department in the development and implementation of a comprehensive system of personnel development.

**41.20(1)** Adequate supply of qualified personnel. Each AEA plan shall include a description of the procedures and activities the AEA will undertake to ensure an adequate supply of qualified personnel as defined in board of educational examiners[282]—Chapters 14 and 15, including special education and related services personnel and leadership personnel. The procedures and activities shall include the development, updating, and implementation of a plan that:

a. Addresses current and projected special education and related services personnel needs, including the need for leadership personnel; and

b. Coordinates and facilitates efforts among the AEA and LEAs, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds and personnel with disabilities.

**41.20(2)** Personnel preparation and continuing education. Each AEA plan shall include a description of the procedures and activities the AEA will undertake to ensure that all personnel necessary to carry out the requirements of these rules are appropriately and adequately prepared. The procedures and activities shall include:

a. A system for the continuing education of general and special education and related services personnel to enable these personnel to meet the needs of eligible individuals.

b. Procedures for acquiring and disseminating to teachers, administrators, and related services personnel

significant knowledge derived from education research and other sources.

c. Procedures for adopting promising practices, materials, and technology when proven effective through research and demonstration.

**41.20(3)** Data system on qualified personnel. The procedures and activities required to ensure an adequate supply of qualified personnel shall include the development and maintenance of a system for determining, on an annual basis:

a. The number and type of personnel, including leadership personnel, employed in the provision of special education and related services, by profession or discipline;

b. The number and type of personnel who are employed with emergency or conditional licensure (certification) in each profession or discipline who do not hold appropriate state certification, licensure or other credentials comparable to certification or licensure for the profession or discipline; and

c. The number and type of personnel, including leadership personnel, in each profession or discipline needed and a projection of the numbers of those personnel that will be needed in five years, based on projections of individuals to be served, retirement and other departures of personnel from the field, and other relevant factors.

d. The data on special education and related service personnel required in this division shall include audiologists, consultants, counselors, diagnostic and evaluation personnel, educational strategists, itinerant teachers, educational interpreters, occupational therapists, physical education teachers, physical therapists, school psychologists, rehabilitation counselors, school social workers, special education media specialists, special education nurses, speech-language pathologists, paraprofessionals, recreation and therapeutic recreation specialists, vocational education teachers, work experience coordinators, and other instructional and noninstructional personnel.

e. The data on leadership personnel required in this division shall include administrators and supervisors of AEAs or LEAs who are involved in the provision or supervision of services or activities necessary to carry out the purposes of these rules.

**281—41.21** Reserved.

**281—41.22(256B,273,34CFR300) Content and development of AEA application.** Each AEA shall submit to the department 45 days prior to the start of the project year an application for the provision of comprehensive special education services for eligible individuals within the AEA. The application, provided by the department shall include the following: general information and utilization of funds, utilization of funds narrative, procedure for monitoring the caseloads of LEA and AEA special education personnel to ensure that the IEPs of eligible individuals are able to be fully implemented, assurances and a statement of policies and description of procedure required, including procedures for evaluation of the effectiveness of programs in meeting the needs of children with disabilities, in order to receive federal assistance under 3 CFR §§300.220 through 300.240. In addition, the application shall describe the procedures for the identification process as required in division VII of these rules. The application shall indicate whether the identification process uses a problem solving approach, a traditional evaluation approach, or a combination of both, and the extent to which the AEA system uses categorical designations.



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

**41.22(1)** Approval of AEA application. Final approval of the AEA application will be granted by the board. The department will notify each AEA in writing of the recommendation to the board for approval or disapproval of the AEA application and the date of the meeting that the board will consider the recommendation. If approval is denied, the written notice shall contain a statement of the reasons for disapproval. An application may be approved in part or subject to the remedying of deficiencies or omissions.

**41.22(2)** Disapproval of an AEA application—opportunity for a hearing. The following are the procedures of the department in providing for a hearing in the event an application would be recommended for disapproval.

a. Within 30 days of the receipt of the recommendation for intended action from the bureau of special education, the applicant agency shall make a request to the director of the department for a hearing.

b. Within 30 days after receiving a request, the director shall hold a hearing on the record and shall review the application.

c. No later than 10 days after the hearing the director shall issue a written ruling, including findings of fact and reasons for the ruling.

d. If the director determines that the department's recommendation is contrary to state or federal statutes or regulations that govern the applicable program, the department shall rescind its action.

e. If the department does not rescind its final action after a review, the applicant agency may appeal to the U.S. Secretary of Education pursuant to procedures found at 34 CFR §76.401.

f. The department will make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this rule, including records of other applicants.

**281—41.23(256B) Special school provisions.**

**41.23(1)** Providers. Special schools for eligible individuals who require special education outside the general education setting may be maintained by individual LEAs; jointly by two or more LEAs; by the AEA; jointly by two or more AEAs; by the state directly; or by approved private providers.

**41.23(2)** Department recognition. Department recognition of agencies providing special education shall be of two types:

a. Recognition of nonpublic agencies and state-operated programs providing special education in compliance with these rules.

b. Approval for the nonpublic agency to provide special education and to receive special education funds for the special education contracted for by an LEA or an AEA.

**281—41.24(256B,34CFR300) Length of school day.**

The length of the school day for eligible individuals shall be the same as that determined by the LEA board for all other individuals unless a shorter day is prescribed in the eligible individual's IEP.

**281—41.25(256B,34CFR76,104,300) Facilities.**

**41.25(1)** Equivalent to general education. Each agency providing special education shall supply facilities which shall be at least equivalent in quality to general

education classrooms in the system, located in buildings housing regularly enrolled individuals of comparable ages, and readily accessible to individuals with disabilities pursuant to 34 CFR §104.21. No eligible individual shall be denied the benefits of, or be excluded from participation in, or otherwise be subjected to discrimination under any program activity because an agency's facilities are inaccessible.

**41.25(2)** Personnel space and assistance. Each agency providing special education shall ensure that special education personnel are provided adequate access to telephone service and clerical assistance, and sufficient and appropriate work space regularly available for their use which is readily accessible to individuals with disabilities pursuant to 34 CFR Part 104.

**41.25(3)** Plan for emergencies. Each facility serving eligible individuals shall develop and maintain a written plan containing emergency and disaster procedures which will be clearly communicated to and periodically reviewed with personnel responsible for such individuals. The emergency plan shall include:

a. Plans for the assignment of personnel to specific tasks and responsibilities.

b. Instructions relating to the use of alarm systems and signals. If combination visual and auditory warning devices do not exist, the plan shall include specific provisions for warning individuals with hearing impairments.

c. Information concerning methods of fire containment.

d. Systems for notification of appropriate persons and agencies.

e. Information concerning the location and use of fire fighting equipment.

f. Specification of evacuation routes and procedures.

g. Posting of plans and procedures at suitable locations throughout the facility.

h. Evacuation drills held as required in Iowa Code section 100.31. Evacuation drills shall include actual evacuation of individuals to safe areas.

i. An evaluation for each evacuation drill.

**281—41.26(256B) Materials, equipment and assistive technology.**

**41.26(1)** Provision for materials, equipment, and assistive technology. Each LEA shall make provision for special education, facility modifications, assistive technology, necessary equipment and materials, including both durable items and expendable supplies; provided that, where an AEA, pursuant to appropriate arrangements authorized by the Iowa Code, furnishes special education, performance by the AEA shall be accepted in lieu of performance by the LEA.

**41.26(2)** Acquire and maintain equipment. Each agency providing special education shall have a comprehensive program in operation under which equipment for special education is acquired, inventoried, maintained, calibrated and replaced on a planned and regular basis.

**41.26(3)** Provide special equipment. The agency responsible for the operation of special education shall provide assistive technology, special aids, equipment, materials or supplies as necessary.

**41.26(4)** Functioning of hearing aids. Each agency shall develop and implement a plan to ensure that the hearing aids worn by individuals with hearing impairments (including deafness) in school are functioning properly.

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

**281—41.27(256B) Department approval for rule exceptions.** In unique circumstances, the director or, in a state-operated program, the superintendent or designee may request a rule exception from the department. These requests must be filed with the department, on forms provided, and approval granted prior to the intended action. Department action on a request for a rule exception shall be communicated in writing to the director or, in a state-operated program, the superintendent and if granted, such an exception shall be valid for that academic year.

**281—41.28** Reserved.

## DIVISION V

## CONFIDENTIALITY OF INFORMATION

**281—41.29(256B,34CFR99,300) Definitions.** As used in this division:

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education records" means the type of records covered under the definition of education records in 34 CFR Part 99, July 1, 1993.

**281—41.30(256B,34CFR99,300) Information recorded and confidentiality maintained.** For each individual all screening, assessment and evaluation results shall be recorded. Educational records shall be confidential and shall not be disclosed except pursuant to 34 CFR Parts 99 and 300, July 1, 1993. Each agency shall maintain records and reports in a current status.

**281—41.31(256B,34CFR99,300) Access to educational records.**

**41.31(1) Reviewing records.** Each agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under these rules. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the individual or the provision of FAPE to the individual and in no case more than 45 days. An agency may presume that the parent has authority to inspect and review records relating to the parent's child unless the agency has been advised that the parent does not have the authority under Iowa Code chapters 597, 598, and 598A governing such matters as guardianship, separation, and divorce. The right to inspect and review education records under these rules includes:

a. The right to a response from the agency to reasonable requests for explanations and interpretations of the records.

b. The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.

c. The right to have a representative of the parent inspect and review the records.

**41.31(2) Record of access.** Each agency shall keep a record of parties obtaining access to education records collected, maintained, or used under these rules (except access by parents and authorized employees of the agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

**41.31(3) Records on more than one individual.** If any education record includes information on more than one individual, the parents of those individuals shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

**41.31(4) List of types and locations of information.** Each agency shall provide to parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

**41.31(5) Fees.** Each agency may charge a fee for copies of records that are made for parents under these rules if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. An agency may not charge a fee to search for or to retrieve information under these rules.

**41.31(6) Consent.**

a. Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of agencies collecting or using the information under these rules, subject to paragraph "b" of this sub-rule, or used for any purpose other than meeting a requirement of these rules.

b. An educational agency or institution subject to 34 CFR Part 99, July 1, 1993, may not release information from education records to agencies without parental consent unless authorized to do so under 34 CFR Part 99, July 1, 1993.

**41.31(7) Safeguards.**

a. Each agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

b. One official at each agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

c. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under these rules and 34 CFR Part 99, July 1, 1993.

d. Each agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

**281—41.32** Reserved.

**281—41.33(256B,34CFR99,300) Amendment of educational records.** A parent who believes that information in the education records collected, maintained or used under these rules is inaccurate or misleading or violates the privacy or other rights of the individual may request the agency that maintains the information to amend the information. The agency shall decide whether to amend the information in accord with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accord with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing under 41.33(1).

**41.33(1) Opportunity for a hearing.** The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the individual.

**41.33(2) Hearing procedure.** A hearing held under 41.33(1) must be conducted according to the procedures under 34 CFR §99.22, July 1, 1993.



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**41.33(3) Result of hearing.** If, as a result of the hearing, the agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the individual, it shall amend the information accordingly and so inform the parent in writing. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of the other rights of the individual, it shall inform the parent of the right to place in the records it maintains on the individual a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. Any explanation placed in the records of the individual under this rule must:

a. Be maintained by the agency as part of the records of the individual as long as the record or contested portion is maintained by the agency; and

b. If the records of the individual or the contested portion is disclosed by the agency to any party, the explanation must be disclosed to the party.

**281—41.34 Reserved.**

**281—41.35(256B,34CFR76,99,300) Destruction of information.** The agency shall inform parents when personally identifiable information collected, maintained or used under these rules is no longer needed to provide educational services to the eligible individual. The information must be destroyed at the request of the parents. Agencies are required to retain records for five years. Personally identifiable information can be removed from those records less than five years old when the parents request destruction of records. A permanent record of the individual's name, address, and telephone number, the individual's grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation. When parents request destruction of information the agency shall inform parents that the records may be needed by the individual or the parents for social security benefits or other purposes.

**281—41.36 Reserved.**

DIVISION VI  
LEAST RESTRICTIVE ENVIRONMENT

**281—41.37(256B,34CFR300) General.**

**41.37(1) General education environment.** The general education environment includes, but is not limited to, the classes, classrooms, services, and nonacademic and extracurricular services and activities made available by an agency to all students. For preschool children who require special education, the general education environment is the setting where activities, instruction, and remediation naturally occur for children of similar age without disabilities.

**41.37(2) Documentation.** Each agency shall ensure and maintain adequate documentation:

a. That to the maximum extent appropriate, eligible individuals, including eligible individuals in public or private institutions or other care facilities, are educated with individuals who are nondisabled.

b. That special classes, separate schooling or other removal of eligible individuals from the general education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever possible, hindrances to

learning and to the normal functioning of eligible individuals within the general school environment shall be overcome by the provision of special aids and services rather than by separate programs for those in need of special education.

**281—41.38(256B,34CFR300) Continuum of alternative services.** Each agency shall ensure that a continuum of alternative services is available to meet the needs of eligible individuals for special education and related services. The continuum of alternative services must include alternative services listed in division IX of these rules.

**281—41.39(256B,34CFR300) Services.** Each agency shall ensure that:

**41.39(1) Annual determination.** The services for each eligible individual are determined at least annually; are based on the individual's IEP; and are provided as close as possible to the individual's home.

**41.39(2) Alternative placements.** The various services included in division IX are available to the extent necessary to implement the IEP for each eligible individual.

**41.39(3) Educated at school.** Unless the IEP of an eligible individual requires some other arrangement, the individual is educated in the school that the individual would attend if nondisabled.

**41.39(4) Harmful effect.** In selecting the LRE, consideration is given to any potential harmful effect on the eligible individual or on the quality of services that the individual needs.

**281—41.40(256B,34CFR300) Nonacademic settings.** In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities, each agency shall ensure that each eligible individual participates with nondisabled individuals in those services and activities to the maximum extent appropriate to the needs of that individual. Those services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the agency, referrals to agencies which provide assistance to persons with disabilities, and employment of students, including both employment by the agency and assistance in making outside employment available.

**281—41.41(256B,34CFR300) Individuals in public or private institutions.** The department, on behalf of LEAs and AEAs, shall make arrangements with public and private institutions as may be necessary to ensure that this division is effectively implemented.

**281—41.42(256B) Special schools.** When an eligible individual's special education is provided in a special school, the individual's IEP shall include specific answers to the following questions:

**41.42(1) Reasons.** What are the reasons that the eligible individual cannot be provided an educational program in an integrated school setting?

**41.42(2) Support needed.** What supplementary aids and services are needed to support the eligible individual in the special education program?

**41.42(3) Integrated setting.** Why can't these aids and services be provided in an integrated setting?

**41.42(4) Continuum of alternative services available.** What is the continuum of alternative services available for the eligible individual?

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**281—41.43(256B,34CFR300) Technical assistance and training activities.** The department shall carry out activities to ensure that teachers and administrators in all agencies are fully informed about their responsibilities for implementing rule 41.37(256B,34CFR300) and are provided with technical assistance and training necessary to assist them in this effort.

**281—41.44(256B,34CFR300) Monitoring activities.** The department shall carry out activities to ensure that rule 41.37(256B,34CFR300) is implemented by each public agency (state-operated program, AEA, and LEA). If there is evidence that an agency makes placements that are inconsistent with rule 41.37(256B,34CFR300), the department shall review the agency's justification for its actions and assist the agency in planning and implementing any necessary corrective action.

**281—41.45 and 41.46 Reserved.**

DIVISION VII  
IDENTIFICATION

**281—41.47(256B,34CFR300) Identification of eligible individuals.**

**41.47(1) Definition.** As used in this division, identification has three purposes: (1) to identify those individuals who may require special education; (2) to identify individuals who may need general education interventions as specified in subrule 41.48(2); and (3) to identify individuals who do not require interventions.

**41.47(2) Procedures.** Each AEA, in conjunction with each constituent LEA, shall establish and maintain ongoing identification and evaluation procedures to ensure early identification of and appropriate special education for eligible individuals of all ages as specified in 41.1(256B,34CFR300) of these rules.

**41.47(3) Written procedures.** Each AEA shall have written procedures for the identification process.

**281—41.48(256B,34CFR300) Identification process.** Each AEA shall develop and use an identification process that, at a minimum, includes the following activities and procedures. The AEA shall maintain adequate records of the results of the identification process.

**41.48(1) Interactions.** The identification process shall include interactions with the individual, the individual's parents, school personnel, and others having specific responsibilities for or knowledge of the individual.

**41.48(2) General education interventions.** Each agency shall attempt to resolve the presenting problem or behaviors of concern in the general education environment prior to conducting a full and individual evaluation. These attempts shall include teacher consultation with special education personnel working collaboratively to improve an individual's educational performance. The activities shall include but not be limited to measurable and goal-directed attempts to resolve a problem including communication with parents, collection of data related to the referring problem or behaviors of concern, intervention design and implementation, and systematic progress monitoring to measure the effects of interventions. Such activities shall be documented to demonstrate performance changes resulting from interventions. If the referring problem or behaviors of concern are shown to be resistant to general education interventions or if interventions are demonstrated to be effective but require continued and substantial effort that may include the provision of special

education, the agency shall then conduct a full and individual evaluation. In circumstances when the development and implementation of general education interventions are not appropriate to the needs of the individual, the multidisciplinary team may determine that a full and individual evaluation shall be conducted. Documentation of the rationale for such action shall be included in the individual's educational record.

**41.48(3) Full and individual evaluation.** A full and individual evaluation of the individual's educational needs shall be completed before any action is taken with respect to the initial provision of special education and related services. Written parental consent as required in these rules shall be obtained prior to conducting a full and individual evaluation. The purpose of the full and individual evaluation is to determine the educational interventions that are required to resolve the presenting problem or behaviors of concern, including whether the educational interventions are special education.

a. A full and individual evaluation shall include:

(1) An objective definition of the presenting problem or suspected disability.

(2) Analysis of existing information about the individual, including the results of general education interventions.

(3) Identification of the individual's strengths or areas of competence relevant to the presenting problem or behaviors of concern.

(4) Collection of additional information needed to design interventions intended to resolve the presenting problem, including, if appropriate, assessment or evaluation of health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

b. The evaluation is made by a multidisciplinary team.

**41.48(4) Speech-language impairments.** Individuals who have a speech-language impairment as their primary disability may not need a complete battery of assessments. However, a qualified speech-language pathologist would evaluate each individual with a suspected speech-language impairment using procedures that are appropriate for the diagnosis and appraisal of a speech-language impairment and, if necessary, make referrals for additional assessments needed to make an appropriate service decision.

**281—41.49(256B,34CFR300) Assessment procedures, tests, and other evaluation materials.** The assessment procedures, tests and other evaluation materials used in the identification process shall be consistent with the following:

**41.49(1) Materials.** The tests and other evaluation materials:

a. Are provided and administered in the individual's native language or other mode of communication, unless it is clearly not feasible to do so.

b. Have been validated for the specific purpose for which they are used.

c. Are administered by trained personnel in conformance with the instructions provided by their producer.

**41.49(2) Tailored tests and materials.** The tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

**41.49(3) Impaired sensory, manual or speaking skills.** The tests and other evaluation materials are selected and administered so as best to ensure that when a procedure or

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test is administered to an individual with impaired sensory, manual, or speaking skills, the test results accurately reflect the individual's aptitude or achievement level or whatever other factors the procedure or test purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills (except where those skills are the factors that the procedure or test purports to measure).

**41.49(4) Nondiscriminatory.** The tests and other evaluation materials are selected and administered so as not to be racially or culturally discriminatory.

**281—41.50(256B,34CFR300) Interpreting evaluation data.** In interpreting evaluation data and in making decisions, each agency shall employ the following standards.

**41.50(1) No single source or procedure.** Draw upon information from a variety of sources and use more than one procedure for determining the appropriate intervention for an individual.

**41.50(2) Documentation.** Ensure that information obtained from all evaluation procedures and sources is documented and carefully considered.

**41.50(3) Group decision.** Ensure that the decision is made by a group of persons, including persons knowledgeable about the individual, the meaning of the evaluation data and the service options.

**41.50(4) Consideration of LRE.** Ensure that the decision is made in conformity with division VI.

**41.50(5) IEP requirement.** If a determination is made that an individual requires special education, procedural safeguards shall be afforded and an IEP must be developed for the individual in accord with these rules.

**281—41.51(256B) Dissenting opinions.** Each AEA shall have written procedures for the filing of dissenting opinions by educational personnel who do not agree with the team's conclusions or with the recommended special education for an individual. Such procedures shall include the receipt and review of the dissenting opinion by the director and a response from the director within ten calendar days of the filing date of the dissenting opinion. No disciplinary sanctions may be imposed against authors of dissenting opinions for comments made in good faith.

**281—41.52(256B) Entitlement.** Based upon the decision of the multidisciplinary team, the director shall certify the individual's entitlement for special education. Individuals determined to have entitlement for special education shall have an IEP developed prior to the provision of special education. A confidential record, subject to audit by the department, registering the name and required special education of each individual requiring special education, shall be maintained by the AEA and provision made for its periodic revision.

**281—41.53(256B) Programming beyond the age of 21.** An agency may continue the special education of an eligible individual beyond the individual's twenty-first birthday if the person had an accident or prolonged illness that resulted in delays in the initiation of or interruption in that individual's special education. The agency must request approval from the department in accord with Iowa Code section 256B.8.

**281—41.54(256B,34CFR300) Independent educational evaluation.** A parent has a right to an independent educational evaluation as described in 41.108(256B, 34CFR300). If a parent obtains an independent educational evaluation at public or private expense, the results

of the evaluation must be considered by the agency in any decision made with respect to the provision of FAPE to the individual and may be presented as evidence at a hearing regarding the individual.

**281—41.55 Reserved.**

**281—41.56(256B,34CFR300) Additional procedures for evaluating individuals with learning disabilities.**

**41.56(1) Additional team members.** In evaluating an individual suspected of having a learning disability, in addition to the members of the multidisciplinary team identified in 41.48(3)"b," the team must include:

a. The individual's general education teacher or, if the individual does not have a regular teacher, a general education teacher qualified to teach an individual of that age; or, for an individual of less than school age, an individual qualified to teach a child of that age.

b. At least one person qualified to conduct individual diagnostic evaluations of individuals, such as a school psychologist, a special education consultant, a special education teacher licensed in learning disabilities, or a speech-language pathologist.

**41.56(2) Criteria for determining the existence of a learning disability.**

a. A team may determine that an individual has a learning disability if:

(1) The individual does not achieve commensurate with the individual's age and ability levels in one or more of the ability areas listed in subrule 41.56(2)"a"(2) when provided with learning experiences appropriate for the individual's age and ability levels.

(2) The team finds that the individual has a severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression; listening comprehension; written expression; basic reading skill; reading comprehension; mathematics calculation; or mathematics reasoning.

b. The team may not identify an individual as having a learning disability if the discrepancy between ability and achievement is primarily the result of a visual, hearing or motor impairment; a mental disability; a behavior disorder; or environmental, cultural or economic disadvantage.

**41.56(3) Observation.** At least one team member other than the individual's regular teacher shall observe the individual's academic performance in the general classroom setting. In the case of an individual of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

**41.56(4) Written report.** The team shall prepare a written report of the results of the evaluation. Each team member shall certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the team member must submit a separate statement presenting the member's conclusions. The written report shall include a statement of:

a. Whether the individual has a learning disability.

b. The basis for making the determination.

c. The relevant behavior noted during the observation of the individual.

d. The relationship of that behavior to the individual's academic functioning.

e. The educationally relevant medical findings, if any.

f. Whether there is a severe discrepancy between achievement and ability that is not correctable without special education.

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g. The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

**281—41.57 and 41.58** Reserved.

DIVISION VIII  
IEP

**281—41.59(256B,34CFR300) Definitions.** As used in this division:

"IEP team" includes members specified in 41.62(256B,34CFR300).

"Participating agency" means a state or local agency, other than the public agency responsible for an individual's education, that is financially and legally responsible for providing transition services to the individual.

**281—41.60(256B,34CFR300) Effective date.** At the beginning of each school year, each agency shall have in effect an IEP for every eligible individual from that agency. An IEP must be in effect before special education is provided to an eligible individual and be implemented as soon as possible following the meetings under 41.61(256B,34CFR300).

**281—41.61(256B,34CFR300) Meetings.**

**41.61(1) General.** Each agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of an eligible individual.

**41.61(2) Timeline.** A meeting to develop an IEP for an eligible individual must be held within 30 calendar days of a determination that the individual needs special education.

**41.61(3) Review.** Each agency shall initiate and conduct meetings to review each eligible individual's IEP periodically and, if appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.

**281—41.62(256B,34CFR300) Participants in meetings.**

**41.62(1) General.** The agency shall ensure that each meeting includes the following participants:

a. A representative of the agency, other than the eligible individual's teacher, who is qualified to provide or supervise the provision of special education, and who has the authority to commit resident LEA resources.

b. The eligible individual's teacher.

(1) For an individual who is receiving special education, the teacher could be the individual's special education teacher. If the individual's disability is speech-language impairment, the teacher could be the speech-language pathologist.

(2) For an individual who is being considered for special education, the teacher could be the individual's general education teacher, or a teacher qualified to provide the type of service the individual may receive, or both.

(3) If the individual is not in school or has more than one teacher, the agency may designate which teacher, agency or special education personnel will participate in the meeting.

c. Either the teacher or the agency representative shall be qualified in the area of the individual's education need.

d. One or both of the individual's parents subject to 41.64(256B,34CFR300).

e. The individual, if appropriate.

f. Other individuals at the discretion of the parent or agency.

**41.62(2) Evaluation personnel.** For an eligible individual who has been evaluated for the first time, the agency shall ensure:

a. That a member of the multidisciplinary team participates in the meeting; or

b. That the representative of the agency, the individual's teacher, or some other person is present at the meeting who is knowledgeable about the evaluation procedures used with the individual and is familiar with the results of the evaluation.

c. For the individual whose primary disability is speech-language impairment, the evaluation personnel would normally be the speech-language pathologist.

**41.62(3) Transition planning participants.**

a. If a purpose of the meeting is the consideration of transition planning for an eligible individual, the agency shall invite the individual and a representative of any other agency that is likely to be responsible for providing or paying for transition services.

b. If the individual does not attend, the agency shall take other steps to ensure that the individual's preferences and interests are considered.

c. If an agency invited to send a representative to a meeting does not do so, the agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

**281—41.63** Reserved.

**281—41.64(256B,34CFR300) Parent participation.**

**41.64(1) Parent participation in IEP meetings.** Each agency shall take steps to ensure that one or both of the parents of the eligible individual are present at each IEP meeting or are afforded the opportunity to participate, including:

a. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend.

b. Scheduling the meeting at a mutually agreed on time and place.

c. Notifying the parents of the purpose, time, and location of the meeting and who will be in attendance.

d. If a purpose of the meeting is the consideration of transition planning for a student, the notice must also:

(1) Indicate this purpose.

(2) Indicate that the agency will invite the student.

(3) Identify any other agency that will be invited to send a representative.

**41.64(2) Documentation.** If neither parent can attend, the agency shall use other methods to ensure parent participation, including individual or conference telephone calls. A meeting may be conducted without a parent in attendance if the agency is unable to convince the parents that they should attend. In this case the agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

a. Detailed records of telephone calls made or attempted and the results of those calls.

b. Copies of correspondence sent to the parents and any responses received.

c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

**41.64(3) Interpreters for parents.** The agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

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**41.64(4)** Copy of IEP to parents. The agency shall give the parent, on request, a copy of the IEP.

**281—41.65** Reserved.

**281—41.66(256B,34CFR300)** The IEP. The IEP is a written statement for an eligible individual that is developed and implemented in accord with these rules. The IEP document is a written record of the decisions reached at the IEP meeting. It serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to jointly decide what the individual's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be. The IEP process provides an opportunity for resolving any differences between the parents and the school concerning the special education needs of an eligible individual. The IEP sets forth in writing a commitment of resources necessary to enable an eligible individual to receive needed special education and related services appropriate to the individual's special learning needs. There shall be one IEP which specifies all the special education and related services for an eligible individual. The IEP is a compliance monitoring document to determine whether an eligible individual is actually receiving the FAPE agreed to by the parents and school.

**281—41.67(256B,34CFR300)** Content of IEP. The IEP shall include the following:

**41.67(1)** Present levels of educational performance (PLEP). A statement of the individual's present levels of educational performance.

a. The statement shall accurately describe the effect of the eligible individual's disability on the individual's performance in any area of education that is affected, including academic areas and nonacademic areas.

b. A disability label may not be used as a substitute for PLEP.

c. The statement shall be written in objective measurable terms, to the extent possible.

d. Test scores, if included, must be self-explanatory or an explanation of the scores given.

e. There must be a direct relationship between the PLEP and the other components of the IEP.

**41.67(2)** Annual goals; instructional objectives. A statement of annual goals, including short-term instructional objectives.

a. Goals and objectives shall provide a mechanism for determining whether the anticipated outcomes for the individual are being met and whether the placement and services are appropriate to the individual's special learning needs.

b. Goals and objectives shall not be as specific as those normally found in daily, weekly or monthly instructional plans.

c. Annual goals are statements that describe what an eligible individual can reasonably be expected to accomplish within a 12-month period in special education.

d. Short-term instructional objectives are measurable intermediate steps between PLEP and the annual goals for the individual.

e. IEP objectives shall be written before the individual is placed in special education.

f. Short-term instructional objectives cannot be changed without holding an IEP meeting for the purpose of developing, reviewing and revising the IEP.

**41.67(3)** Special education and participation in general education. A statement of the specific special education and related services to be provided to the eligible individual and the extent that the individual will be able to participate in general education programs.

a. The IEP for an eligible individual shall include all of the specific special education and related services needed by the individual.

b. Special education and related services shall be provided by the school directly or through contract or other arrangements.

c. If modifications (supplementary aids and services) to the general education program are necessary to ensure the individual's participation in that program, those modifications must be described in the individual's IEP.

d. All special education instruction, support services and related services needed by the individual shall be specified in the IEP.

e. If modifications to the general vocational education program are necessary in order for the individual to participate in that program, those modifications must be included in the IEP. If the individual needs a specially designed vocational education program, then it must be described in all applicable areas of the individual's IEP.

f. The amount of services to be provided must be stated in the IEP so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services are possible (based on the professional judgment of the service provider) without holding another IEP meeting.

**41.67(4)** Projected dates of services. The projected dates for initiation of services and the anticipated duration of the services.

a. In general, the anticipated duration of services would be up to 12 months.

b. If a particular service is projected to be needed for more than one year, it may be projected in the IEP for the requisite time. However, the duration of each service must be reconsidered whenever the IEP is reviewed and at least annually.

**41.67(5)** Physical education. If an eligible individual is receiving specially designed physical education, it must be addressed in all applicable parts of the IEP. Modifications to the general physical education program must be described in the IEP.

**41.67(6)** Criteria, evaluation and schedules. Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

**41.67(7)** Transition planning. The IEP for each eligible individual, beginning no later than the age of 16 and at a younger age, if determined appropriate, must include a statement of the needed transition services defined in rule 41.72(256B,34CFR300) including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the individual leaves the school setting. If the IEP team determines that services are not needed in one or more of the coordinated set of activities (instruction, community experiences, and development of employment and other

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postschool adult living objectives), the IEP must include a statement to that effect and the basis upon which the determination was made.

**41.67(8)** Projected graduation. The IEP must include a statement of the projected date of graduation at least 18 months in advance of said date and the criteria to be used in judging whether graduation shall occur. Prior to graduation, the IEP team must find that these criteria have been met.

**281—41.68 Support services only.** An IEP that satisfies the requirements of 41.60(256B,34CFR300) to 41.67(256B,34CFR300) shall be developed for eligible individuals who require only special education support services. The special education support service specialist shall have primary responsibility for recommending the need for support service, the type or model of service to be provided, and the amount of service to be provided. However, the determination that an individual is eligible for special education shall meet the requirements of division VII.

**281—41.69(34CFR300,303) IFSP to IEP.** Eligible individuals younger than the age of two years and three months shall have an IFSP. Eligible individuals who are two years of age and will reach the age of three during the school year, who are receiving FAPE, and do not require services from other agencies, may be served through an IEP.

**281—41.70(256B,34CFR300) Related IEP requirements.**

**41.70(1)** Completed IEP. It is not permissible for an agency to present a completed and finalized IEP to parents for their approval before there has been a full discussion with the parents regarding the eligible individual's need for special education and related services and the services the agency will provide to the individual. It would be appropriate for agency personnel to come prepared with evaluation findings, statements of present levels of educational performance, and a recommendation regarding annual goals, short-term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents.

**41.70(2)** LRE considerations. When developing an eligible individual's IEP, the IEP team shall consider the following questions regarding the provision of special education:

- a. What accommodations, modifications, and adaptations does the individual require?
- b. Why can't these accommodations, modifications, and adaptations be provided within the general classroom?
- c. Is there a potential detriment to the individual if served in the general classroom?
- d. How will the individual's participation in the general classroom impact the other students?

**41.70(3)** Consolidated IEP. In instances where an eligible individual must have both an IEP and an individualized service plan under another federal program, it is possible to develop a single, consolidated document if it contains all of the information required in an IEP and if all of the necessary parties participate in its development.

**41.70(4)** Performance contract. The IEP is not a performance contract that imposes liability on a teacher, agency, or other person if an eligible individual does not

meet the IEP objectives. However, the agency must provide special education and related services in accord with the IEP, and the teacher, agency, and other persons must make good faith efforts to assist the individual in achieving the goals and objectives listed in the IEP. Further, this does not limit a parent's right to complain and ask for revisions of the individual's program or to invoke due process procedures if the parent feels that these efforts are not being made.

**41.70(5)** Amending IEPs. An IEP cannot be amended without conducting an IEP meeting and following all requirements pertaining to an IEP meeting.

**41.70(6)** Interim IEP. An IEP must be in effect before special education and related services are provided to an eligible individual. This does not preclude the development of an interim IEP when the IEP team determines that it is necessary to temporarily provide special education to an eligible individual as part of the evaluation process, before the IEP is finalized, to aid in determining the appropriate services for the individual. An interim IEP may also be developed when an eligible individual moves from one LEA to another and a copy of the current IEP is not available, or either the LEA or the parent believes that the current IEP is not appropriate or that additional information is needed before a final decision can be made regarding the specific special education services that are needed. IEP teams cannot use interim IEPs to circumvent the requirements of this division. It is essential that the temporary provision of service not become the final special education for the individual before the IEP is finalized. In order to ensure that this does not happen, IEP teams shall take the following actions:

- a. Specific conditions and timelines. Develop an interim IEP for the individual that sets out the specific conditions and timelines for the temporary service. An interim IEP shall not be in place for more than 30 school days.
- b. Parent agreement and involvement. Ensure that the parents agree to the interim service before it is carried out and that they are involved throughout the process of developing, reviewing, and revising the individual's IEP.
- c. Completing evaluation and making judgments. Set a specific timeline for completing the evaluation and making judgments about the appropriate services for the individual.
- d. Conducting meeting. Conduct an IEP meeting at the end of the trial period in order to finalize the individual's IEP.

**41.70(7)** Individuals with visual impairment. The annual review of the IEP for an eligible individual with visual impairment shall include discussion of instruction in braille reading and writing and a written explanation of the reasons why the individual is using a given reading and writing medium or media. If the reasons have not changed since the previous year, the written explanation for the current year may refer to the fuller explanation from the previous year.

**281—41.71** Reserved.

**281—41.72(256B,34CFR300) Transition planning.**

**41.72(1)** Transition. Transition means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to postschool activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation.



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**41.72(2)** Set of activities. The coordinated set of activities shall:

a. Individual needs. Be based on the individual needs, taking into account the individual's preferences and interests.

b. Needed activities. Include needed activities in the areas of instruction; community experiences; the development of employment and other postschool adult living objectives; and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

**281—41.73(256B,34CFR300)** Agency responsibility for transition planning. If a participating agency fails to provide agreed-upon transition services contained in the IEP of an eligible individual, the agency responsible for the individual's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP. Nothing in these rules relieves any participating agency of the responsibility to provide or pay for any transition service that the agency would otherwise provide to individuals with disabilities who meet the eligibility criteria of that agency.

**281—41.74** Reserved.

**281—41.75(256B,34CFR300,303)** Transition from Part H to Part B. Policies and procedures to ensure a smooth transition for individuals receiving early childhood special education services through an IFSP under 20 U.S.C. Chapter 33, subchapter VIII (Part H) who are eligible for continued participation in early childhood special education under 20 U.S.C. Chapter 33, subchapter II (Part B) shall contain:

**41.75(1)** Families. A description of how the families will be included in the transitional plans.

**41.75(2)** AEA role. A description of how the AEA will:

a. Notify the appropriate LEA or AEA in which the eligible individual resides.

b. Convene, with the approval of the family, a conference among the family, the LEA or AEA at least 90 calendar days before the child's third birthday or, if earlier, the date on which the individual is eligible for the preschool program under Part B in accord with state law, to:

(1) Review the eligible individual's program options for the period from the individual's third birthday through the remainder of the school year.

(2) Establish a transition plan.

**281—41.76** Reserved.

**281—41.77(256B,34CFR300)** Reevaluation. Each agency shall ensure that the IEP of each eligible individual is reviewed in accord with 41.61(3) and that an evaluation of each eligible individual, based on procedures that meet the requirements of 41.48(3), is conducted every three years or more frequently if conditions warrant or if an eligible individual's parent or teacher requests an evaluation. The reevaluation is designed to determine an eligible individual's past progress, current needs, impact of current interventions, future interventions and entitlement for special education.

**281—41.78(256B)** Trial placement. Prior to transfer from a special education program or service, an eligible individual may be provided a trial placement in the general education setting of not more than 45 school days. A

trial placement plan shall be incorporated into this individual's IEP.

**281—41.79** Reserved.

**281—41.80(256B,34CFR300)** Extended year special education. In certain circumstances, to ensure provision of FAPE, an eligible individual shall be provided extended year special education (EYSE) in identified critical skill areas when the special education in which this individual is regularly participating is not in session for periods of three or more consecutive weeks.

**41.80(1)** Critical skills. Critical skills shall be:

a. Determined at the time of the development or revision of the IEP and identified in the IEP;

b. Appropriate for the eligible individual, given this individual's ability to acquire the selected skill; and

c. A priority for developmental and age-appropriate growth.

**41.80(2)** Determining need. A review of an eligible individual with identified critical skills shall be conducted by the IEP team for the purpose of determining the need for EYSE. This review shall be done at least 60 calendar days prior to the interruption of special education in which this individual is regularly participating. The determination of need for EYSE shall be made only for the immediate period of interruption. The provision of EYSE for the immediate period does not imply that EYSE will be required for subsequent periods in the absence of a finding to that effect by the IEP team. In limited cases where the 60-calendar-day standard is impracticable (i.e., late enrollment; verifiable change in educational needs), the review for determining need for EYSE shall be conducted with expediency.

**41.80(3)** Basis for determining need. Determination of the need for EYSE for each eligible individual shall be based on empirical and qualitative data collected by the IEP team. An eligible individual shall be provided EYSE if, in the IEP team's interpretation of the data, either of the following conditions is present:

a. Failure to maintain an acquired critical skill, as a result of an interruption of special education in a critical skill area, to the extent that a period of reteaching of nine or more weeks will be required to regain previous competence. In these cases, EYSE programming shall be designed to provide for maintenance rather than continued development of the skills identified.

b. Rare and unusual circumstances which will result in the loss or a severe limitation of the eligible individual's capacity and potential to acquire a critical skill. In these cases, EYSE shall provide for the maintenance of the critical skill and may also provide for the continued development or acquisition of a critical skill to prevent the anticipated loss or limitation.

**41.80(4)** Appeal. Should the parents of an eligible individual disagree with the IEP team's decision regarding EYSE and wish to appeal the team's decision, an affidavit of appeal shall be filed pursuant to division XI within 15 calendar days of the IEP team's decision. This requirement is necessary if the appeal is to be heard in time for the implementation of extended year special education during the period for which the request was made.

**281—41.81** Reserved.

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**281—41.82(256B,34CFR300) General.**

**41.82(1)** Individually designed. The special education provided to an eligible individual shall be individually determined and based on the specific educational needs of the individual.

**41.82(2)** Least restrictive environment. To the maximum extent appropriate to the needs of the eligible individual, special education shall be designed and delivered so as to maintain the individual in the general education environment and as detailed in division VI of these rules.

**41.82(3)** Based on IEP or IFSP. The special education provided an eligible individual shall be consistent with the services described in the individual's IEP or IFSP.

**41.82(4)** Combination of services. A combination of services may be necessary to address the educational needs of an eligible individual. In such cases, the personnel providing the various services shall coordinate activities and efforts, and the services shall be described in one IEP or IFSP.

**281—41.83(256B,34CFR300) Continuum of alternative services.** Each LEA, in conjunction with the AEA, shall ensure that a continuum of alternative services from birth to the maximum age provided by the Iowa Code are available or shall be made available to meet the educational needs of eligible individuals.

**281—41.84(256B,273,34CFR300) Instructional services.** Instructional services are the specially designed instruction and accommodations provided by special education instructional personnel to augment, supplement or support the general education program of eligible individuals. These services are ordinarily provided by the LEA but, in limited circumstances, may be provided by another LEA, the AEA, or another recognized agency through contractual agreement.

**41.84(1)** Intensity or level of instructional service. The intensity or level of instructional service refers to the relationship between the general education program and specially designed instruction for an eligible individual. The level of service is determined based on an eligible individual's educational need and independent of the environment in which the specially designed instruction is provided. The level of service is the basis for the assignment of the appropriate special education weighting by the director in accord with Iowa Code sections 256B.9 and 273.5.

a. Level I. A level of service that provides specially designed instruction for a limited portion or part of the educational program. A majority of the general education program is appropriate. This level of service includes modifications and adaptations to the general education program.

b. Level II. A level of service that provides specially designed instruction for a majority of the educational program. This level of service includes substantial modifications, adaptations, and special education accommodations to the general education program.

c. Level III. A level of service that provides specially designed instruction for most or all of the educational program. This level of service requires extensive redesign of curriculum and substantial modification of instructional techniques, strategies and materials.

**41.84(2)** Delivery methods for school-age individuals. Any combination of the following methods may be used in providing instructional services to an eligible individual.

a. "Collaborative service" refers to the cooperative efforts of a special education teacher and general education teacher in the general education classroom to provide specially designed instruction and related activities and may include modifications and adaptations to the general education program.

b. "Resource service" refers to the provision of specially designed instruction on a limited basis by a special education teacher in the general classroom or in an environment other than the general classroom. This service includes consultation with general education teachers and the modification of the general education curriculum, instruction, and environment.

c. "Extensive specialized instructional service" refers to specially designed instruction to groups of eligible individuals with similar special education instructional needs. This service is organized according to the type of curriculum and instruction to be provided, and the severity of the educational needs of the eligible individuals to be served.

**41.84(3) Delivery methods for ECSE.**

a. Special education instructional services can be provided in a "community-based early childhood program" or community activity for young children. Instructional services are provided and monitored on site by an early childhood special education professional. The program may be a publicly funded early childhood center-based program or a fee-based early childhood program in the community. The agency responsible for providing special education may contract with a fee-based community program.

b. "Co-location" refers to the provision of special education instructional services through an arrangement that combines the services of a special education and an early childhood center-based program or a publicly funded early childhood program. The programs are combined in one room or in close proximity to each other in order to promote the interaction of children with and without disabilities.

c. "Reverse integration program" refers to an arrangement that enrolls children without disabilities in an ECSE classroom. The reverse integration program is considered one of the more restrictive integration models.

d. "Early childhood special education center-based programs" include the following alternatives for children aged one through five, each being served by one ECSE teacher and one instructional assistant:

(1) A center-based program for up to ten children requiring Level I or Level II ECSE service.

(2) A center-based program for up to five children requiring Level III ECSE service.

(3) A center-based program typically providing Level I or II ECSE service in which each child with Level III needs counts as two children.

e. "Home instruction" refers to the provision of special education instructional services in the home for children below the age of six.

f. "Dual programming" includes both center-based ECSE intervention and an integrated component; for example, a child may attend both an ECSE program and a program for preschool children without disabilities. Intervention specific to the IEP or IFSP goals must occur in both the special and general education environments.

**281—41.85** Reserved.

**281—41.86(256B,34CFR300) Support services.** Support services are the specially designed instruction and re-



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lated activities provided by special education support personnel identified in 41.5(3) to augment, supplement or support the educational program of eligible individuals.

**41.86(1)** Delivery methods. Delivery methods include, but are not limited to, the following:

a. Cooperative efforts of special education support personnel and the general education teacher in the general education classroom to provide specially designed instruction and related activities.

b. Cooperative efforts of special education support personnel and special education teachers.

c. Provision of specially designed instruction by a special education support service provider in the general classroom or in an environment other than the general classroom.

d. Consultation with general education teachers and special education teachers, and may include the modification of the general education environment, curriculum, and instruction.

e. Provision of support services to an eligible individual through this individual's parents, teachers or others in the environment.

**41.86(2)** Agency. These services are ordinarily provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by the LEA or another qualified agency.

**281—41.87** Reserved.

**281—41.88(256B,34CFR300)** Itinerant service.

**41.88(1)** School based. Special education may be provided on an itinerant basis whenever the number, age, severity, or location of eligible individuals to be served does not justify the provision of professional personnel on a full-time basis to an attendance center.

**41.88(2)** Home service or hospital service. Special education shall be provided to eligible individuals whose condition precludes their participation in the general and special education provided in schools or related facilities. The provision of services in a home or hospital setting shall satisfy the following:

a. The service and the location of the service shall be specified in the individual's IEP.

b. The status of these individuals shall be periodically reviewed to substantiate the continuing need for and the appropriateness of the service.

c. When services are provided in the home for an individual who has been removed from school because of unacceptable school behaviors, the status of the individual shall be reviewed at least every 30 calendar days by the IEP team to review other alternatives and to determine whether itinerant service in the home continues to be appropriate.

d. Procedural safeguards shall be afforded to individuals receiving special education through itinerant services in a home or hospital setting. A need for itinerant services in a home or hospital setting must be determined at a meeting to develop or revise the individual's IEP, and parents must give consent or be given notice, as appropriate.

**281—41.89** Reserved.

**281—41.90(256B,34CFR300)** Supplementary aids and services (special adaptations). These shall be provided in order for an eligible individual to be served in the general education classroom environment. These may include, but are not limited to, intensive short-term

specially designed instruction; educational interpreters; readers for individuals with visual impairments; special education assistants; parent counseling and training; and special education assistants for individuals with physical disabilities for assistance in and about school, and for transportation.

**281—41.91** Reserved.

**281—41.92(256B,34CFR300)** Assistive technology. Agencies shall ensure that assistive technology devices, assistive technology services, or both, are made available to an eligible individual if required as part of this individual's special education and as specified in the IEP. Assistive technology services include:

**41.92(1)** Functional evaluation. The evaluation of the needs of an eligible individual, including a functional evaluation of this individual in the individual's customary environment.

**41.92(2)** Acquisition. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices.

**41.92(3)** Selections, adaptations and replacement. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices.

**41.92(4)** Coordination and planning. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs.

**41.92(5)** Training or technical assistance. Training or technical assistance for an eligible individual or, when appropriate, the family of this individual; and for professionals, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of eligible individuals.

**281—41.93** Reserved.

**281—41.94(256B,34CFR300)** Related services. In order to establish the responsibility for agencies to provide a specific related service to an eligible individual, the following criteria shall be applied:

**41.94(1)** Routinely administered. The service can routinely be administered by school personnel.

**41.94(2)** Basic to goals of IEP or IFSP. The service is basic to the goals and objectives of the eligible individual's IEP or IFSP and is required in the IEP or IFSP.

**41.94(3)** Frequency and intensity of service. The individual's special education necessitates service of a greater frequency and intensity than would be required if this individual were not in school.

**41.94(4)** Administered during school hours. The service has to be administered during the school day, as defined in 281—subrule 3.2(11), in order to reasonably expect the individual to be able to attend special education.

**41.94(5)** Exclusive of support services. Related services are not synonymous with special education support services as defined in 41.5(3).

**281—41.95** Reserved.

**281—41.96(256B)** Special health services. Some eligible individuals need special health services to participate in an educational program. These individuals shall receive special health services concomitantly with their educational program.

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**41.96(1) Definitions.** The following definitions shall be used in this division, unless the context otherwise requires:

"Assignment and delegation" occurs when licensed health personnel, in collaboration with the education team, determine the special health services to be provided and the qualifications of individuals performing the health services. Primary consideration is given to the recommendation of the licensed health personnel. Each designation considers the individual special health service. The rationale for the designation is documented.

"Coadministration" is the eligible individual's participation in the planning, management and implementation of the individual's special health service and demonstration of proficiency to licensed health personnel.

"Educational program" includes all school curricular programs and activities both on and off school grounds.

"Education team" may include the eligible individual, this individual's parent, administrator, teacher, licensed health personnel, and others involved in the individual's educational program.

"Health assessment" is health data collection, observation, analysis, and interpretation relating to the eligible individual's educational program.

"Health instruction" is education by licensed health personnel to prepare qualified designated personnel to deliver and perform special health services contained in the eligible individual's health plan. Documentation of education and periodic updates shall be on file at school.

"Individual health plan" is the confidential, written, preplanned and ongoing special health service in the educational program. It includes assessment, planning, implementation, documentation, evaluation and a plan for emergencies. The plan is updated as needed and at least annually. Licensed health personnel develop this written plan with the education team.

"Licensed health personnel" includes licensed registered nurse, licensed physician, and other licensed health personnel legally authorized to provide special health services and medications.

"Prescriber" is licensed health personnel legally authorized to prescribe special health services and medications.

"Qualified designated personnel" is a person instructed, supervised and competent in implementing the eligible individual's health plan.

"Special health services" includes, but is not limited to, services for eligible individuals whose health status (stable or unstable) requires:

1. Interpretation or intervention,
2. Administration of health procedures and health care, or
3. Use of a health device to compensate for the reduction or loss of a body function.

"Supervision" is the assessment, delegation, evaluation and documentation of special health services by licensed health personnel. Levels of supervision include situations in which:

1. Licensed health personnel are physically present.
2. Licensed health personnel are available at the same site.
3. Licensed health personnel are available on call.

**41.96(2) Special health services policy.** Each board of a public school or authorities in charge of an accredited nonpublic school shall, in consultation with licensed health personnel, establish policy and guidelines for the provision of confidential special health services in confor-

mity with rules 41.94(256B,34CFR300) and 41.96(256B). Such policy and guidelines shall address and contain:

a. Licensed health personnel shall provide special health services under the auspices of the school. Duties of the licensed personnel include:

- (1) Participate as a member of the education team.
- (2) Provide the health assessment.
- (3) Plan, implement and evaluate the written individual health plan.
- (4) Plan, implement and evaluate special emergency health services.
- (5) Serve as liaison and encourage participation and communication with health service agencies and individuals providing health care.
- (6) Provide health consultation, counseling and instruction with the eligible individual, the individual's parent and the staff in cooperation and conjunction with the prescriber.
- (7) Maintain a record of special health services. The documentation includes the eligible individual's name, special health service, prescriber or person authorizing, date and time, signature and title of the person providing the special health service and any unusual circumstances in the provision of such services.
- (8) Report unusual circumstances to the parent, school administration, and prescriber.
- (9) Assign and delegate to, instruct, provide technical assistance and supervise qualified designated personnel.
- (10) Update knowledge and skills to meet special health service needs.

b. Prior to the provision of special health services the following shall be on file:

- (1) Written statement by the prescriber detailing the specific method and schedule of the special health service, when indicated.
- (2) Written statement by the individual's parent requesting the provision of the special health service.
- (3) Written report of the preplanning staffing or meeting of the education team.
- (4) Written individual health plan available in the health record and integrated into the IEP or IFSP.

c. Licensed health personnel, in collaboration with the education team, shall determine the special health services to be provided and the qualifications of individuals performing the special health services. The documented rationale shall include the following:

- (1) Analysis and interpretation of the special health service needs, health status stability, complexity of the service, predictability of the service outcome and risk of improperly performed service.
- (2) Determination that the special health service, task, procedure or function is part of the person's job description.
- (3) Determination of the assignment and delegation based on the individual's needs.
- (4) Review of the designated person's competency.
- (5) Determination of initial and ongoing level of supervision required to ensure quality services.

d. Licensed health personnel shall supervise the special health services, define the level of supervision and document the supervision.

e. Licensed health personnel shall instruct qualified designated personnel to deliver and perform special health services contained in the eligible individual health plan. Documentation of instruction and periodic updates shall be on file at school.

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f. Parents shall provide the usual equipment, supplies and necessary maintenance for such. The equipment shall be stored in a secure area. The personnel responsible for the equipment shall be designated in the individual health plan.

**281—41.97** Reserved.

**281—41.98(256B,34CFR300) Transportation.** Transportation of eligible individuals shall generally be provided as for other individuals, when appropriate. Specialized transportation of an eligible individual to and from a special education instructional service is a function of that service and, therefore, an appropriate expenditure of special education instructional funds generated through the weighting plan.

**41.98(1) Special arrangements.** Transportation of an eligible individual to and from a special education support service is a function of that service, shall be specified in the IEP or IFSP, and is an appropriate expenditure of funds generated for special education support services. When, because of an eligible individual's educational needs or because of the location of the program, the IEP team determines that unique transportation arrangements are required and the arrangements are specified in the IEP or IFSP, the resident LEA shall be required to provide one or more of the following transportation arrangements for instructional services and the AEA for support services:

a. Transportation from the eligible individual's residence to the location of the special education and back to this individual's residence, or child care placement for eligible individuals below the age of six.

b. Special assistance or adaptations in getting the eligible individual to and from and on and off the vehicle, en route to and from the special education.

c. Reimbursement of the actual costs of transportation when by mutual agreement the parents provide transportation for the eligible individual to and from the special education.

d. Agencies are not required to provide reimbursement to parents who elect to provide transportation in lieu of agency-provided transportation.

**41.98(2) Responsibility for transportation.**

a. The AEA shall provide the cost of transportation of eligible individuals to and from special education support services. The AEA shall provide the cost of transportation which is necessary for the provision of special education support services to nonpublic school eligible individuals if the cost of that transportation is in addition to the cost of transportation provided for special education instructional services.

b. When individuals enrolled in nonpublic schools are dually enrolled in public schools to receive special education instructional services, transportation provisions between nonpublic and public attendance centers will be the responsibility of the school district of residence.

c. Transportation of individuals, when required for educational diagnostic purposes, is a special education support service and, therefore, an appropriate expenditure of funds generated for special education support services.

**41.98(3) Purchase of transportation equipment.** When it is necessary for an LEA to purchase equipment to transport eligible individuals to special education instructional services, this equipment shall be purchased from the LEA's general fund. The direct purchase of transportation equipment is not an appropriate expenditure of spe-

cial education instructional funds generated through the weighting plan. A written schedule of depreciation for this transportation equipment shall be developed by the LEA. An annual charge to special education instructional funds generated through the weighting plan for depreciation of the equipment shall be made and reported as a special education transportation cost in the LEA Certified Annual Report. Annual depreciation charges, except in unusual circumstances, shall be calculated according to the directions provided for the Annual Transportation Report completed by the LEA and adjusted to reflect the proportion special education mileage is of the total annual mileage.

**41.98(4) Lease of transportation equipment.** An LEA may elect to lease equipment to transport eligible individuals to special education instructional services. Cost of the lease, or that portion of the lease attributable to special education transportation expense, shall be considered a special education transportation cost and reported in the LEA Certified Annual Report.

**41.98(5) Transportation equipment safety standards.** All transportation equipment, either purchased or leased by an LEA to transport eligible individuals to special education instructional services or provided by an AEA, must conform to the transportation equipment safety and construction standards contained in 281—Chapters 43 and 44.

**281—41.99** Reserved.

**281—41.100(256B,34CFR300) Other services.** Other services provided by special education personnel, but which are not typically described on IEPs, include:

**41.100(1)** Provision of information, consultation and support to teachers, administrators, curriculum specialists, early childhood providers, special education personnel, other school personnel, and other service providers.

**41.100(2)** Supervision and training of paraprofessionals.

**41.100(3)** Continuing education for personnel providing or being prepared to provide special education.

**41.100(4)** Demonstration of special education procedures and techniques.

**41.100(5)** Curriculum development.

**41.100(6)** Modifying and designing special education materials.

**41.100(7)** Assessment, consultation, general education interventions, program planning, and referral to and coordination with community agencies and services.

**41.100(8)** Participation in parent conferences and in IEP or IFSP meetings.

**281—41.101** Reserved.

DIVISION X  
PARENT PARTICIPATION

**281—41.102(256B,34CFR300) Parent participation.** Each agency shall take steps to ensure that one or both of the parents of an eligible individual are present at each IEP meeting or are afforded the opportunity to participate as described in division VIII, rule 41.64(256B,34CFR300).

**281—41.103(256B,34CFR300) Consent.** Parental consent must be obtained before the agency conducts a full and individual evaluation and before the initial provision of special education and related services. Consent is voluntary and may be revoked up until the time the initial

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proposed action takes place. If a dispute arises after the individual is placed, the parents may request a hearing to review the placement decision.

**281—41.104(256B,34CFR300) Written notice.** Written notice must be given to the parents of an individual a reasonable time before the agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of an individual or the provision of FAPE to the individual. The notice is intended to inform parents of an LEA's final decision that was made at an IEP meeting regarding a proposal or refusal. Such notice must be given to parents before the agency implements a proposed action, but after the agency's decision has been made. Following receipt of the written notice a parent or an agency has the right to request an impartial due process hearing.

**41.104(1) Notice content.** The written notice shall include:

a. A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected.

b. A description of each evaluation procedure, test, record or report the agency uses as a basis for the proposal or refusal.

c. A description of any other factors that are relevant to the agency's proposal or refusal.

d. A full explanation of all the procedural safeguards available to the parents including:

(1) The definitions of "consent," "evaluation," and "personally identifiable."

(2) Opportunity to examine records.

(3) Independent educational evaluation.

(4) Written (prior) notice and parental consent.

(5) Content of written notice.

(6) Impartial due process hearing.

(7) Impartial administrative law judge (hearing officer).

(8) Hearing rights.

(9) Hearing decision and appeal.

(10) Civil action.

(11) Timelines and convenience of hearings and reviews.

(12) Individual's status during proceedings.

(13) Surrogate parents.

(14) Attorney's fees.

(15) Record access rights.

(16) Records of record access.

(17) Records on more than one individual.

(18) List of types and locations of information.

(19) Copying fees.

(20) Amendment of records at parent's request.

(21) Opportunity for a hearing on records.

(22) Result of hearing.

**41.104(2) Notice requirements.** The notice shall be:

a. Written in language understandable to the general public.

b. Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

c. If the native language or other mode of communication of the parent is not a written language, the agency shall take steps to ensure:

(1) That the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication.

(2) That the parent understands the content of the notice.

(3) That there is written evidence that the requirements in this rule have been met.

**41.104(3) Implementation.** The final decision of the agency for a proposed action indicated in the written notice requirements cannot be implemented for ten calendar days. The purpose is to give parents an opportunity to review the decision and request an impartial due process hearing if they disagree. If the written notice requirements are fulfilled at the IEP meeting, the ten-day waiting period should be documented on the IEP by the starting date of the new IEP exceeding the meeting date by ten days. If the parent chooses to waive the ten days, the starting date of implementation of the new IEP would be immediate with documentation and rationale for the waiver clearly stated.

**281—41.105(256B,34CFR300) Complaints to the department.** An organization or individual may file a signed written complaint that includes a statement that an agency has violated these rules and the facts on which the statement is based. The department shall review, investigate and act on any written complaint within 60 calendar days of the receipt of such complaint although the time limit can be extended if exceptional circumstances exist. The complainant shall be given the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. After the relevant information is reviewed, an independent determination shall be made by the department as to whether the agency is violating these rules. The department shall issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the department's final decision. If needed, the department shall provide for negotiations, technical assistance activities or corrective action to achieve compliance. The complainant or the agency has a right to request the Secretary of the United States Department of Education to review the department's final decision.

**281—41.106(256B,34CFR300) Initiating a hearing.** A parent or a public educational agency may initiate a hearing on any decision related to a proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. The hearing shall be conducted by an impartial administrative law judge pursuant to division XI of these rules.

**281—41.107(34CFR300) Attorney fees.** Each public agency shall inform parents that in any action or proceeding involving procedural safeguards, courts may award parents reasonable attorneys' fees under 20 U.S.C. 1415(e)(4) as part of the costs to the parents or guardian of a child or youth with a disability who is a prevailing party.

**281—41.108(256B,34CFR300) Independent educational evaluation.**

**41.108(1) Definitions.** As used in this rule:

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not

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employed by the agency responsible for the education of the individual in question.

"Public expense" means that the agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

**41.108(2) General.** A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the agency. However, the agency may initiate a hearing under division XI to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

**41.108(3) Locations of independent educational evaluations.** Each agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

**41.108(4) Parent-initiated evaluations.** If the parent obtains an independent educational evaluation at private expense, the results of the evaluation must be considered by the agency in any decision made with respect to the provision of FAPE to the individual, and may be presented as evidence at a hearing.

**41.108(5) Hearing officer.** If an administrative law judge requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be at public expense.

**41.108(6) Agency criteria.** Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the agency uses when it initiates an evaluation. These criteria shall be set forth in AEA board policy.

**281—41.109(256B,34CFR300) Surrogate parent procedures.**

**41.109(1) Definitions as used in this rule:**

"Eligible surrogate parents" are persons who are at least 18 years of age, known to be reliable and have had or will receive training in the education of individuals with disabilities. A person selected as a surrogate has no interest that conflicts with the interest of the individual represented and has knowledge and skills that ensure adequate representation of the individual. A person assigned as a surrogate may not be an employee of an agency that is involved in the education or care of the individual. A person who otherwise qualifies to be a surrogate parent shall not be an employee of the agency solely because the surrogate is paid by the agency to serve as a surrogate parent. Parents of other individuals with disabilities or other interested and knowledgeable persons may be appointed to serve as surrogate parents. The appointment of a surrogate parent is impermissible under federal law when a parent is available for the individual. Foster parents are deemed a person acting as the parent of an individual and in such situations surrogate parent appointment is not necessary. Group home directors and caseworkers may not be assigned as surrogate parents.

"Surrogate parent" means an individual who acts in place of a parent in protecting the rights of an individual in the educational decision-making process. A surrogate parent is appointed for an individual when no parent can be identified; when the agency, after reasonable efforts, cannot discover the whereabouts of a parent; or when the individual is a ward of the state.

**41.109(2) Appointment.**

a. A surrogate parent for special education shall be appointed whenever the AEA documents that no parent (as defined above) can be identified; cannot discover the whereabouts of a parent after reasonable efforts; or the individual is a ward of the state and is known to be or is suspected of being an individual with disabilities.

b. In appointing a surrogate parent, it shall be ensured that there is no conflict of interest regarding the surrogate parent's responsibility to protect the special education rights of the individual; the surrogate parent is, or is willing to become, knowledgeable about the individual's disability and educational needs; and the surrogate parent is informed of the rights and responsibilities of serving as a surrogate parent.

c. The AEA director shall select a surrogate parent for special education purposes. The director shall contact the department of human services district administrator to ascertain whether the proposed surrogate parent has any conflict of interest. The director shall appoint the surrogate parent by letter. The letter must contain the individual's name, age, educational placement and other information about the individual determined to be useful to the surrogate parent, and must specify the period of time for which the person shall serve. A copy of the letter shall be sent to the department.

**41.109(3) Responsibilities.** Confidential educational records may be reviewed by the surrogate parent who is acting as a parent as defined above. The surrogate parent may represent the individual in all matters relating to the identification, evaluation, and educational placement of the individual and the provision of FAPE to the individual.

**41.109(4) Training.**

a. Training shall be conducted as necessary by each AEA using a training procedure approved by the department, which includes rights and responsibilities of surrogate parent, sample forms used by LEAs and AEAs, specific needs of individuals with disabilities and resources for legal and instructional technical assistance.

b. The department shall provide continuing education and assistance to AEAs upon request.

**41.109(5) Monitoring.** The department shall provide assistance to, and shall monitor, surrogate parent programs.

**281—41.110 Reserved.**

**281—41.111 Reserved.**

DIVISION XI  
SPECIAL EDUCATION APPEAL PROCEDURES

**281—41.112(17A,256B,290) Definitions.** As used in this division:

"Administrative law judge" means an administrative law judge designated by the director of education from the list of approved administrative law judges to hear the presentation of evidence and oral arguments in the hearing. The administrative law judges are selected under authority granted by the board. Such authority provides for the contracting with qualified personnel to serve as administrative law judges who are not personally or professionally involved so as to conflict with objectivity and are not employees or board members of either state, intermediate or local education agencies involved in the education or care of the individual. The department shall keep a list

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of the persons who serve as administrative law judges. The list shall include a statement of the qualifications of each of those persons.

"Appellant" means the party bringing a special education appeal to the department.

"Appellee" means the party in a matter against whom an appeal is taken.

"Parties" means the appellant, appellee and third parties named or admitted as a party.

**281—41.113(17A,256B) Manner of appeal.****41.113(1) Initiating a hearing.**

a. A parent may initiate a hearing when the agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the individual or the provision of FAPE to the individual.

b. An educational public agency may use the hearing procedures to determine if the individual may be evaluated or initially provided special education and related services without parental consent. If an agency does so and the administrative law judge upholds the agency, the agency may evaluate or initially provide special education and related services to the individual without the parent's consent.

c. The appropriate AEA serving the individual shall be deemed to be a party with the LEA whether or not specifically named by the parent or agency filing the appeal. In instances where the individual is served through a contract with another agency, the school district of residence of the individual shall be deemed a party.

**41.113(2) Conducting a hearing.** The hearing shall be conducted by the department.

**41.113(3) Appeal by affidavit.** An appeal shall be made in the form of an affidavit which identifies the individual, LEA and AEA, and generally sets forth the facts, the error or errors complained of or the reasons for the appeal in a plain and concise manner. An affidavit requires a sworn affirmation before a notary public or other officer authorized to administer oaths.

**41.113(4) Notice.** The director of education or designee shall, within five days after the filing of such affidavit, notify the proper school officials in writing of the appeal and the officials shall, within ten school days, file with the department complete educational records and proceedings related to the decision appealed.

**41.113(5) Free or low-cost legal services.** The department shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the agency initiates a hearing.

**41.113(6) Written notice.** The director of education or designee shall provide notice in writing delivered by fax, personal service as in civil actions, or by certified mail, return receipt requested, to all parties at least ten days prior to the hearing unless the ten-day period is waived by both parties. Such notice shall include the time and the place where the matter of appeal shall be heard. A copy of the appeal hearing rules shall be included with the notice.

**41.113(7) Mediation conference.** Parties shall be contacted by department personnel to ascertain whether they wish to participate in a mediation conference. The involved parties shall be notified that participation in this conference is voluntary and that such a conference in no way shall deny or delay a party's right to a full due process hearing. Such a conference, if held, shall be scheduled at a time and place that is convenient to all involved

persons. The mediation conference is designed to clarify the issues and, if possible, to resolve disagreements prior to a hearing. The discussions and offers of compromise of the mediation conference shall not be entered as arguments or evidence in a hearing. However, the parties may stipulate to agreements reached in mediation.

**41.113(8) Continuance.** A request for continuance may be made by any party to the designated administrative law judge. The administrative law judge may grant specific extensions of time beyond 45 days after the receipt of a request for a hearing.

**41.113(9) Dismissal.** A request for dismissal may be made to the administrative law judge at any time by the party initiating the appeal. A request or motion for dismissal made by the appellee (a party against whom an appeal was taken) shall be granted upon a determination by the administrative law judge that any of the following circumstances apply:

a. The affidavit of appeal relates to an issue that does not reasonably fall under any of the appealable issues of identification, evaluation, placement, or the provision of a free appropriate public education.

b. The issue(s) raised is moot.

c. The individual is no longer a resident of the LEA or AEA against whom the appeal was filed.

d. The relief sought by the appellant is beyond the scope and authority of the administrative law judge to provide.

e. Circumstances are such that no case or controversy exists between the parties.

An appeal may be dismissed administratively when an appeal has been in continued status for more than one school year. Prior to an administrative dismissal, the administrative law judge shall notify the appellant at the last known address and give the appellant an opportunity to give good cause as to why an extended continuance shall be granted. An administrative dismissal issued by the administrative law judge shall be without prejudice to the appellant.

**41.113(10) Time and place of hearing.** The hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and individual involved.

**281—41.114(17A,256B) Participants in the hearing.**

**41.114(1) Conducting hearing.** The hearing shall be conducted by the administrative law judge.

**41.114(2) Counsel.** Any party to a hearing has a right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of individuals with disabilities.

**41.114(3) Opportunity to be heard—appellant.** The appellant or representative shall have the opportunity to be heard.

**41.114(4) Opportunity to be heard—appellee.** The appellee or representative shall have the opportunity to be heard.

**41.114(5) Opportunity to be heard—director.** The director or designee shall have the opportunity to be heard.

**41.114(6) Opportunity to be heard—third party.** A person or representative who was neither the appellant nor appellee, but was a party in the original proceeding, may be heard at the discretion of the administrative law judge.

**41.114(7) Resource persons.** Representatives of the department may be present as resource persons and may be heard at the discretion of the administrative law judge.



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

**41.114(8)** Presence of individual. Parents involved in hearings must be given the right to have the individual who is the subject of the hearing present.

**281—41.115(17A,256B) Convening the hearing.**

**41.115(1)** Announcements and inquiries by administrative law judge. At the established time, the name and nature of the case are to be announced by the administrative law judge. Inquiries shall be made as to whether the respective parties or their representatives are present.

**41.115(2)** Proceeding with the hearing. When it is determined that parties or their representatives are present, or that absent parties have been properly notified, the appeal hearing may proceed. When any absent party has been properly notified, it shall be entered into the record. When notice to an absent party has been sent by certified mail, return receipt requested, the return receipt shall be placed in the record. If the notice was in another manner, sufficient details of the time and manner of notice shall be entered into the record. If it is not determined whether absent parties have been properly notified, the proceedings may be recessed at the discretion of the administrative law judge.

**41.115(3)** Types of hearing. The administrative law judge shall establish with the parties that the hearing shall be conducted as one of three types:

- a. A hearing based on the stipulated record.
- b. An evidentiary hearing.
- c. A mixed evidentiary and stipulated record hearing.

**41.115(4)** Evidentiary hearing scheduled. An evidentiary hearing shall be held unless both parties agree to a hearing based upon the stipulated record or a mixed evidentiary and stipulated record hearing.

**41.115(5)** Educational record part of hearing. The educational record submitted to the department by the educational agency shall, subject to timely objection by the parties, become part of the record of the hearing.

**281—41.116(17A,256B) Stipulated record hearing.**

**41.116(1)** Record hearing is nonevidentiary. A hearing based on stipulated record is nonevidentiary in nature. No witnesses shall be heard nor evidence received. The controversy shall be decided on the basis of the record certified by the proper official and the arguments presented on behalf of the respective parties. The parties shall be so reminded by the administrative law judge at the outset of the proceeding.

**41.116(2)** Materials to illustrate an argument. Materials such as charts and maps may be used to illustrate an argument, but may not be used as new evidence to prove a point in controversy.

**41.116(3)** One spokesperson per party. Unless the administrative law judge determines otherwise, each party shall have one spokesperson.

**41.116(4)** Arguments and rebuttal. The appellant shall present first argument. The appellee then presents second argument and rebuttal of the appellant's argument. A third party, at the discretion of the administrative law judge, may be allowed to make remarks. The appellant may then rebut the preceding arguments but may not introduce new arguments.

**41.116(5)** Time to present argument. Appellant and appellee shall have equal time to present their arguments and appellant's total time shall not be increased by the right of rebuttal. The time limit of argument shall be established by the administrative law judge.

**41.116(6)** Written briefs. Any party may submit written briefs. Written briefs by a person who is not a party may be accepted at the discretion of the administrative law judge. A brief shall provide legal authority for an argument, but shall not be considered as evidence. Copies of written briefs shall be delivered to all parties, and if desired each party may submit reply briefs at the conclusion of the hearing or at a mutually agreeable time. A final decision shall be reached and a copy of the decision shall be mailed to the parties not later than 45 days after the receipt of the request for the hearing unless the administrative law judge granted an extension of time beyond the 45 days. The time for filing briefs may extend the time for final decision.

**41.116(7)** Open hearing. Parents involved in hearings shall be given the right to open the hearing to the public.

**281—41.117(17A,256B) Evidentiary hearing.**

**41.117(1)** Testimony and other evidence. An evidentiary hearing provides for the testimony of witnesses, introduction of records, documents, exhibits or objects.

**41.117(2)** Appellant statement. The appellant may begin by giving a short opening statement of a general nature which may include the basis for the appeal, the type and nature of the evidence to be introduced and the conclusions which the appellant believes the evidence shall substantiate.

**41.117(3)** Appellee statement. The appellee may present an opening statement of a general nature and may discuss the type and nature of evidence to be introduced and the conclusion which the appellee believes the evidence shall substantiate.

**41.117(4)** Third party statement. With the permission of the administrative law judge, a third party may make an opening statement of a general nature.

**41.117(5)** Witness testimony and other evidence. The appellant may then call witnesses and present other evidence.

**41.117(6)** Witness under oath. Each witness shall be administered an oath by the administrative law judge. The oath may be in the following form: "You do solemnly swear or affirm that the testimony or evidence which you are about to give in the proceeding now in hearing shall be the truth, the whole truth and nothing but the truth."

**41.117(7)** Cross-examination by appellee. The appellee may cross-examine all witnesses and may examine and question all other evidence.

**41.117(8)** Witness testimony and other evidence. Upon conclusion of the presentation of evidence by the appellant, the appellee may call witnesses and present other evidence. The appellant may cross-examine all witnesses and may examine and question all other evidence.

**41.117(9)** Questions and other requests by administrative law judge. The administrative law judge may address questions to each witness at the conclusion of questioning by the appellant and the appellee. The administrative law judge may request to hear other witnesses and receive other evidence not otherwise presented by the parties.

**41.117(10)** Rebuttal witnesses and additional evidence. At the conclusion of the initial presentation of evidence and at the discretion of the administrative law judge, either party may be permitted to present rebuttal witnesses and additional evidence of matters previously placed in

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

evidence. No new matters of evidence may be raised during this period of rebuttal.

**41.117(11) Appellant final argument.** The appellant may make a final argument, not to exceed a length of time established by the administrative law judge, in which the evidence presented may be reviewed, the conclusions outlined which the appellant believes most logically follow from the evidence and a recommendation of action to the administrative law judge.

**41.117(12) Appellee final argument.** The appellee may make a final argument for a period of time not to exceed that granted to the appellant in which the evidence presented may be reviewed, the conclusions outlined which the appellee believes most logically follow from the evidence and a recommendation of action to the administrative law judge.

**41.117(13) Third party final argument.** At the discretion of the administrative law judge, a third party directly involved in the original proceeding may make a final argument.

**41.117(14) Rebuttal of final argument.** At the discretion of the administrative law judge, either side may be given an opportunity to rebut the other's final argument. No new arguments may be raised during rebuttal.

**41.117(15) Written briefs.** Any party may submit written briefs. Written briefs by a person who is not a party may be accepted at the discretion of the administrative law judge. A brief shall provide legal authority for an argument, but shall not be considered as evidence. Copies of written briefs shall be delivered to all parties, and if desired each party may submit reply briefs at the conclusion of the hearing or at a mutually agreeable time. A final decision shall be reached and a copy of the decision shall be mailed to the parties not later than 45 days after the receipt of the request for the hearing unless the administrative law judge granted an extension of time beyond the 45 days. The time for filing briefs may extend the time for final decision.

**41.117(16) Open hearing.** Parents involved in hearings must be given the right to open the hearing to the public.

**281—41.118(17A,256B) Mixed evidentiary and stipulated record hearing.**

**41.118(1) Written evidence of portions of record may be used.** A written presentation of the facts or portions of the certified record which are not contested by the parties may be placed into the hearing record by any party, unless there is timely objection by the other party. Such evidence cannot later be contested by the parties and no introduction of evidence contrary to that which has been stipulated may be allowed.

**41.118(2) Conducted as evidentiary hearing.** All oral arguments, testimony by witnesses and written briefs may refer to evidence contained in the material as any other evidentiary material entered at the hearing. The hearing is conducted as an evidentiary hearing.

**281—41.119(17A,256B) Witnesses.**

**41.119(1) Subpoenas.** The director of education shall have the power to issue (but not serve) subpoenas for witnesses, to compel the attendance of those thus served and the giving of evidence by them. The subpoenas shall be given to the requesting parties whose responsibility it is to serve to the designated witnesses. Requests may be denied or delayed if not submitted at least five days prior to the hearing date.

**41.119(2) Attendance of witness compelled.** Any party may compel by subpoena the attendance of witnesses, subject to limitations imposed by state law.

**41.119(3) Cross-examination.** Witnesses at the hearing or a person whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party necessary for a full and true disclosure of the facts.

**281—41.120(17A,256B) Rules of evidence.**

**41.120(1) Receiving relevant evidence.** Because the administrative law judge must decide each case fairly, based on the information presented, it is necessary to allow for the reception of all relevant evidence which shall contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative and relevant.

**41.120(2) Acceptable evidence.** Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The kind of evidence which reasonably prudent persons rely on may be accepted even if it would be inadmissible in a jury trial. The administrative law judge shall give effect to the rules of privilege recognized by law. Objections to evidence may be made and shall be noted in the record. When a hearing shall be expedited and the interests of the parties shall not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

**41.120(3) Documentary evidence.** Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available. Upon objection, documentary evidence which is not disclosed to the other parties at least five days before the hearing shall be prohibited.

**41.120(4) Independent educational evaluation.** If deemed necessary, the administrative law judge may order an independent educational evaluation, which shall be provided at no cost to the parent and which meets criteria prescribed by the department.

**41.120(5) Opportunity to contest.** The administrative law judge may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the administrative law judge. Parties shall be notified at the earliest practicable time, either before or during the hearing or by reference in preliminary reports, and shall be afforded an opportunity to contest such facts before the decision is announced unless the administrative law judge determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

**41.120(6) Administrative law judge may evaluate evidence.** The administrative law judge's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

**41.120(7) Decision.** A decision shall be made upon consideration of the whole record or such portions that are supported by and in accord with reliable, probative and substantial evidence.

**281—41.121(17A,256B) Communications.**

**41.121(1) Restrictions on communications—administrative law judge.** The administrative law judge shall not communicate directly or indirectly in connection with any issue of fact or law in that contested case with any person or party except upon notice and opportunity for all parties to participate.



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

**41.121(2) Restrictions on communications—parties.** Parties or their representatives shall not communicate directly or indirectly in connection with any issue of fact or law with the administrative law judge except upon notice and opportunity for all parties to participate as are provided for by administrative rules. The recipient of any prohibited communication shall submit the communication, if written, or a summary of the communication, if oral, for inclusion in the record of the proceeding.

**41.121(3) Sanctions.** Any or all of the following sanctions may be imposed upon a party who violates the rules regarding ex parte communications: censure, suspension or revocation of the privilege to practice before the department, or the rendering of a decision against a party who violates the rules.

**281—41.122(17A,256B) Record.**

**41.122(1) Closed hearing.** The hearing shall be closed to the public, unless the parents desire that it be open, and shall be recorded by mechanized means or by certified shorthand reporters. Oral proceedings in whole or in part may be transcribed at the request of any party, with the expense of the transcription charged to the requesting party. Any party to a hearing has the right to obtain an electronic verbatim record of the hearing.

**41.122(2) Transcripts.** All recording or stenographic notes of oral proceedings or the transcripts thereof shall be maintained and preserved by the department for at least five years from the date of decision.

**41.122(3) Hearing record.** The record of a hearing shall be maintained and preserved by the department for at least five years from the date of the decision. The record under this division shall include:

- a. All pleadings, motions and intermediate rulings.
- b. All evidence received or considered and all other submissions.
- c. A statement of matters officially noted.
- d. All questions and offers of proof, objections and rulings thereof.
- e. All proposed findings and exceptions.
- f. Any decision, opinion or report by the administrative law judge presented at the hearing.

**281—41.123(17A,256B) Decision and review.**

**41.123(1) Decision.** The administrative law judge, after due consideration of the record and the arguments presented, shall make a decision on the appeal.

**41.123(2) Basis of decision.** The decision shall be based on the laws of the United States and the state of Iowa and the rules and policies of the department and shall be in the best interest of the education of the individual.

**41.123(3) Time of decision.** The administrative law judge's decision shall be reached and mailed to the parties within 45 days after the department receives the original request for a hearing, unless a continuance has been granted by the administrative law judge for a good cause.

**41.123(4) Impartial decision maker.** No individual who participates in the making of any decision shall have advocated in connection with the hearing, the specific controversy underlying the case or other pending factually related matters. Nor shall any individual who participates in the making of any proposed decision be subject to the authority, direction or discretion of any person who has advocated in connection with the hearing, the specific

controversy underlying the hearing or a pending related matter involving the same parties.

**281—41.124(17A,256B) Finality of decision.**

**41.124(1) Decision final.** The decision of the administrative law judge is final. The date of postmark of the decision is the date used to compute time for purposes of appeal.

**41.124(2) Civil action.** Any party who is aggrieved by the findings and decision can bring civil action.

**41.124(3) Department dissemination.** The department, after deleting any personally identifiable information, shall transmit those findings and decisions to the state advisory panel and shall make those findings and decisions available to the public.

**281—41.125(17A,256B) Individual's status during proceedings.**

**41.125(1) Placement during proceedings.** During the pendency of any administrative or judicial proceeding regarding a complaint, unless the agency and the parents of the individual agree otherwise, the individual involved in the complaint must remain in the present educational placement. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with individuals who are endangering themselves or others.

**41.125(2) Placement during initial admission hearing.** If the complaint involves an application for initial admission to public school, the individual, with the consent of the parents, shall be placed in the public school program until the completion of all the proceedings.

**281—41.126 and 41.127 Reserved.**DIVISION XII  
FINANCE

**281—41.128(256B,282) Contractual agreements.** Any special education instructional program not provided directly by an LEA or any special education support service not provided by an AEA can only be provided through a contractual agreement. The board shall approve contractual agreements for AEA-operated special education instructional programs and contractual agreements permitting special education support services to be provided by agencies other than the AEA.

**281—41.129(256B) Research and demonstration projects and models for special education program development.** Applications for aid, whether provided directly from state or from federal funds, for special education research and demonstration projects and models for program development shall be submitted to the department.

**281—41.130(256B,273) Additional special education.** Additional special education made available through the provisions of Iowa Code section 273.3 shall be furnished in a manner consistent with these rules.

**281—41.131(256B,273,282) Extended year special education.** Approved extended year programs for special education support services, when provided by the AEA for eligible individuals, shall be funded through procedures as provided for special education support services. Approved extended year instructional programs shall be

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

funded through procedures as provided for special education instructional programs.

**281—41.132(256B,282,34CFR300) Program costs.**

**41.132(1) Nonresident individual.** The program costs charged by an LEA or an AEA for an instructional program for a nonresident eligible individual shall be the actual costs incurred in providing that program.

**41.132(2) Contracted special education.** An AEA or LEA may make provisions for resident eligible individuals through contracts with public or private agencies which provide appropriate and approved special education. The program costs charged by or paid to a public or private agency for special education instructional programs shall be the actual costs incurred in providing that program.

**41.132(3) LEA responsibility.** The resident LEA shall be liable only for instructional costs incurred by an agency for those individuals certified as entitled in accord with these rules unless required by 34 CFR §300.302, July 1, 1993.

**41.132(4) Support service funds.** Support service funds may not be utilized to supplement any special education programs authorized to use special education instructional funds generated through the weighting plan.

**41.132(5) Responsibility for special education for children living in a foster care facility.** For eligible individuals who are living in a licensed child foster care facility as defined in Iowa Code section 282.19 or in a facility as defined in Iowa Code section 125.2, the LEA in which the facility is located must provide special education if the facility does not maintain a school. The costs of the special education, however, shall be paid by the school district of residence of the eligible individual. If the school district of residence of the eligible individual cannot be determined, and this individual is not included in the weighted enrollment of any LEA in the state, the LEA in which the facility is located may certify the costs to the director of education by August 1 of each year for the preceding fiscal year. Payment shall be made from the general fund of the state.

**41.132(6) Responsibility for special education for individuals placed by court.** For eligible individuals placed by the district court, and for whom parental rights have been terminated by the district court, the LEA in which the facility or home is located must provide special education. Costs shall be certified to the director of education by August 1 of each year for the preceding fiscal year by the director of the AEA in which this individual has been placed. Payment shall be made from the general fund of the state.

**41.132(7) Proper use of special education instructional and support service funds.** Special education instructional funds generated through the weighting plan may be utilized to provide special education instructional services both in state and out of state with the exceptions of itinerant hospital services or home services, itinerant instructional services and special education consultant services which shall utilize special education support service funds for both in-state and out-of-state placements.

**41.132(8) Funding of ECSE instructional options.** Eligible individuals below the age of six may be designated as full-time or part-time students depending on the needs of the child. Funding shall be based on individual needs as determined by the IEP team and may include the following:

a. Full-time ECSE instructional programming shall include 20 hours or more instruction per week. The total

hours of participation in special education and general education, such as kindergarten or special education tuitioned preschool placements, may be combined to constitute a full-time program. Special education instructional funds generated through the weighting plan shall not be used to provide child care.

b. Part-time ECSE instructional programming shall include from 10 to 20 hours of instruction per week. The total hours of participation in special education and general education, such as kindergarten or special education tuitioned preschool placements, may be combined to constitute a part-time program.

**281—41.133(256B,282) Audit.** The department reserves the right to audit the records of any agency providing special education for eligible individuals and utilizing funds generated under Iowa Code chapters 256B, 273 and 282.

**281—41.134(256B,282,34CFR300) Evaluations.**

**41.134(1) Educational or medical evaluation.** If an educational or medical evaluation is requested by the AEA, the cost of the evaluation including travel expenses shall be at no cost to the parent and shall be paid by the AEA.

**41.134(2) Independent educational evaluation—administrative law judge.** If an independent educational evaluation is requested by a department administrative law judge, the cost of the independent educational evaluation including travel expenses shall be at no cost to the parent and shall be paid by the department.

**41.134(3) Independent educational evaluation—parent.** When parents have the right to an independent educational evaluation at public expense, rule 41.108(256B, 34CFR300), the cost of the independent educational evaluation including travel expenses shall be at no cost to the parent and shall be paid by the AEA.

**41.134(4) AEA policy and procedures.** The AEA shall establish policy and procedures for paying costs of an independent educational evaluation authorized under 34 CFR §300.503, July 1, 1993.

**281—41.135(256B,273,282) Sanctions.**

**41.135(1) Suspension of financial aid.** Any financial aid provided to an agency in support of special education may be suspended in whole or in part if the agency is found to be in noncompliance with any of the provisions of applicable statutes or rules. Suspension of financial aid would be only for the specific special education not meeting compliance requirements.

**41.135(2) Noncompliance.** When it has been determined that an area of noncompliance exists, the department shall notify the involved agency in writing of the violation, the required corrective action with timelines, appeal rights and the financial aid to be suspended if corrective action does not occur. If corrective action within the prescribed time limit does not occur, the department shall amend its certification to the director of the department of management so that the financial aid in question will be subtracted from funds available to the agency in the next scheduled payment period.

**281—41.136 and 41.137 Reserved.**

DIVISION XIII  
STATE PLAN

**281—41.138(256,256B,273,281) State plan of education for all individuals with disabilities.** In accord with

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

20 U.S.C. §1413, the state must submit a plan with certain requisite features.

**41.138(1) Planning process.**

a. The three-year state plan shall be developed in accord with all applicable federal statutes and regulations. Copies of such applicable regulations can be obtained at no cost by contacting the department. Beginning with fiscal year 1981, each state plan shall be effective for a period of three fiscal years.

b. A state level advisory panel shall be established and shall serve in an advisory capacity to the department in matters relating to the education of eligible individuals. This advisory panel shall meet as often as necessary to conduct its business, but at least semiannually.

**41.138(2) Public participation.** The department, in order to provide the general public a reasonable opportunity for participation in the development of the state plan for 20 U.S.C. §1401 et seq., shall utilize the following procedures:

a. Consult with relevant advisory committees, local agencies, interest groups and experienced professionals in the development of each proposed state plan.

b. Publish a description of each proposed state plan, in a manner that shall ensure circulation throughout the state, at least 60 days prior to the date on which the plan is submitted to the secretary of education or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on the proposed plan to be accepted for at least 30 days.

c. Hold public hearings on the proposed state plan as required by the secretary of education or by regulation.

d. Provide an opportunity for interested agencies, organizations and individuals to suggest improvements in the administration of programs and to allege that there has been a failure by an entity to comply with applicable statutes and regulations.

**41.138(3) Applicability of final approved plan.** The provisions of the state plan are applicable to, shall be adopted by and implemented by all political subdivisions of the state that are involved in and have responsibility for the education of eligible individuals. These would include:

a. The department.

b. LEAs.

c. AEAs.

d. Other state-operated special education programs as detailed in 41.8(256B,34CFR300).

**281—41.139 and 41.140 Reserved.**

DIVISION XIV  
MONITORING OF COMPLIANCE

**281—41.141(256B,442) Audit.** The department reserves the right to audit the records of any agency providing special education for eligible individuals and utilizing funds generated under Iowa Code chapters 256B and 273.

**281—41.142(256B,273,34CFR300) Compliance with federal and Iowa Codes.** Each agency shall adhere to the provision of, and implementing regulations and rules to 20 U.S.C. §§1400 et seq., applicable portions of 29 U.S.C. §794 pertaining to eligible individuals and Title 42 U.S.C. §§2116 et seq., and Iowa Code chapters 256B and 273.

**281—41.143(34CFR300) Monitoring.** The agency's adherence to federal and state code shall be monitored on a regular basis by the department in accord with 20 U.S.C. §§1232 et seq. Each agency shall provide the department with reports, records and access to programs and personnel needed to conduct monitoring activities.

**281—41.144(256B,273,282) Sanctions.** When it has been determined that an area of noncompliance exists, the department shall notify the involved agency in writing of the violation and the required corrective action with timelines. If the corrective action within the prescribed timelines does not occur, the department shall implement sanctions as described in 41.135(256B,273,282).

These rules are intended to implement Iowa Code chapters 256B and 273 and 34 CFR Part 300.

**ARC 4633A**

## EDUCATION DEPARTMENT[281]

### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 Iowa State Board of Education hereby gives Notice of Intended Action to amend Chapter 46, "Vocational Education Programs," Iowa Administrative Code.

The amendment is being proposed to clarify the process local school districts and community colleges must use to develop competencies for their vocational programs.

Any interested person may submit oral or written suggestions or comments on the proposed amendment on or before March 22, 1994, by addressing them to Roger Foelske, Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, or by telephone at (515)281-4700.

There will be a public hearing on March 22, 1994, at 2 p.m. in the State Board Room, Grimes State Office Building, Second Floor, East 14th and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

This amendment is intended to implement Iowa Code sections 256.11(5)"h" and 258.4(8).

The following amendment is proposed.

Amend subrule 46.7(2) as follows:

**46.7(2) Competency development by local school districts or community colleges.** Local school districts and community colleges may elect to develop competencies in lieu of the state minimum competencies as well as those above and beyond those identified by the department.

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

~~They shall utilize the state developed competency development procedures described in subrule 46.7(1) and their competency lists must be approved by the state department of education. The competencies shall be developed by the process described in subrule 46.7(1) and approved by the state department of education.~~

*Local school districts and community colleges are encouraged to develop additional competencies beyond the minimums identified by the department. The process described in subrule 46.7(1) should also be utilized to develop these competencies.*

## ARC 4632A

## EDUCATION DEPARTMENT[281]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 Iowa State Board of Education hereby gives Notice of Intended Action to amend Chapter 47, "Vocational Education Advisory Council," Iowa Administrative Code.

The amendments are being proposed to bring the chapter into compliance with federal regulations 20 U.S.C. §2322(a), (b) which were passed in 1990.

Any interested person may submit oral or written comments on the proposed amendments on or before March 22, 1994, by addressing them to Roger Foelske, Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, or by telephone at (515)281-4700.

There will be a public hearing on March 22, 1994, at 1 p.m. in the State Board Room, Grimes State Office Building, Second Floor, E. 14th and Grand, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

These amendments are intended to implement Iowa Code section 258.7 and 20 U.S.C. §2322(a), (b).

The following amendments are proposed.

ITEM 1. Amend **281—Chapter 47**, title, as follows:

## VOCATIONAL EDUCATION ADVISORY COUNCIL

ITEM 2. Amend rule 281—47.1(17A,258) as follows:

**281—47.1(17A,258) Agency description.** The Iowa vocational education advisory council consists of 13 members appointed by the governor and possessing various backgrounds and representing specific interests as specified in Iowa Code section 258.7 and ~~section 104(b)(1) of Public Law 90-576, United States Congress, October 16, 1968~~ 20 U.S.C. §§2322(a), (b). The council serves in an advisory capacity to the state board of education, *the governor, the business and labor community, and other agencies and individuals the general public.* The council

develops a knowledge base for its advice by visiting school systems agencies providing education and training for the workplace and conducting public meetings in the state. The council employs the necessary staff to organize its work. The executive director is responsible to the council and is responsible for administrative matters and general supervision of the council staff.

ITEM 3. Amend rule 281—47.2(17A,258) as follows:

**281—47.2(17A,258) Location and methods of obtaining information.** The council office is located at 1209 East Court in Des Moines, Iowa. All available information may be obtained by writing the Iowa vocational education advisory council at the above address. Telephone requests for available information and reports will be mailed.

## ARC 4631A

## EDUCATION DEPARTMENT[281]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 gives Notice of Intended Action to amend Chapter 64, "Child Development Coordinating Council," Iowa Administrative Code.

The proposed amendments codify the 1993 Child Development Coordinating Council requirement that all Council-funded programs must be accredited by the National Academy of Early Childhood Programs by April 15, 1995, and every April 15 thereafter, in order to receive renewal funding for the 1996 and subsequent fiscal years. The amendments include a waiver provision of this requirement for both continuation and new/extended programs.

Any interested person or agency may submit written or oral suggestions or comments on the proposed amendments prior to March 31, 1994. Comments should be directed to Ms. Donna Eggleston, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, telephone (515)281-7844.

A public hearing on these proposed amendments will be held on March 31, 1994, at 2 p.m. in the Grimes State Office Building, East 14th and Grand, Conference Room 3 North, Des Moines, Iowa.

These amendments are intended to implement Iowa Code sections 256A.3 and 279.51.

The following amendments are proposed.

ITEM 1. Amend rule **281—64.15(256A,279)** by adding the following **new** numbered paragraphs "5" and "6":

5. Continuation programs shall participate in the Self-Study and Accreditation Program of the National Academy of Early Childhood Programs. Continuation programs

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

not able to attain accreditation by April 15, 1995, and every April thereafter, may apply for a waiver of accreditation by March 15, 1995, and every March thereafter. Waivers shall be awarded at the discretion of the council. Programs not attaining accreditation or not receiving a waiver of accreditation will be terminated.

6. New/expansion programs shall participate in the Self-Study and Accreditation Program of the National Academy of Early Childhood Programs during their first year of council funding. New/expansion programs shall be granted a waiver of accreditation during their first year of funding. New/expansion programs must complete self-study and attain accreditation during their second year of funding. Programs not able to attain accreditation during their second year may apply for a waiver of accreditation by March 15 of the current fiscal year. Waivers shall be granted at the discretion of the council. Programs not attaining accreditation or not receiving waivers will be terminated.

ITEM 2. Amend rule **281—64.20(256A,279)** by adding the following as the last unnumbered paragraph:

The contract may be terminated in whole or in part by June 30 of the current fiscal year in the event that the grantee has not attained accreditation by the National Academy of Early Childhood Programs or has not been awarded a waiver of accreditation by the council.

These amendments are intended to implement Iowa Code sections 256A.3 and 279.51.

The following amendments are proposed.

ITEM 1. Amend subrule 65.9(4) as follows:

**65.9(4)** The department shall have the final discretion to award funds. The decision to renew existing grants or instead to reopen the entire grant process rests with the department.

ITEM 2. Rescind subrule **65.9(5)** and renumber subrule **65.9(6)** as **65.9(5)**.

ITEM 3. Rescind subrule **65.9(7)** and insert the following new subrule **65.9(6)**.

**65.9(6)** Grants will be funded in each of the following three district-size categories for the innovative grants, if acceptable application is made and the proposed program meets all other criteria:

- small (fewer than 1,199 district enrollment)
- medium (1,200 - 5,000 district enrollment)
- large (5,001 and more district enrollment)

Additional programs may be funded within each category depending upon available funds and requests.

**ARC 4629A****EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 Iowa State Board of Education hereby gives Notice of Intended Action to amend Chapter 94, "Administrative Advancement and Recruitment Program," and Chapter 95, "Equal Employment Opportunity and Affirmative Action in Educational Agencies," Iowa Administrative Code.

The amendment to Chapter 94 reflects renumbering of the 1993 Iowa Code. The amendment to Chapter 95 is being proposed to accurately reflect the change from merged area schools to community colleges.

Since this process does not affect the public, no public hearing will be held.

These amendments are intended to implement Iowa Code section 256.7(3).

The following amendments are proposed.

ITEM 1. Amend **281—Chapter 94** by striking all references to "72GA, ch 1078" and inserting "256.23" to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend **281—Chapter 95** by striking "merged area schools" and inserting "community colleges" in rule **281—95.1(256)** and rule **281—95.2(256)**, definition of "Agency," to accurately reflect current Iowa Code language.

**ARC 4630A****EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 gives Notice of Intended Action to amend Chapter 65, "Innovative Programs for At-Risk Early Elementary Students," Iowa Administrative Code.

The proposed amendments modify the grant criteria by reducing from five to three the categories of school district size and clarify that the decision to renew grants annually or to reopen the entire process rests with the agency.

Any interested person or agency may submit written or oral suggestions or comments on the proposed amendments prior to March 31, 1994. Comments should be directed to Ms. Susan Andersen, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, telephone (515)281-4747.

A public hearing is planned on these proposed amendments on March 31, 1994, Grimes State Office Building, East 14th and Grand, Conference Room 3 North, Des Moines, Iowa, at 1 p.m.

## ARC 4622A

### GENERAL SERVICES DEPARTMENT[401]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 17A.3 and Iowa Code Supplement section 18.8A, the Historical Division gives Notice of Intended Action to transfer and amend Historical Division[223] Chapters 55 to 57 to Department of General Services[401] Chapters 14 to 16, Iowa Administrative Code.

Item 2 allows weddings and wedding receptions to be held at Terrace Hill. It also authorizes the Commission to assess a fee for rental of Terrace Hill for special events and weddings and wedding receptions.

Item 3 provides that the treasurer for the Terrace Hill endowment for musical arts shall be a member of the Commission.

Any interested person may make written comments on these proposed amendments on or before March 22, 1994. Comments should be directed to Barb Filer, Terrace Hill Commission, 2300 Grand Avenue, Des Moines, Iowa 50312.

These amendments are intended to implement Iowa Code Supplement section 18.8A.

The following amendments are proposed:

ITEM 1. Transfer **223—Chapters 55 to 57 to 401—Chapters 14 to 16** and strike all parenthetical references to "303" and insert "18" wherever it appears.

ITEM 2. Amend **401—Chapter 14** as follows:

Amend **401—14.1(18)**, definition of "Commission," as follows:

"Commission" means the Terrace Hill commission as established by Iowa Code section ~~303.17~~ 18.8A.

Amend 401—14.2(18) as follows:

**401—14.2(18) Mission statement.** The Terrace Hill commission exists in accordance with Iowa Code section ~~303.17~~ 18.8A to preserve, maintain, renovate, landscape, and administer the Terrace Hill facility. The commission has authority to approve the ongoing expenditures for preservation, renovation, and landscaping of Terrace Hill and seeks necessary funds for these activities. Terrace Hill is maintained as the official residence for the governor of Iowa and serves as a facility for public and private functions.

Amend subrule 14.3(2) as follows:

**14.3(2) Composition.** The commission consists of nine members appointed by the governor in accordance with Iowa Code section ~~303.17~~ 18.8A.

Amend subrule 14.7(3) as follows:

**14.7(3) Fees.** Fees may be charged and collected by the commission and shall be administered according to Iowa Code section ~~303.9~~ 18.8A. Fees may be charged for, but are not limited to, admission, special events, use of images, and technical services. All fees charged shall

be approved by the commission and shall become effective upon 30 days' notice. This notice shall be a public posting in the facility. All fees shall be permanently posted.

Amend subrule 14.7(8) as follows:

**14.7(8)** Public functions may be held at the facility when the governor has an immediate interest or the function meets the special events criteria established by the commission. The criteria require that the event be in accordance with the mission of the facility. *Rental of Terrace Hill is permitted for special events on a limited basis. Approved groups shall pay rental fees in accordance with the fee schedule adopted by the Terrace Hill commission. Weddings and wedding receptions are strictly prohibited, except in the case of the immediate family of the current governor permitted as approved by the Terrace Hill commission. Requests for weddings and wedding receptions shall be made to the chair of the commission and decided upon by the entire commission. Only one wedding and wedding reception will be allowed per month.* Inquiries shall be directed to the ~~Administrator,~~ Terrace Hill Commission, 2300 Grand Avenue, Des Moines, Iowa 50312.

Amend the implementation sentence as follows:

These rules are intended to implement Iowa Code sections ~~303.1A and 303.17(4) and 1991 Iowa Acts, House File 479, section 214, subsection 3~~ section 18.8A.

ITEM 3. Amend **401—Chapter 16** as follows:

Amend rule 401—16.4(18) as follows:

**401—16.4(18) Funding.** All funds to support and maintain the scholarship have been raised by public and private donations and shall not be used for any other purpose. They are held in trust under the Terrace Hill foundation, a nonprofit, charitable foundation. All proceeds generated from investment interest by the scholarship moneys are themselves deposited into the scholarship trust. The treasurer for the scholarship is *shall be the treasurer for a member of the Terrace Hill commission and the foundation.*

Amend the implementation sentence as follows:

These rules are intended to implement Iowa Code section ~~303.17~~ 18.8A.

## ARC 4635A

### INSURANCE DIVISION[191]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 505.8, the Iowa Division of Insurance hereby gives Notice of Intended Action to amend Chapter 71, "Small Group Health Benefit Plans," Iowa Administrative Code.

The proposed new subrules address fair marketing rules in relation to commission payments on small group

## INSURANCE DIVISION[191](cont'd)

products and pay levels on basic and standard health benefit plans.

Interested persons may submit written comments regarding the proposed amendment on or before March 22, 1994. Comments should be directed to Susan E. Voss, Iowa Insurance Division, Lucas State Office Building, Des Moines, Iowa 50319.

This amendment is intended to implement Iowa Code chapter 513B.

The following amendment is proposed.

Amend rule 191—71.11(513B) by adding the following new subrules:

**71.11(8)** A small employer carrier shall establish commission payments at the same level as commission payments assessed on other small group products.

**71.11(9)** No small employer carrier shall establish a payment level on the basic and standard health benefit plans lower than the lowest payment level used on other types of policies.

**ARC 4637A****NATURAL RESOURCE  
COMMISSION[571]****Notice of Termination**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on November 24, 1993, as **ARC 4454A**, amending Chapter 16, "Public, Commercial, Private Docks and Dock Management Areas," Iowa Administrative Code.

No comments were received. However, staff has determined that certain significant additions need to be included with the proposed amendments which were not included in the published Notice. Therefore, the Commission is terminating the rule making commenced in **ARC 4454A** and is renoticing the rule to incorporate further changes and clarifications to requirements under this chapter.

**ARC 4638A****NATURAL RESOURCE  
COMMISSION[571]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 16,

"Public, Commercial, Private Docks and Dock Management Areas," Iowa Administrative Code.

These amendments include updating references to reflect renumbering of the 1993 Iowa Code and will establish general permits for eligible classes of private docks. The general permits will avoid need for many private dock owners to submit individual permit applications to the Department. The general permits will expire March 1, 1999. Item 10 of these amendments establishes fees for individual permits for private docks which are not authorized by a general permit. The fees do not become effective until July 1, 1994. These amendments also simplify the criteria for permitting of private docks and update references to the Iowa Code.

Any interested person may make written suggestions or comments on the proposed amendments on or before March 23, 1994. Such written materials should be directed to the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at telephone (515)281-4515 or at the enforcement offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on March 23, 1994, at 9 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

These amendments are intended to implement Iowa Code sections 455A.5(6), 461A.4, 461A.25, 462A.2, and 462A.27.

The following amendments are proposed.

**ITEM 1.** Amend **571—Chapter 16** by striking all references to "106" and "111" and inserting "462A" and "461A," respectively, to reflect renumbering of the 1993 Iowa Code.

**ITEM 2.** Amend rule 571—16.1(461A) as follows:

**571—16.1(461A) Definitions.** For the purpose of this rule, the following terms are used:

"All docks" ~~shall mean~~ means private docks, public docks, commercial docks, and docks constructed in dock management areas.

"Catwalk" means a walkway constructed for access from the dock to moored vessels or boat storage structures.

"Commercial dock" ~~shall mean~~ means any dock on or over waters under the jurisdiction of the commission in which the use or operation of the dock involves a fee, directly or indirectly.

"Commission" means the natural resource commission.

"Department" means the department of natural resources.

"Director" ~~shall mean~~ means the director of the department of natural resources.

~~"Director's representative" shall mean any employee of the department of natural resources authorized by the director to administer the provisions of this chapter.~~

"Dock management area" ~~shall mean~~ means those areas adjacent to publicly owned riparian land or a specially developed harbor area, either of which has been designated a dock management area by the department of natural resources.



## NATURAL RESOURCE COMMISSION[571](cont'd)

*"General permit" means a permit issued as a rule of this chapter to authorize maintenance of an eligible class of private docks. The owner of a private dock that is eligible for coverage under a general permit need not file an individual dock permit application.*

*"Lakes" includes all natural lakes and artificial lakes to which the public has lawful access from land or from a navigable stream inlet, excepting river impoundments as defined in this rule.*

*"Private dock" shall mean means a dock extending from the private property of a riparian landowner and constructed on or over waters under the jurisdiction of the natural resource commission and which is not used as a marina or for other commercial purposes or made available for public use.*

*"Public dock" shall mean means a dock over waters under the jurisdiction of the commission extending from riparian public land or from private land to which the public has been granted a license to travel and either of which is open to public use.*

*"River impoundments" means all pools upstream from dams on meandered and nonmeandered rivers. Examples are Lake Panorama, Lake Delhi and Lake Nashua.*

ITEM 3. Rescind rule 571—16.2(461A) and insert in lieu thereof the following new rule:

**571—16.2(461A) When dock permit required.** No person shall construct a private dock, public dock, or commercial dock on a lake, river, or river impoundment without first obtaining a permit from the department. Individual permits must be obtained for all public and commercial docks. Individual permits must be obtained for all private docks which do not conform to the general permit criteria in 571—16.3(461A) or 16.4(461A).

ITEM 4. Amend rule 571—16.3(461A) by rescinding the introductory paragraph, by renumbering subrules 16.3(1) to 16.3(12) as subrules 16.5(13) to 16.5(24) and by inserting the following new rule:

**571—16.3(461A) General permit for certain private docks on lakes.** This rule constitutes a general permit for certain private docks on lakes as defined in 571—16.1(461A). This general permit expires March 1, 1999. This general permit authorizes maintenance of private docks conforming to the standard conditions set forth in 571—16.5(461A) and the following additional criteria:

**16.3(1) Spacing and alignment.** The dock shall be offset at least 25 feet from the nearest adjoining property boundary and at least 50 feet from the nearest other lawful dock. If these offsets are impossible due to the narrowness of the riparian parcel, the dock shall be located to conform as nearly as reasonably possible to these minimum offsets. The dock must be aligned so as not to cross the projection of the adjoining property line into the lake.

**16.3(2) Dimensions.** The width shall be not less than 3 nor more than 6 feet. The total length of the dock shall not exceed 100 feet measured from the ordinary high water line of the lake as determined by the department. However, the director may authorize a temporary extension of length as reasonably needed during low lake levels.

**16.3(3) Configuration.** Docks offset at least 25 feet from the nearest adjoining property boundary will be allowed one segment which is at an angle to the dock. This segment and the dock must be offset at least 50 feet from any lawful dock. This segment shall not be longer than

16 feet, measured along its angle to the dock and including the width of the dock, and shall not create a platform larger than 168 square feet. If the segment is less than 25 feet from the nearest adjoining property boundary or less than 50 feet from the nearest lawful dock, it may not be longer than 8 feet, measured along its angle to the dock and including the width of the dock, and shall not create a platform larger than 80 square feet. These segments may not be less than 30 feet from another lawful dock.

**16.3(4) Hoists and other adjacent structures.** A hoist or other boat storage structure shall not be placed adjacent to any segment more than 6 feet wide.

ITEM 5. Rescind rule 571—16.4(461A) and insert in lieu thereof the following new rule:

**571—16.4(461A) General permit for certain private docks on rivers and river impoundments.** This rule constitutes a general permit for certain private docks on rivers and river impoundments as defined in 571—16.1(461A). This general permit expires March 1, 1999. This general permit authorizes maintenance of private docks conforming to the standard conditions set forth in 571—16.5(461A) and the following additional criteria:

**16.4(1) Spacing and alignment.** The dock shall be offset at least 25 feet from the nearest adjoining property boundary and at least 50 feet from the nearest other lawful dock. If these offsets are impossible due to the narrowness of the riparian parcel, the dock shall be located to conform as nearly as reasonably possible to these minimum offsets. The dock must be aligned so as not to cross the projection of the adjoining property line into the river or river impoundment.

**16.4(2) Dimensions.** The width shall be not less than 3 nor more than 6 feet. The total length of the dock shall not exceed the lesser of 50 feet or one-fourth of the width of the waterway measured from the water's edge at normal river stage.

**16.4(3) Configuration.** Docks on rivers and river impoundments will be allowed segments which are at an angle to the dock. These segments may not exceed 25 feet in length, measured along their angle to the dock, and these segments must be at least 3 feet wide and may not exceed 6 feet in width. There may be two of these segments on one side of the dock, but not one on each side of the dock if the result would cause the frontage to exceed 25 feet.

**16.4(4) Hoists and other adjacent structures.** A hoist or other boat storage structure shall not be placed upstream or downstream from any dock segment more than 6 feet wide.

**16.4(5) Anchoring.** All river docks must be securely anchored to prevent them from becoming floating hazards during times of high river flows.

ITEM 6. Amend subrules 16.5(1), 16.5(2), 16.5(8) and 16.5(10) to read as follows:

**16.5(1) Display of numbers.** The number of the dock permit *when required or the name and address of the owner* shall be displayed on the water end of the dock, facing away from the shore and plainly visible, in block numbers of good proportion, ~~not less than three inches in height,~~ and in a color contrasting to the background.

**16.5(2) Removal and reconstruction of docks.** All docks must be removed from the waters of this state before December 15 of each year and not reconstructed until the following spring, except those exempted by special individual permit from the director.



## NATURAL RESOURCE COMMISSION[571](cont'd)

**16.5(8)** Impacts on natural resources. The permittee shall make every reasonable effort to construct the dock authorized by an approved dock permit application in a manner so as to minimize any adverse impact on fish, wildlife, water quality, and natural environmental values.

**16.5(10)** Electrical service. Any electrical service on or leading to any dock used for storage or dispensing of fuel must comply with the National *Electric Code*, 1981 Edition NFPA 70-1981 latest revision. All electrical service leading to docks and shall include ground fault circuit protection.

ITEM 7. Amend renumbered subrules 16.5(13) to 16.5(24) and insert new subrules 16.5(25) and 16.5(26) as follows:

**16.5(13)** Activities and structures must comply with permit. All activities and structures authorized by a dock permit must comply with the requirements of the permit and the permittee shall maintain the structure or work authorized by the permit in good condition and in accordance with plans and drawings attached to the application for permit.

**16.5(14)** Permit limitations. A dock permit shall not be construed to do more than give the permittee the right to construct a dock. The permit creates no interests, personal or real, in the real estate below the ordinary high water line nor does it relieve the requirement to obtain federal or local assent when required by law for such activity.

**16.5(15)** Permanent structures. All docks, piers, or wharves which cannot be removed or stored in an approved location shall be considered permanent structures and shall be subject to 571—Chapter 18, Iowa Administrative Code, and other regulations covering permanent structures.

**16.5(16)** Permits and privileges are not transferable. ~~Dock~~ *Individual dock permits or privileges* shall not be transferable, and when the permittee desires to abandon the dock or activity authorized by the permit, the area must be restored to a condition satisfactory to the department of natural resources. *An individual permit shall be valid only while the permittee has the necessary permissions to use the adjoining riparian land from which the dock projects.*

**16.5(17)** Right to inspection. The permit shall allow the director or the director's representative to make inspections, at any and all reasonable times, of docks authorized by the permit in order to ensure that the activity being performed or the structure constructed is safe and in accordance with the terms and conditions of the permit and this rule.

**16.5(18)** Suspension, modification, or revocation of permits. ~~A~~ *An individual dock permit or the applicability of a general permit to a specific dock* may be modified, suspended, or revoked by written notice, in whole or in part, if the director or the director's representative determines that the dock is not safe or that a violation of any terms or conditions of the permit has occurred or that continuation of the permit is not in the public interest. Such modification, suspension, or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation, the reasons for the action, and any corrective or preventative measures to be taken by the permittee to bring the dock, structure, or activity into compliance. Within 30 days following receipt of the notice of a revocation or modification, or during the course

of a suspension, the permittee may request a hearing in order to present information demonstrating that the alleged violation did not occur, or that required corrective and preventative measures have been taken, or any other information relevant to a decision as to whether the permit should be reinstated, modified, or revoked. The hearing shall be conducted as prescribed by 571—Chapter 7. After completion of the hearing, a final decision will be made concerning the status of the permit. In the event that no hearing is requested, notices of modification and revocation shall remain in effect and suspended permits shall be either reinstated, modified, or revoked.

**16.5(19)** Persons affected—hearing request. Any person adversely affected by a *an individual dock permit or the applicability of a general permit to a specific dock* may request, in writing, a hearing to reconsider the permit. Requests for hearings shall show cause and shall be made in accordance with procedures described in 571—Chapter 7.

**16.5(20)** Claims for damages. Any modification, suspension, or revocation of a dock permit shall not be the basis for any claim for damages against the state of Iowa or the department of natural resources.

**16.5(21)** Liability for damage from wake or high water. The issuance of a dock permit does not relieve the permittee from taking all proper steps to ensure the integrity of the structure permitted and the safety of boats moored thereto from damage by wave wash or high water conditions, and the permittee shall not hold the state of Iowa or the department of natural resources liable for any such damage.

**16.5(22)** Restriction of navigation prohibited. No attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity or structure authorized by a dock permit.

**16.5(23)** Expiration of permits. The term of a *an individual permit* shall not exceed five years. Renewals shall be requested on the same form as an original permit.

**16.5(24)** Protected waters area. Special restrictions may be placed on docks which are in a component of a state protected waters area as necessary to protect the natural features of the designated area.

**16.5(25)** *Fill prohibited. No fill may be placed in a water body in association with construction of a dock unless placement of such fill is specifically authorized by permit and the permittee has obtained all other permits required to authorize deposit of such fill.*

**16.5(26)** *Catwalks. A catwalk shall be at least 2 feet wide and considered a part of the dock. Catwalks shall be limited in length as is any segment of the dock which is at an angle to the dock.*

ITEM 8. Rescind rule 571—16.6(461A) and insert in lieu thereof the following new rule:

**571—16.6(461A) Applications for individual dock permits.**

**16.6(1)** Application forms. A person requesting a dock permit shall apply on the form furnished by the department. The form is the "Dock Application and Permit" form or the "Dock Assignment and Permit" form. If the applicant is not the owner of the adjoining riparian land, the application must include a signed declaration that the applicant is the lessee of the adjoining riparian land.

**16.6(2)** Plans, drawings and application fee. The application form shall be accompanied by accurate plans and

## NATURAL RESOURCE COMMISSION[571](cont'd)

drawings as specified on the form and the application fee established in 571—16.10(461A). Approved plans and drawings shall be incorporated as part of the dock permit.

ITEM 9. Rescind rule 571—16.7(461A) and insert in lieu thereof the following new rule:

**571—16.7(461A) Criteria for individual private dock permits.** The director or the director's designee may approve issuance of a permit for a private dock which does not conform to one or more of the applicable "general permit" criteria in these rules. To be eligible for an individual permit the applicant must provide information supporting a determination that good cause exists for issuance of a permit and that neither public nor private rights will be adversely affected by issuance of the permit.

ITEM 10. Amend subrules 16.8(1) and 16.8(3) and rescind and reserve subrule 16.8(7) as follows:

**16.8(1)** Width and strength of docks. All commercial and public docks *not within a dock management area* shall be at least ~~four~~ 4 feet wide and constructed of sound, strong material capable of withstanding the normal severe wind conditions for the area of their location.

**16.8(3)** Posting of public docks. All public docks permitted under the terms of this chapter shall be posted from the shore end in legible lettering as "public docks" ~~except for those public docks constructed within a dock management area.~~

~~**16.8(7)** Catwalks. That which is commonly called a "catwalk" shall be at least two feet wide and considered a part of the dock. Catwalks shall be limited in length as an "L" or "T" portion of the dock construction and used to provide access to not more than two vessels or mooring facilities.~~

ITEM 11. Amend subrule 16.9(1), paragraph "e," as follows:

e. ~~Except commercial and public, all~~ All dock sites in a dock management area shall be marked by identifying signs furnished by the department and placed at locations determined by the area manager.

ITEM 12. Amend rule 571—16.10(461A) to read as follows:

**571—16.10(461A) Fees for commercial docks, and docks in dock management areas, and private docks requiring an individual permit.**

**16.10(1)** Enclosed docks. Any dock constructed with one or more sides enclosed will be subject to the following fee schedule in addition to that specified for docks in dock management areas.

1. Up to 15 feet wide and not more than 20 feet long—\$50 annually.

2. Over 15 feet wide and not more than 20 feet wide and not more than 24 feet long—\$75 annually.

3. Over 20 feet wide and not more than 28 feet long—\$100 annually.

4. Over 25 feet wide shall be proportionate to the above width fees.

**16.10(2)** Fees for commercial docks. A fee shall be assessed for each commercial dock not within a dock management area which provides slips for boats other than those owned by the applicant and used to carry on commerce under riparian rights. The fee shall be \$2 per slip to accommodate boats under 26 feet and \$4 per slip for those to accommodate boats over 26 feet.

**16.10(3)** Fees for docks in dock management areas. In each dock management area, the department of natural resources shall evaluate the benefits to the dock applicant and establish a dock permit and hoist or mooring fee based on the following criteria:

1. The desirability of the water;
2. The placement of the dock and area on the water;
3. The public benefit or inconvenience;
4. The private benefit;
5. Comparable docking fees.

**16.10(4)** Fees for private docks. A fee of \$25 per year shall be assessed on private docks requiring an individual permit. The fees shall be paid, upon application, for the requested term of the permit.

~~**16.10(4)**~~ **16.10(5)** Payment of fees. Payment of the annual fee for commercial docks, docks in dock management areas, and private docks requiring an individual permit shall be made upon application and ~~yearly on or before May 31, or~~ may be paid in a lump sum in advance for the term of the permit. Permits issued under the rule for which the annual fee has not been paid by ~~May 31~~ April 1 of any year are void but may be reinstated by payment of all fees due for the year reinstatement is sought, as well as any prior years in the term of the permit for which an annual fee has not been paid. Payment of any fee under this rule shall be made to the department of natural resources.

ARC 4643A

## NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

These rules give the regulations for hunting waterfowl and coot and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

Any interested person may make written suggestions or comments on these proposed amendments prior to April 16, 1994. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 16, 1994, at 10 a.m. in the Auditorium of the Wallace State Office Building at which time persons may present their views

## NATURAL RESOURCE COMMISSION[571](cont'd)

either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

The following amendments are proposed.

ITEM 1. Amend rule 571—91.1(481A), introductory paragraph, to read as follows:

**571—91.1(481A) Ducks (split season).** Open season for hunting ducks shall be October 2 1 to October 4 2, 1993 1994; October 23 22 to November 18, 1993 1994, in that portion of the state lying north of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border; and October 23 22 to October 29 28, 1993 1994, November 6 5 to November 28 27, 1993 1994, in that portion of the state lying south of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border. Shooting hours are one-half hour before sunrise to sunset each day.

ITEM 2. Amend rule 571—91.2(481A), introductory paragraph, to read as follows:

**571—91.2(481A) Coots (split season).** Open season for hunting coots shall be October 2 1 to October 4 2, 1993 1994, October 23 22 to November 18, 1993 1994, in that portion of the state lying north of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border; and October 23 22 to October 29 28, 1993 1994; November 6 5 to November 28 27, 1993 1994, in that portion of the state lying south of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border. Shooting hours are one-half hour before sunrise to sunset each day.

ITEM 3. Amend rule 571—91.3(481A), introductory paragraph, to read as follows:

**571—91.3(481A) Geese.** The open season for hunting Canada and white-fronted geese and brant shall be from October 9 8 to December 2 1, 1993 1994, and snow geese shall be from October 9 8 to December 27 26, 1993 1994, except for the south Iowa goose hunting zone, which is that part of the state lying south of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border. In the south Iowa goose hunting zone the season shall be October 23 22 to December 16 15, 1993 1994, for Canada and white-fronted geese and brant, October 23 22, 1993 1994, to January 10 9, 1994 1995, for snow geese. Shooting hours are one-half hour before sunrise to sunset each day.

ITEM 4. Amend subrule 91.4(2) by adding new paragraphs "n" and "o" as follows:

n. Area fourteen. Portions of Bremer County bounded as follows: Beginning at the northeast corner of section 4, township 93 north, range 11 west; thence south 16 miles, then east one-half mile, then south one mile

along Bremer County Road V56; thence west 4½ miles along a county road right-of-way to Bremer County Road V49; thence north 4 miles along Bremer County Road V49 to Iowa Highway 3; thence west 2 miles along Iowa Highway 3 to Bremer County Road V43; thence north 4 miles along Bremer County Road V43 to Bremer County Road C33; thence west 4 miles along Bremer County Road C33 to U.S. Highway 63; thence north 9 miles along U.S. Highway 63 to the Bremer-Chickasaw County line; thence east 10 miles along the Bremer-Chickasaw County line to the point of beginning.

o. Area fifteen. Portions of Butler County bounded as follows: Beginning at the junction of Highway 3 and County Road T16, thence south 8 miles on County Road T16 to its intersection with County Road C55, thence east 9 miles on County Road C55 to its intersection with Highway 14, thence north 8 miles on Highway 14 to its intersection with Highway 3, thence west 9 miles on Highway 3 to the point of beginning; but, excluding those lands within this bounded area managed by the Iowa department of natural resources as the Big Marsh Management Area.

**ARC 4644A**

## NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 94, "Nonresident Deer Hunting," Iowa Administrative Code.

These rules give the seasons for hunting deer by non-residents and include season dates, bag limits, possession limits, season limits, shooting hours, areas open to hunting, license quotas, licensing procedures, means and method of take and transportation tag requirements.

Any interested person may make written suggestions or comments on these proposed amendments prior to April 16, 1994. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 16, 1994, at 10 a.m. in the Fourth Floor Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

## NATURAL RESOURCE COMMISSION[571](cont'd)

These amendments are intended to implement Iowa Code sections 481A.38, 481.39, 481A.48, 483A.1 and 483A.8.

The following amendments are proposed.

ITEM 1. Amend rule 571—94.1(483A), introductory paragraph, to read as follows:

**571—94.1(483A) Licenses.** Every hunter must have in possession a valid 1993 deer license and a valid 1993 habitat stamp when hunting, possessing, or transporting deer. No person, while hunting deer, shall carry or have in possession any license or transportation tag issued to another person. No person shall obtain more than one nonresident deer hunting license.

ITEM 2. Amend rule 571—94.2(483A) to read as follows:

**571—94.2(483A) Season dates.** Deer may be taken in 1993-1994 1994-1995 only during the following periods.

**94.2(1) Bow season.** Deer may be taken by bow and arrow only in accordance with the type, tenure, and zone of license issued from October 1 through December 3 2, 1993 1994, and December 20 19, 1993 1994, through January 10, 1994 1995.

**94.2(2) Regular gun season.** Deer may be taken with gun only in accordance with the type, tenure, and zone of license issued, from December 4- 3 through December 8 7, or from December 4+ 10 through December 19 18, 1993 1994.

**94.2(3) Special muzzleloader season.** Deer may be taken by muzzleloader only in accordance with the type, tenure and zone of license issued from December 20 19 1993 1994, through January 10, 1994 1995.

ITEM 3. Amend subrules 94.7(1), 94.7(4) and 94.7(5) to read as follows:

**94.7(1) Bow season.** Except as provided in 571—15.5(481A), only recurve, compound or longbows with broadhead arrows will be permitted in taking deer during the bow season. *Arrows with chemical or explosive pods are not permitted.*

**94.7(4) Prohibited weapons and devices.** The use of dogs, domestic animals, salt or bait, rifles other than muzzleloaded, handguns, crossbows except as otherwise provided, automobiles, aircraft, or any mechanical conveyances or device is prohibited including electronic calls is prohibited except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. *"Bait" means grain, fruit, vegetable, nuts, hay, salt or mineral blocks or any other natural food materials, or by-products of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. "Paraplegic" means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord.*

~~It shall be illegal for a licensed bow hunter to have on their person a firearm while bow hunting for deer. It shall be illegal for a licensed gun deer hunter or special muzzleloader during gun seasons, to have on their person a centerfire rifle or handgun while gun hunting for deer. It shall be unlawful for a person, while hunting deer, to have on their person a handgun or rifle other than a muzzleloading rifle that meets the requirements of 571—subrule 106.7(3).~~

**94.7(5) Discharge of firearms from roadway highway.** No person shall discharge a shotgun shooting slugs or muzzleloader from a road right-of-way highway during the regular gun seasons in Zones 1, 2 and 10 all counties and parts of counties north of Highway 30 and west of Highway 63. A "highway" means the way between property lines open to the public for vehicle traffic as defined in Iowa Code section 321.1(78).

ITEM 4. Amend rule 571—94.8(483A) as follows:

**571—94.8(483A) Application procedures.** All applications for regular gun season nonresident deer hunting licenses for 1993 1994 deer hunting season shall be made on forms provided by the department of natural resources and returned to the department of natural resources office in Des Moines, Iowa. No one shall submit more than one application. Applications for nonresident deer hunting licenses must be accompanied by the appropriate license fee. The nonresident license fee shall be \$110. Party applications with no more than four individuals will be accepted. Applications received in the natural resources office in Des Moines, Iowa, by 4:30 p.m. on May 14 June 13, 1993 1994, will be processed. If applications received are in excess of the license quota for any hunting zone, a drawing will be conducted to determine which applicants shall receive licenses. If licenses are still available in any zone, licenses will be issued as applications are received until quotas are filled or June 18, 1993 July 15, 1994, whichever occurs first. Any incomplete or improperly completed application or any application not meeting the above conditions will not be considered as a valid application.

ARC 4645A

## NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 96, "Pheasant, Quail and Gray (Hungarian) Partridge Hunting Seasons," Iowa Administrative Code.

These rules give the regulations for hunting pheasants, quail and gray partridges and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

Any interested person may make written suggestions or comments on these proposed amendments prior to April 16, 1994. Such written materials should be directed to

## NATURAL RESOURCE COMMISSION[571](cont'd)

the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 16, 1994, at 10 a.m. in the Auditorium of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

The following amendments are proposed.

ITEM 1. Amend subrule 96.1(1) to read as follows:

**96.1(1) Open season.** Open season for hunting pheasants shall be October ~~30~~ 29, ~~1993~~ 1994, through January 10, ~~1994~~ 1995. Bag limit 3 cock birds daily; possession limit 12 cock birds. Shooting hours shall be from 8 a.m. to 4:30 p.m. Entire state open.

ITEM 2. Amend rule 571—96.2(481A) to read as follows:

**571—96.2(481A) Gray (Hungarian) partridge season.** Open season for hunting gray partridge shall be October 9 ~~8~~, ~~1993~~ 1994, through January 31, ~~1994~~ 1995. Bag limit 8 birds daily; possession limit 16 birds. Shooting hours shall be from 8 a.m. to 4:30 p.m. Entire state open.

ITEM 3. Amend rule 571—96.3(481A) to read as follows:

**571—96.3(481A) Quail season.** Open season for hunting quail shall be October ~~30~~ 29, ~~1993~~ 1994, through January 31, ~~1994~~ 1995. Bag limit 8 birds daily; possession limit 16 birds. Shooting hours shall be from 8 a.m. to 4:30 p.m. Entire state open.

## ARC 4646A

NATURAL RESOURCE  
COMMISSION[571]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 97, "Common Snipe, Virginia Rail, Sora, Woodcock and Ruffed Grouse Hunting Seasons," Iowa Administrative Code.

These rules govern hunting of common snipe, Virginia rail, sora, woodcock and ruffed grouse and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

Any interested person may make written suggestions or comments on these proposed amendments prior to April 16, 1994. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 16, 1994, at 10 a.m. in the Auditorium of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

The following amendments are proposed.

ITEM 1. Amend rule 571—97.1(481A) to read as follows:

**571—97.1(481A) Common snipe season.** Open season for hunting common snipe shall be from September ~~4~~ 3 through ~~December 19, 1993~~ November 11, 1994. Shooting hours shall be from *one-half hour before* sunrise to sunset each day. Daily bag limit 8 birds; possession limit 16 birds. Entire state open.

ITEM 2. Amend rule 571—97.2(481A) to read as follows:

**571—97.2(481A) Virginia rail and sora season.** Open season for hunting Virginia rail and sora shall be from September ~~4~~ 3 through November ~~12~~ 11, ~~1993~~ 1994. Shooting hours shall be from *one-half hour before* sunrise to sunset each day. Daily bag limit 12 and possession limit 24 in aggregate of both species. Entire state open.

ITEM 3. Amend rule 571—97.3(481A) to read as follows:

**571—97.3(481A) Woodcock season.** Open season for hunting woodcock shall be from September ~~18~~ 17 through November ~~21~~ 20, ~~1993~~ 1994. Shooting hours shall be from sunrise to sunset each day. Daily bag limit 5; possession limit 10. Entire state open.

ITEM 4. Amend rule 571—97.4(481A), introductory paragraph, to read as follows:

**571—97.4(481A) Ruffed grouse season.** Open season for hunting ruffed grouse shall be from October 9 ~~8~~, ~~1993~~ 1994, through January 31, ~~1994~~ 1995. Shooting hours shall be from sunrise to sunset each day. Daily bag limit 3; possession limit 6.

## ARC 4647A

NATURAL RESOURCE  
COMMISSION[571]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 99, "Wild Turkey Fall Hunting," Iowa Administrative Code.

These rules give the regulations for hunting wild turkeys during the fall and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take and transportation tag requirements.

Any interested person may make written suggestions or comments on these proposed amendments prior to April 16, 1994. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 16, 1994, at 10 a.m. in the Auditorium of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 110.7.

The following amendments are proposed.

ITEM 1. Amend 571—99.1(481A), introductory paragraph, and subrules 99.1(1) and 99.1(2) as follows:

**571—99.1(481A) General.** Wild turkey may be taken during the 1993 1994 fall season subject to the following:

**99.1(1) License.** All resident hunters must have in possession a valid 1993 resident fall wild turkey hunting license, and additionally a 1993 valid hunting license and 1993 habitat stamp if normally required to have them, when hunting wild turkey. No person while hunting wild turkey shall carry or have in possession any license or transportation tag issued to another person. Licenses will be issued by zone and period and will be valid in the designated zone and for the designated period only. Except as provided in 99.4(1), no resident shall obtain more than one fall wild turkey gun hunting license and one fall wild turkey bow hunting license.

**99.1(2) Seasons.** Wild turkey of any age or sex may be taken only by the use of shotguns, muzzleloading shotguns, and bow and arrow during specified periods as follows:

a. Combination shotgun-or-archery season. The open fall season for hunting wild turkey with shotguns, muzzle-

loading shotguns and bow and arrow shall be October 11 10 through November 28 30, 1993 1994, for residents.

b. Archery only. The open fall season for hunting wild turkey with bow and arrow only shall be October 1 through December 3 2, 1993 1994, and December 20 19, 1993 1994, through January 10, 1994 1995, for residents only.

ITEM 2. Amend rule 571—99.4(481A) to read as follows:

**571—99.4(481A) Application procedure.** All applications for wild turkey fall hunting licenses for the 1993 fall wild turkey hunting season must be made on forms provided by the department of natural resources and returned to the Department of Natural Resources, Des Moines, Iowa 50319, with the proper license fee. Individual applications only will be accepted.

**99.4(1) Applications for combination shotgun-or-archery licenses.** Applications for resident 1993 fall wild turkey combination shotgun-or-archery hunting licenses shall be received and accepted from July 1 to July 23 22, 1993 1994, or if the application form bears a valid and legible U.S. Postal Service postmark during the same period. No person shall submit more than one application. At the end of the period, if applications have been received in excess of the license quota for any hunting zone and license type, the department of natural resources shall conduct a drawing to determine which applicants shall receive licenses. Incomplete or improperly completed applications, applications not meeting the above conditions, or applications received prior to or after the application period shall not be considered valid applications for the drawing. If the quota for any hunting period, zone or license type has not been filled by applications received during the application period, licenses shall then be issued in the order in which applications are received starting August 16 15 and shall continue to be issued until the quota has been met or until August 27 26, 1993 1994, whichever first occurs. Residents who have obtained one combination shotgun-or-archery license may obtain one additional combination shotgun-or-archery license between August 23 22, 1993 1994, and August 27 26, 1993 1994, if licenses are still available. Nonresidents may not apply for or obtain a 1993 1994 fall turkey license.

**99.4(2) Applications for archery-only licenses.** Residents may apply for 1993 1994 fall wild turkey archery-only hunting licenses at any time after July 1, 1993 1994. The number of archery-only licenses will not be restricted. Nonresidents may not apply for this type of license.

**99.4(3) Special turkey hunting licenses.** Applications for special wild turkey hunting licenses, as provided for in Iowa Code section 481A.38, subsection 3, shall be on forms furnished by the department and shall be received at the department offices from July 1 to August 27 26, 1993 1994.

**99.4(4) Landowner-tenant licenses.** The application period for free landowner-tenant licenses shall be July 1 to August 27 26, 1993 1994. Free landowner-tenant shotgun-or-archery licenses are valid only for that portion of the farm unit that lies within Zone 6. Free landowner-tenant archery licenses are valid on farm units statewide. No resident landowner or tenant may obtain both a free combination shotgun-or-archery license and a paid shotgun-or-archery license except that persons obtaining a

## NATURAL RESOURCE COMMISSION[571](cont'd)

free landowner or tenant license may obtain a paid license in the same manner that a nonlandowner or tenant obtains a second paid license, as provided for in 99.4(1). Non-resident landowners are not eligible for free wild turkey hunting licenses.

**ARC 4648A****NATURAL RESOURCE  
COMMISSION[571]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 102, "Falconry Regulations for Hunting Game," Iowa Administrative Code, and adopt a new chapter with the same title.

These rules give the regulations for hunting game birds by falconry and include season dates, bag limits, possession limits, hawking hours, and areas open to hunting.

Any interested person may make written suggestions or comments on the proposed rules prior to April 16, 1994. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 16, 1994, at 10 a.m. in the Auditorium of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

The following rules are proposed.

Rescind 571—Chapter 102 and insert in lieu thereof the following new chapter:

**CHAPTER 102****FALCONRY REGULATIONS FOR HUNTING GAME**

**571—102.1(481A) General.** Game may be taken annually, by licensed falconers only, subject to the following:

**102.1(1) Definitions.** For the purposes of this rule, the following definitions are used:

"Falconer" means any person licensed under the provisions of 571—Chapter 101, Iowa Administrative Code, who pursues the sport of falconry.

"Falconry" means the sport of taking quarry by means of a trained raptor.

"Raptor" means a live migratory bird of the family Accipitridae, other than the bald eagle (*Haliaeetus leucocephalus*), or of the family Falconidae, or the great-horned owl (*Bubo virginianus*) of the family Strigidae.

**102.1(2) Licenses and permits.** In addition to the falconry license, a falconer must have all other licenses, stamps, and permits required by law.

**102.1(3) Other requirements.** Except for the provisions of rule 571—102.2(481A), any person taking game by falconry must comply with all other statutes and rules governing this activity.

**571—102.2(481A) Migratory bird regulations.** Seasons and limits for taking migratory birds by means of falconry shall be as follows:

**102.2(1) Ducks and coots.** The season for taking ducks and coots statewide by means of falconry shall begin each year on the first day the conventional (gun) duck and coot hunting season is opened in any zone in Iowa, as described in rule 571—91.1(481A) and 571—91.2(481A), and shall continue for 107 consecutive days. The hours for taking ducks and coots by means of falconry and the daily bag and possession limits for ducks and coots taken by means of falconry are the same as those described for the conventional (gun) duck and coot hunting season in rules 571—91.1(481A) and 571—91.2(481A).

**102.2(2) Geese.** The season for taking geese by means of falconry may vary among goose hunting zones. Falconry seasons for geese shall begin each year on the first day of the conventional (gun) goose hunting season in each zone as described in rule 571—91.3(481A), and continue in each zone for 107 consecutive days. The hours and the daily bag and possession limits for taking geese by means of falconry shall be the same as described for the conventional (gun) goose hunting seasons in 571—subrules 91.3(1) and 91.3(2).

**102.2(3) Rails, snipe and woodcock.** The seasons for taking rails, snipe and woodcock by means of falconry shall begin each year on the first day of the conventional (gun) hunting seasons for these species, as described in rules 571—97.1(481A), 571—97.2(481A), and 571—97.3(481A), and continue for 107 consecutive days. The entire state is open for these species. The hours for taking rails, snipe, and woodcock taken by means of falconry, and the daily bag and possession limits for rails, snipe and woodcock taken by means of falconry, shall be the same as described for the conventional (gun) rail, snipe, and woodcock hunting seasons in rules 571—97.1(481A), 571—97.2(481A), and 571—97.3(481A).

**571—102.3(481A) Small game.** Seasons and limits for the taking of pheasant (both sexes), quail, gray partridge, ruffed grouse, squirrels, cottontail rabbit and jackrabbit, by falconry only, shall be as follows:

**102.3(1) Seasons.**

a. Pheasant (both sexes), quail, gray partridge, ruffed grouse, and jackrabbit. The season for the taking of pheasant, quail, gray partridge, ruffed grouse, and jackrabbit shall be from October 1 of each year through March 31 of the following year.

b. Cottontail rabbit and squirrel. The season for the taking of cottontail rabbits and squirrels shall be from August 1 of each year through March 31 of the following year.

**102.3(2) Limits.**

a. Pheasants (both sexes) and jackrabbit. The daily limit shall be two pheasants, no more than one of which



## NATURAL RESOURCE COMMISSION[571](cont'd)

may be a hen, and one jackrabbit; possession limit shall be four pheasants and two jackrabbits.

b. Quail, gray partridge, ruffed grouse, squirrels and cottontail rabbit. The daily limit shall be two quail, two gray partridge, two ruffed grouse, four cottontail rabbits and four squirrels; possession limit shall be four quail, four gray partridge, four ruffed grouse, eight cottontail rabbits, and eight squirrels.

**571—102.4(481A) Means and methods of take.** No person shall have in possession any firearm or any other implement for the taking of game while hunting game by means of falconry.

**571—102.5(481A) Exclusions.** Nothing in this chapter shall pertain to the taking of game under 571—Chapters 91, 96, 97 and 107, Iowa Administrative Code.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

## ARC 4649A

NATURAL RESOURCE  
COMMISSION[571]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 106 and to adopt in lieu thereof a new Chapter 106, "Deer Hunting," Iowa Administrative Code.

These rules give the regulations for hunting deer during the fall and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking and transportation tag requirements.

Any interested person may make written suggestions or comments on these proposed rules prior to April 16, 1994. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 16, 1994, at 10 a.m. in the Auditorium of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.48.

The following rules are proposed.

Rescind 571—Chapter 106 and insert in lieu thereof the following new chapter:

CHAPTER 106  
DEER HUNTING

**571—106.1(481A) Licenses.** Every hunter must have in possession a deer license valid for the current year when hunting, possessing, or transporting deer. No person while hunting deer shall carry or have in possession any license or transportation tag issued to another person.

**106.1(1) Bow season license.** Paid bow deer licenses shall be valid for taking any deer statewide or antlerless deer in the special antlerless zone and shall be valid only during the bow season. When two bow licenses are obtained, the individual is not eligible for any other deer license except for a deer population management area permit as provided for in 571—Chapter 105.

**106.1(2) Regular gun season license.** Paid regular gun season licenses will be valid for antlered deer, any sex deer or antlerless deer depending on the county or zone hunted and shall be valid statewide for the season designated on the license. Antlered deer are defined as those deer having at least one three-inch antler.

Paid regular gun season licenses will be issued by season and will be valid for the designated season only.

**106.1(3) Muzzleloader season.** Paid muzzleloader season licenses shall be valid during one of the muzzleloader seasons for antlered deer, any sex deer, or antlerless deer depending on the county or zone hunted. Licenses will be valid only for the season designated on the license. Antlered deer are defined as those deer having at least one three-inch antler.

**571—106.2(481A) Season dates.** Deer may be taken only during the following seasons:

**106.2(1) Bow season.** Deer may be taken by bow and arrow in accordance with the type of license issued from October 1 through December 2, 1994, and December 19, 1994, through January 10, 1995.

**106.2(2) Regular gun seasons.** Deer may be taken with gun only in accordance with the type, tenure and zone from December 3 through December 7, or from December 10 through December 18, 1994.

**106.2(3) Muzzleloader seasons.** Deer may be taken by muzzleloader in accordance with the type, tenure and zone from October 15 through October 23, or from December 19, 1994, through January 10, 1995.

**571—106.3(481A) Shooting hours.** Legal shooting hours vary according to the type of season.

**106.3(1) Bow season.** Legal shooting hours for hunting deer with bow and arrow shall be one-half hour before sunrise to one-half hour after sunset each day.

**106.3(2) Regular gun season.** Legal shooting hours for hunting deer with a gun shall be sunrise to sunset each day.

**106.3(3) Muzzleloader seasons.** Legal shooting hours for hunting deer during the muzzleloader seasons shall be one-half hour before sunrise to one-half hour after sunset each day.

**571—106.4(481A) Limits.**

**106.4(1) Bow season.** Daily bag limit one deer per license; possession limit one deer per license. A person may only shoot and tag a deer by utilizing the license and tag issued in the person's name.



## NATURAL RESOURCE COMMISSION[571](cont'd)

**106.4(2) Muzzleloader season.** Daily bag limit one deer per license; possession limit one deer per license. A person may only shoot and tag a deer by utilizing the license and tag issued in the person's name.

**106.4(3) Regular gun seasons.** Bag limit shall be one deer for each hunter in the party who has a valid deer transportation tag. Possession limit shall be one deer per license; "possession" shall mean that the deer is in possession of the person whose license number matches the number of the transportation tag on the carcass of the deer.

**106.4(4) Maximum annual possession limit.** The maximum annual possession limit varies with the type of weapon(s) used, but cannot exceed three deer. Three deer may be taken if:

- a. One is taken with a bow and two are taken during the regular second gun season; or
- b. One is taken with a bow, one taken during the regular second gun season, and one during the late muzzleloader season; or
- c. One is taken with a bow and two are taken during the late muzzleloader season;
- d. If two deer are taken with a bow, two is the maximum possession limit.

Notwithstanding the maximum limits above, an additional deer may be taken if hunting on a deer population management area as provided for in 571—Chapter 105.

**571—106.5(481A) Areas open to hunting.**

**106.5(1) Paid deer licenses.** Hunters shall be restricted to the type of deer they shoot based on the county or zone where they hunt.

a. Bow season. Deer of either sex may be taken in all counties.

b. Early muzzleloader season and first regular gun season. Only antlered deer may be taken in the following counties (Zone 1): Lyon, Osceola, Dickinson, Emmet, Kossuth, Winnebago, Worth, Mitchell, Howard, Chickasaw, Floyd, Cerro Gordo, Hancock, Palo Alto, Clay, O'Brien, Sioux, Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Bremer, Fayette, Clayton, Dubuque, Delaware, Buchanan, Black Hawk, Grundy, Hardin, Hamilton, Webster, Calhoun, Sac, Ida, Woodbury, Monona, Crawford, Carroll, Greene, Boone, Story, Marshall, Tama, Benton, Linn, Jones, Jackson, Clinton, Cedar, Muscatine, Johnson, Iowa, Poweshiek, Jasper, Polk, Audubon, Shelby, Harrison, Pottawattamie, Cass, Warren, Mills and Fremont. Deer of either sex may be taken in all other counties (Zone 2).

c. Late muzzleloader season and second regular gun season. Only antlered deer may be taken in the following counties (Zone 1): Osceola, Dickinson, Emmet, Kossuth, Winnebago, Worth, Mitchell, Floyd, Cerro Gordo, Hancock, Palo Alto, Clay, O'Brien, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Bremer, Buchanan, Black Hawk, Grundy, Hardin, Hamilton, Webster, Calhoun, Sac, Ida, Carroll, Greene, Boone, Story and Marshall. Deer of either sex may be taken in all other counties (Zone 2).

**106.5(2) Paid second deer licenses.** Paid second deer licenses for the bow season, second regular gun season or the late muzzleloader season shall be valid only for antlerless deer and only in the following counties (special antlerless zone): Adams, Taylor, Union, Ringgold, Clarke, Decatur, Lucas, Wayne, Monroe, Appanoose, Wapello, Davis, Jefferson, and Van Buren.

**106.5(3) Free landowner/tenant licenses.** Free landowner/tenant licenses shall be valid for deer of either sex taken on the landowner/tenant's farm unit during season designated on the license.

**106.5(4) Closed areas.** There shall be no open season for hunting deer on the county roads immediately adjacent to or through Union Slough National Wildlife Refuge, Kossuth County, where posted accordingly.

**571—106.6(481A) License quotas.** A limited number of deer licenses or a limited number of certain types of licenses will be issued as follows:

**106.6(1) Bow season.** An unlimited number of bow licenses will be issued from the county recorder's office. A second antlerless-only bow license may be purchased for \$25 from the county recorder's office. Second bow licenses will be valid only for antlerless deer for counties designated in 106.5(2). Persons obtaining two bow deer licenses may not obtain a free or paid gun license. Persons that obtain only one bow license may obtain up to two gun licenses as described in 106.6(2) and 106.6(3).

**106.6(2) Regular gun seasons.** Unlimited licenses for both first and second season will be available for all counties. Persons obtaining a paid or free landowner/tenant license for the second regular gun season shall be eligible to purchase a second antlerless-only license for the second regular gun or late muzzleloader season that is valid for counties designated in 106.5(2). No person obtaining two second season gun licenses is eligible for a late muzzleloader license.

**106.6(3) Muzzleloader seasons.**

a. Early muzzleloader season. No more than 7,500 licenses will be sold for the October early muzzleloader season. Hunters obtaining a paid or free landowner/tenant early muzzleloader season license are not eligible to purchase any other gun season license.

b. Late muzzleloader season. An unlimited number of licenses will be issued for the December-January late muzzleloader season. Persons obtaining a paid or free late muzzleloader season license may purchase a second antlerless-only license for the late muzzleloader season valid in counties designated in 106.5(2). Any person obtaining two late muzzleloader season licenses may not obtain any other gun license.

**106.6(4) Landowner/tenant free license and additional paid bow or gun license(s).** Anyone receiving a free landowner/tenant bow, second season gun, or late muzzleloader license may purchase one additional paid bow license or one or two gun licenses in accordance with rule 106.6(481A).

**571—106.7(481A) Method of take.** Permitted weapons and devices vary according to the type of season.

**106.7(1) Bow season.** Except as provided in 571—15.5(481A), only recurve, compound or longbows with broadhead arrows will be permitted in taking deer during the bow season. Arrows with chemical or explosive pods are not permitted.

**106.7(2) Regular gun seasons.** Only 10-, 12-, 16- and 20-gauge shotguns, shooting single slugs only, and flintlock or percussion cap lock muzzleloaded rifles or muskets of not less than .44 nor larger than .775 caliber, shooting single projectiles only, will be permitted in taking deer during the regular gun seasons.

**106.7(3) Muzzleloader seasons.** Only muzzleloading rifles will be permitted in taking deer during the early muzzleloader season. During the late muzzleloader sea-

## NATURAL RESOURCE COMMISSION[571](cont'd)

son, deer may be taken with either a muzzleloader or bow. "Muzzleloader rifles" are defined as flintlock or percussion cap lock muzzleloaded rifles or muskets of not less than .44 nor larger than .775 caliber, shooting single projectiles only.

**106.7(4) Prohibited weapons and devices.** The use of dogs, domestic animals, bait, rifles other than muzzle-loaded, handguns, crossbows except as otherwise provided, automobiles, aircraft, or any mechanical conveyance or device, including electronic calls, is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Bait" means grain, fruit, vegetable, nuts, hay, salt, mineral blocks, or any other natural food materials; commercial products containing natural food materials; or byproducts of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. "Paraplegic" means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord. It shall be unlawful for a person, while hunting deer, to have on their person a handgun or rifle other than a muzzleloading rifle that meets the requirements of 106.7(3).

**106.7(5) Discharge of firearms from roadway.** No person shall discharge a shotgun shooting slugs or muzzleloader from a highway during the regular gun seasons in all counties and parts of counties north of Highway 30 and west of Highway 63. A "highway" means the way between property lines open to the public for vehicle traffic as defined in Iowa Code section 321.1(78).

**571—106.8(481A) Application procedures.**

**106.8(1)** All free landowner/tenant deer licenses issued to qualifying landowners or tenants shall be issued by the county recorder's office in the county of residence through the first Friday in November. Additional paid deer licenses, except early muzzleloader licenses, may be purchased at the county recorder's office in the county of residence through the first Friday in November.

**106.8(2)** Regular gun and late muzzleloader season licenses. All applications for regular gun and late muzzleloader season licenses shall be made on forms provided by the department of natural resources and returned to the department of natural resources office in Des Moines, Iowa. No one shall submit more than one application. Applications must be accompanied by \$25 for each license. Only individual applications will be accepted. Applications will be received and accepted from July 18 through August 26, 1994, or if the application form bears a valid and legible U.S. Postal Service postmark prior to August 27, 1994. Any incomplete or improperly completed application, any application not meeting the above conditions, or any application received after the application period will not be considered a valid application.

**106.8(3)** Early muzzleloader season licenses. All applications for early muzzleloader season licenses must be made on forms provided by the department of natural resources and returned to the department in Des Moines, Iowa. Applications must be accompanied by \$25 for each license. Only individual applications will be accepted. Applications will be received and accepted from July 18 through August 12, 1994. If valid applications exceed the quota, a drawing will be held. Any incomplete or improperly completed application, any application not meet-

ing the above conditions, or any application received after the application period will not be considered as a valid application. If the quota for early muzzleloader season deer licenses has not been filled, licenses shall then be issued in the order in which applications are received and shall continue to be issued until quotas have been met or until August 26, 1994, whichever first occurs.

**106.8(4)** Alternate application methods. The department may develop media/telecommunication options that would allow for additional methods of obtaining a deer license. Methods and deadlines may be determined by the department as a part of the alternative methods developed.

**106.8(5)** Restrictions. No person shall apply for or obtain more than two deer bow licenses or one bow license and two firearms licenses.

If a person provides false information in an application for any deer license, that license and transportation tag and any other deer hunting license and transportation tag applied for during the same year shall be invalid.

**571—106.9(481A) Transportation tag.** A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to the carcass of each deer, in such a manner that the tag cannot be removed without mutilating or destroying the tag, within 15 minutes of the time the deer is killed or before the carcass of the deer is moved in any manner, whichever first occurs. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to all deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility, or until the deer has been processed for consumption.

**571—106.10(481A) Youth deer hunt.**

**106.10(1)** Licenses. A special youth deer license will be issued to any Iowa resident that is 12 to 15 years of age by September 1 who possesses a valid hunter safety certificate. All persons participating must be accompanied by an adult possessing a regular hunting license and habitat stamp. Only one adult may participate for each youth hunter. The accompanying adult must not possess a firearm and must be in direct company of the youth at all times. Persons may obtain only one youth deer license, but may also obtain one bow or firearm license for any other season. If the youth obtains a free landowner/tenant license, it will count as the one free license for which the youth's family is eligible.

**106.10(2)** Season dates. Any sex deer may be taken in 1994 statewide from September 17 through October 2, 1994.

**106.10(3)** Shooting hours. Legal shooting hours for hunting deer will be one-half hour before sunrise to one-half hour after sunset each day regardless of weapon used.

**106.10(4)** Limits and license quotas. Daily bag and possession limit is one deer per licensed youth. The licensee can shoot only one deer during this season. An unlimited number of licenses will be issued.

**106.10(5)** Method of take and other regulations. Deer may be taken with shotgun, bow or muzzleloaded rifles as permitted in 571—106.7(481A). All participants must meet the hunter orange requirement in Iowa Code section 481A.122. All other regulations for taking deer with a gun shall apply.

## NATURAL RESOURCE COMMISSION[571](cont'd)

**106.10(6) Application procedures.** All applications for youth gun deer hunting licenses for the current season shall be made on forms provided by the department of natural resources and returned to the department of natural resources office in Des Moines, Iowa. No one shall submit more than one application. Applications for youth gun deer hunting licenses must be accompanied by \$25 for each license. Applications will be received and accepted only from June 20 through July 22, 1994.

**571—106.11(481A) Deer depredation permits.** Upon recommendation from the department's fish and wildlife division, the director may authorize certain landowners or their designee to shoot deer outside the established hunting seasons or issue additional permits during the established hunting seasons. Applications for depredation permits must be on forms provided by the department. Permits will only be valid for dates specified between September 1 and February 28.

**106.11(1) Method of take and other regulations.** Legal weapons and restrictions will be governed by 571—106.7(481A).

Deer may be taken from one-half hour before sunrise to one-half hour after sunset regardless of weapon used. The producer or designee must meet the deer hunters' orange apparel requirements in Iowa Code section 481A.122.

**106.11(2) Eligibility.** Permits shall be granted only to producers growing high-value horticultural crops (Christmas trees, fruit or vegetable crops, nurseries, and commercial nut growers), that are sustaining excessive damage. Permits shall specify the number of deer to be taken and shall be valid only on the producer's property and farmers' property immediately adjacent to the producer's property.

**106.11(3) Disposal.** It shall be the producer's responsibility to see that all deer are field dressed, tagged with a DNR salvage tag, and removed immediately from the field. Dead deer must be handled for consumption and the producer must coordinate disposal of deer offered to the public through the local conservation officer. Charitable organizations will have the first opportunity to take deer offered to the public. No producer can keep more than two deer taken under special depredation permits. By express permission from a DNR enforcement officer, the landowner may dispose of deer carcasses through a livestock sanitation facility.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

## ARC 4650A

NATURAL RESOURCE  
COMMISSION[571]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 107, "Rabbit and Squirrel Hunting," Iowa Administrative Code.

These rules give the regulations for hunting rabbits and squirrels and include season dates, bag limits, possession limits, shooting hours and areas open to hunting.

Any interested person may make written suggestions or comments on these proposed amendments prior to April 16, 1994. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 16, 1994, at 10 a.m. in the Auditorium of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

The following amendments are proposed.

ITEM 1. Amend rule 571—107.1(481A) to read as follows:

**571—107.1(481A) Cottontail rabbit season.** Open season for hunting cottontail rabbits shall be from September ~~4~~ 3, ~~1993~~ 1994, through February 28, ~~1994~~ 1995. Bag limit shall be 10 per day; possession limit 20. Legal hunting hours shall be from sunrise to sunset. Entire state open.

ITEM 2. Amend rule 571—107.2(481A) to read as follows:

**571—107.2(481A) Jackrabbit season.** Open season for hunting jackrabbits shall be from October ~~30~~ 29, ~~1993~~ 1994, through December ~~5~~ 4, ~~1993~~ 1994. Bag limit shall be 2 per day; possession limit 4. Legal hunting hours shall be from sunrise to sunset. Entire state open.

ITEM 3. Amend rule 571—107.3(481A) to read as follows:

**571—107.3(481A) Squirrel season.** Open season for hunting squirrels (fox and gray) shall be from September ~~4~~ 3, ~~1993~~ 1994, through January 31, ~~1994~~ 1995. Bag limit shall be 6 squirrels per day; possession limit 12. Entire state open.

**ARC 4651A**  
**NATURAL RESOURCE**  
**COMMISSION[571]**

**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 108, "Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, Otter and Spotted Skunk Seasons," Iowa Administrative Code.

These rules give the regulations for taking furbearers (except groundhog) and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

Any interested person may make written suggestions or comments on these proposed amendments prior to April 16, 1994. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 16, 1994, at 10 a.m. in the Auditorium of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

These amendments are intended to implement Iowa Code sections 481A.6, 481A.38, 481A.39, 481A.87 and 481A.90.

The following amendments are proposed.

ITEM 1. Amend rule 571—108.1(481A), introductory paragraph, and subrule 108.1(2) to read as follows:

**571—108.1(481A) Mink, muskrat and weasel.** Open season for the taking of mink, muskrat and weasel shall be from 8 a.m., November 6 5, ~~1993~~ 1994, through January 31, ~~1994~~ 1995. Entire state open. No bag or possession limit.

**108.1(2) Game management areas.** Open season for taking muskrats on certain state game management areas, certain federal national wildlife refuges, and certain county conservation board areas, only where approved by the natural resource commission and posted accordingly, shall be from 8 a.m., February 26 25 through April 3 2, ~~1994~~ 1995. The use of leghold traps during this season is prohibited unless each trap is placed completely inside a muskrat house. No bag or possession limit.

ITEM 2. Amend rule 571—108.2(481A) to read as follows:

**571—108.2(481A) Raccoon, badger, opossum and striped skunk.** Open season for the taking of raccoon,

badger, opossum, and striped skunk shall be from 8 a.m., November 6 5, ~~1993~~ 1994, through January 31, ~~1994~~ 1995. Entire state open. No bag or possession limit.

ITEM 3. Amend rule 571—108.3(481A) to read as follows:

**571—108.3(481A) Red and gray fox.** Open season for the taking of red and gray fox shall be from 8 a.m., November 6 5, ~~1993~~ 1994, through January 31, ~~1994~~ 1995. Entire state open. No bag or possession limit.

ITEM 4. Amend rule 571—108.4(481A) to read as follows:

**571—108.4(481A) Beaver.** Open season for the taking of beaver shall be from 8 a.m., November 6 5, ~~1993~~ 1994, through April 15, ~~1994~~ 1995. No bag or possession limit.

ITEM 5. Amend subrule 108.5(2) to read as follows:

**108.5(2) Trapping.** Open season for trapping coyote shall be 8 a.m., November 6 5, ~~1993~~ 1994, through January 31, ~~1994~~ 1995. Entire state open. No bag or possession limit. Any conservation officer or wildlife biologist may authorize a landowner, tenant or designee to trap coyotes causing damage outside the established trapping season dates.

**ARC 4655A**

**PROFESSIONAL LICENSURE**  
**DIVISION[645]**

**BOARD OF MORTUARY SCIENCE EXAMINERS**

**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 Mortuary Science Examiners hereby gives Notice of Intended Action to amend Chapter 101, "Board of Mortuary Science Examiners," Iowa Administrative Code.

The proposed amendments reduce the number of required premortuary college or university credits from 64 to 60 semester hours and eliminate the requirement of specific courses; add new rules for office retention of original applications that do not meet the minimum criteria for licensure; change the fee for an endorsement application from \$100 to \$50 to coincide with the recent change of 101.98(1); and allow for a 50 minute continuing education clock-hour.

Any interested person may make written comments on the proposed amendments on or before March 22, 1994, addressed to Harriett L. Miller, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

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

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 1. Rescind subrule 101.1(3) and insert the following new subrule:

**101.1(3)** College educational requirements. An applicant shall successfully complete:

a. A minimum of 60 semester hours as indicated on the transcript in a regionally accredited college or university with a minimum of a 2.0 or "C" grade point average; and

b. A course in mortuary science from a school accredited by the American Board of Funeral Service Education.

The 60 semester hours shall not include any technical or vocational mortuary science courses.

ITEM 2. Rescind and reserve subrule **101.1(4)**.

ITEM 3. Amend rule 645—101.2(147) by adding the following new subrule:

**101.2(11)** Application for licensure. Applications for license which do not meet the minimum criteria for licensure shall be retained by the board office for a maximum of five years from the date the application was received. Persons whose application for license is more than five years old must submit a new application and fee(s).

Applicants who, by March 1 of each year, submit a written request to the board to keep the application current will not need to reapply.

ITEM 4. Amend subrule **101.4(3)**, paragraph "a," as follows:

a. A fee of ~~\$100~~ **\$50**.

ITEM 5. Amend rule **645—101.100(147)**, definition of "Hour," as follows:

"Hour" of continuing education means a clock-hour ~~spent after December 31, 1978, of at least 50 minutes spent~~ by a licensee in actual attendance at ~~and completion of~~ an approved continuing education activity.

## ARC 4653A

### PUBLIC HEALTH DEPARTMENT[641]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 139.9(8), the Department of Public Health gives Notice of Intended Action to amend Chapter 7, "Immunization of Persons Attending Elementary or Secondary Schools or Licensed Child-Care Centers," Iowa Administrative Code.

These proposed amendments provide a change in the immunization code to comply with the Immunization Practices Advisory Committee, the advisory body for the Centers for Disease Control and Prevention, immunization schedule. This change will allow children who have received a measles/rubella containing vaccine at 12 to 15 months of age to enter school or preschool.

The Immunization Practices Advisory Committee sets standards for immunization practices in the public sector. These proposed amendments to Chapter 7 will allow Iowa to comply with national standards.

Any interested person may make written comments on the proposed amendments on or before March 22, 1994. Such written materials should be directed to: David R. Miller, Division of Health Protection, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, fax (515)281-4529.

These amendments are intended to implement Iowa Code section 139.9.

The following amendments are proposed.

ITEM 1. Amend rule 641—7.4(139) as follows:

**641—7.4(139) Required immunizations.**

**7.4(1)** 0-2 months of age: Immunization not required.

**7.4(2)** 2-18 months of age: Applicants shall have received:

a. At least one dose of combined diphtheria, tetanus, and pertussis vaccine. Pediatric diphtheria and tetanus vaccine may be substituted when pertussis vaccine is contraindicated for the child; and

b. At least one dose of trivalent polio vaccine.

**7.4(3)** 18 months of age and older: Applicants enrolled or attempting to enroll in a licensed child-care center shall have received:

a. At least three doses of combined diphtheria, tetanus, and pertussis vaccine. Adult tetanus and diphtheria vaccine or pediatric diphtheria and tetanus vaccine may be substituted for combined diphtheria, tetanus and pertussis vaccine when pertussis vaccine is contraindicated for the child; and

b. At least three doses of trivalent polio vaccine; and

c. At least one dose of rubeola *and* rubella containing vaccine received after the applicant was at least 12 months of age. ~~Applicants receiving the vaccine after February 1, 1981, shall have been at least 15 months of age at the time of the immunization; and~~

~~d. At least one dose of rubella vaccine received after the applicant was at least 12 months of age. Applicants receiving the vaccine after February 1, 1981, shall have been at least 15 months of age at the time of the immunization.~~

**7.4(4)** 4 years of age and older: Applicants enrolled or attempting to enroll in a public or nonpublic elementary or secondary school shall have received:

a. At least three doses of combined diphtheria, tetanus, and pertussis vaccine. At least one dose of combined vaccine shall have been received after the applicant's fourth birthday. Applicants ~~seven six~~ years of age and older are exempt from receiving further doses of pertussis vaccine. Adult tetanus and diphtheria or pediatric diphtheria and tetanus vaccine should be substituted for combined diphtheria, tetanus and pertussis vaccine for children ~~seven six~~ years of age and older or when pertussis vaccine is contraindicated for the child; and

b. At least three doses of trivalent polio vaccine. At least one dose of trivalent polio vaccine shall have been received after the applicant's fourth birthday. Applicants 18 years of age and older are exempt from the polio requirement. ~~Persons with a previous history of inactivated polio vaccine and persons seeking immunization against polio with inactivated polio vaccine should consult with the Iowa department of public health, division of disease prevention, for immunization recommendations; and~~

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

c. At least two doses of *rubeola and rubella containing* vaccine if four to six years of age and enrolled or attempting to enroll for the first time or demonstrate a positive antibody test. The first dose shall have been received *on or after 12* 15 months of age. The second dose shall have been received no less than 30 days after the first dose. Applicants who have been previously enrolled shall have received at least one dose of *rubeola and rubella containing* vaccine or demonstrate a positive antibody test. ~~Applicants receiving the vaccine prior to February 1, 1981, shall have been at least 12 months of age at the time of the first dose. Applicants receiving the vaccine on or after February 1, 1981, shall have been at least 15 months of age at the time of the first dose.~~

d. ~~At least two doses of rubeola vaccine if four to six years of age and enrolled or attempting to enroll for the first time or demonstrate a positive antibody test. The first dose shall have been received after 15 months of age. The second dose shall have been received no less than 30 days after the first dose. Applicants who have been previously enrolled shall have received at least one dose of rubeola vaccine or demonstrate a positive antibody test. Applicants receiving the vaccine prior to February 1, 1981, shall have been at least 12 months of age at the time of the first dose. Applicants receiving the vaccine on or after February 1, 1981, shall have been at least 15 months of age at the time of the first dose.~~

This rule is intended to implement Iowa Code section 139.9.

ITEM 2. Amend subrule 7.7(1) as follows:

7.7(1) It shall be the duty of the admitting official of a licensed child-care center or elementary or secondary school to ensure that the admitting official have a valid Iowa department of public health certificate of immunization, certificate of immunization exemption, or provisional certificate of immunization on file for each child enrolled. The admitting official shall ensure that the certificate be properly completed and include dates of immunization, sources of immunization, and validation by the appropriate party.

a. The admitting official shall keep the certificates on file in the school or licensed child-care center in which the applicant is enrolled and assist the applicant or parent or guardian in the transfer of the certificate to another school upon the transfer of the applicant to another school.

b. Unless otherwise requested by the applicant, or parent or guardian, the admitting official shall retain the Iowa department of public health certificate of immunization, or certificate of immunization exemption, or provisional certificate of immunization for ~~one year~~ five years commencing upon the transfer or graduation of the applicant *or the school may choose to provide the permanent immunization record to the student at time of graduation. Included with the immunization record a letter should state that this is an important document that will be needed by the student for college or employment and should be permanently retained.*

## ARC 4623A

**HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments February 9, 1994. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on January 5, 1994, as ARC 4531A.

These amendments remove the limit of 200 persons on the Elderly Waiver program and revise a reference regarding standards for adult day care providers.

At the current time the Department is operating the Elderly Waiver program as a model waiver program which is limited to 200 persons. A state plan request has been submitted to change the program to a full waiver which is not subject to a limit. With the change in eligibility requirements and the expansion of the program to additional counties, the program is near capacity at this time. Therefore, references to the limit of 200 and the waiting list are being removed.

The Department of Elder Affairs is promulgating rules establishing a uniform set of guidelines for consistent delivery of adult day care. (See ARC 4417A in the November 10, 1993, Iowa Administrative Bulletin.) These amendments revise the previous reference to general standards adopted by the Department of Elder Affairs to the more specific reference regarding adult day care.

The Department of Human Services finds that these amendments confer a benefit on applicants and recipients of the Elderly Waiver program by eliminating the possibility of applicants being placed on a waiting list and having their eligibility postponed and by adding a uniform set of guidelines adult day care providers can meet to be Elderly Waiver service providers. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

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

These amendments are intended to implement Iowa Code section 249A.4.

These amendments became effective March 1, 1994.

The following amendments are adopted.

ITEM 1. Amend subrule 77.33(1) as follows:

Rescind and reserve paragraph "a."

Amend paragraph "b" by adding the following **new** subparagraph (4):

(4) Standards set forth in department of elder affairs rules 321—24.1(231) to 321—24.8(231).

ITEM 2. Rescind subrule 83.22(1), paragraph "g."

ITEM 3. Amend subrule 83.23(1) as follows:

**83.23(1)** Application for financial eligibility. Application for financial eligibility shall be made by completing the Application for Medical Assistance or State Supplementary Assistance, Form PA-1107-0. The application process as specified in rules 441—76.1(249A) to

441—76.6(249A) shall be followed. ~~Persons who have been placed on the waiting list shall complete a new application at the time their names come up on the waiting list.~~

ITEM 4. Rescind subrule 83.28(1), paragraph "e."

[Filed Emergency After Notice 2/10/94, effective 3/1/94]  
[Published 3/2/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/94.

## ARC 4624A

**HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this amendment February 9, 1994. Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin on December 22, 1993, as ARC 4500A.

Under current policy for HCBS/MR and HCBS/MR/OBRA waiver services, supported employment services are limited to a maximum of three calendar months following minimum wage attainment. Supported employment services are those services of instruction, supervision and assistance associated with attaining and maintaining paid employment.

This amendment removes that maximum, thereby allowing consumers under the waivers to continue to receive follow-along support to assist in employment longevity. In the absence of supports, persons could lose their jobs, which has negative implications for the consumer, employer, the provider agency, and the community.

The Department of Human Services finds that this amendment confers a benefit on persons under the HCBS/MR and HCBS/MR/OBRA waivers by allowing them to continue to receive supported employment services following minimum wage attainment until they are no longer in need of the services to assist them with maintaining employment. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

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

This amendment is intended to implement Iowa Code section 249A.4.

This amendment became effective March 1, 1994.

The following amendment is adopted.

Rescind subrule 78.41(7), paragraph "m."

[Filed Emergency After Notice 2/10/94, effective 3/1/94]  
[Published 3/2/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/94.



**ARC 4627A****PUBLIC SAFETY  
DEPARTMENT[661]****Adopted and Filed Emergency**

Pursuant to the authority of Title 23 U.S.C. Sections 153 and 402 and Governor's Executive Order Number Twenty-Three, signed June 9, 1986, the Iowa Department of Public Safety hereby amends Chapter 20, "Governor's Traffic Safety Bureau," Iowa Administrative Code.

This amendment provides an exception to the normal application deadline for applying for grants from federal highway safety funds. The exception will apply for applications for "Section 153" funds only for Federal Fiscal Year 1995 (FFY 95). The Section 153 program is mandated by federal law (23 U.S.C. 153) for states which do not have in effect laws requiring the use of motorcycle helmets which meet established federal criteria. Whereas applications for all existing federal highway safety programs administered for Iowa by the Governor's Traffic Safety Bureau must be received by March 1 of a given year to be considered for funding during the federal fiscal year beginning on the following October 1, this deadline is being extended to June 1 for the Section 153 program, for FFY 95 only. Due to the short time between the likely occurrence of any contemplated legislative action regarding these funds and the normal application deadline for federal highway safety programs of March 1, the

deadline for Section 153 program applications is being extended to June 1, 1994.

Pursuant to Iowa Code subsection 17A.4(2), the Department finds that notice and public participation prior to the adoption of this amendment is impracticable because it would delay a public benefit being conferred by extension of the application deadline for Section 153 programs from March 1 to June 1.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department finds that this amendment confers a benefit on the public and that the normal waiting period prior to the effective date of the amendment of 35 days after publication should be waived and the amendment made effective on March 1, 1994, after filing with the Administrative Rules Coordinator.

This amendment is intended to implement Title 23 U.S.C. Section 153.

The following amendment is adopted.

Amend subrule **20.3(6)** by adding the following **new** exception:

EXCEPTION: Applications for funding of programs pursuant to the authority of 23 U.S.C. 153 for federal fiscal year 1995 (October 1, 1994, through September 30, 1995) must be received by the governor's traffic safety bureau on or before June 1, 1994.

[Filed Emergency 2/11/94, effective 3/1/94]  
[Published 3/2/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/94.

## ARC 4628A

## EDUCATION DEPARTMENT[281]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education hereby amends Chapter 12, "General Accreditation Standards," Iowa Administrative Code.

These amendments make corrections and updates in Chapter 12 and add a new division relating to educational standards exemption process.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 27, 1993, as ARC 4399A.

Interested persons were allowed to comment on the proposed amendments and a public hearing was held on December 2, 1993. Three oral comments were received along with seven written comments. There were several changes made from the Notice of Intended Action as a result of input and further consideration of the proposed amendments.

These changes are as follows:

Subrule 12.2(2) as it appeared in the Notice inadvertently deleted all of the sentence after the word "closed" instead of only a portion of the sentence.

Subrule 12.2(4) adds a second subrule reference.

Subrule 12.3(4) was amended to correct an Iowa Code reference.

Subrule 12.3(12) has been amended to be consistent in the use of the word "accredited" with the words "non-public school".

Subrule 12.4(7) was amended to bring the definition of "principal" into conformity with Iowa Code subsection 272.1(7).

Subrule 12.5(8) was amended to replace the word "handicapped" with "disabled", the word "handicap" with "disability", and drop "age" and add "marital status" to conform with Iowa Code section 280.3.

Subparagraph 12.8(2)"a"(3) was amended to remove the adjective "good" describing "information."

Paragraph 12.8(2)"c" was amended to change the word "environment" to "processes".

These amendments shall become effective on April 6, 1994.

These amendments are intended to implement Iowa Code sections 256.11(12), 280.14, and 299.3.

The following amendments are adopted.

ITEM 1. Amend subrule 12.1(5) as follows:

**12.1(5)** When nonaccredited. A school or school district shall be nonaccredited on the day after the date it is removed from the list of accredited schools by action of the state board of education. *A nonpublic school shall be nonaccredited on the date established by the resolution of the state board, which shall be no later than the end of the school year in which the nonpublic school is declared to be nonaccredited.*

ITEM 2. Amend subrule 12.1(6) by adding the following new unnumbered paragraph at the end thereof:

An exemption request may also be made under the guidelines specified in Iowa Code subsection 256.9(51). See information provided in rule 281—12.8(256).

ITEM 3. Amend subrule 12.2(2) as follows:

**12.2(2)** Day of school. A day of school is a day during which the school or school district is in session and pupils are under the guidance and instruction of the instructional professional staff. School shall be considered in session during parent-teacher conferences as well as during activities such as field trips if pupils are engaged in school programs or activities under the guidance and direction of the instructional professional staff. All grade levels of the school or school district must be operated and available for attendance by all pupils. An exception is if either the elementary or secondary grades are closed for a portion of the day for activities such as staff in-service programs or parent-teacher conferences provided that this time is made up at some other point during the school calendar so as to meet the minimum of 180 days of instruction for all grade levels one through twelve 12. If a classroom or attendance center is closed for emergency health or safety reasons but the remainder of the school or school district is in operation, the day may be counted as a day of school.

ITEM 4. Amend subrule 12.2(4) as follows:

**12.2(4)** Day of attendance. A day of attendance shall be a day during which a pupil was present and under the guidance and instruction of the instructional professional staff. A pupil shall not be counted in attendance during school calendar days designated by the board for licensed/certificated staff in-service programs or for parent-teacher conferences unless these are conducted outside the time required for a "minimum school day." (Note ~~exception~~ exceptions in subrule subrules 12.2(2) and 12.2(3).)

ITEM 5. Amend subrules 12.3(4) and 12.3(12) as follows:

**12.3(4)** Personnel evaluation. Each board shall adopt a performance evaluation process for school personnel. Personnel evaluation processes of school districts shall conform to Iowa Code sections 260.33 272.33, and 279.14, and 279.23A.

**12.3(12)** Report on accredited nonpublic school instruction. Between September 1 and October 1 of each year the secretary of each public school district board shall request from each accredited nonpublic school located within its boundaries a report of private school instruction as required by Iowa Code section 299.3. Each accredited nonpublic school shall submit the required report in duplicate. The secretary of the public school board shall send one copy to the board secretary of the area education agency within which the public school district is located.

*Within ten days of receipt of notice, Each each accredited nonpublic school shall send a report to the secretary of the public school district within which the accredited nonpublic school is located to each public school district from which it receives pupils. This report shall conform to the requirements of Iowa Code section 299.3. a list of the pupils of compulsory school age enrolled in the nonpublic school who are residents of that district. This list shall include the name, grade, date of birth, name of parent or guardian, and location of the pupil's residence.*

ITEM 6. Amend rule 12.4(256), introductory paragraph, as follows:

**281—12.4(256)** School personnel. License/Certificate certificate and endorsement standards required in this rule relate to licenses/certificates and endorsements issued by the state board of education educational examiners. The

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

following standards shall apply to personnel employed in accredited schools.

ITEM 7. Amend subrules 12.4(1), 12.4(3), 12.4(8), 12.4(10), 12.4(11), and 12.4(13) as follows:

12.4(1) by striking "certificate" and substituting "license/certificate".

12.4(3) by striking "certificate" and substituting "license/certificate"; and

by striking "certificate with an approval" and substituting "license/certificate with an endorsement".

12.4(8) by striking "certificate" and substituting "license/certificate".

12.4(10) by striking "certificate" and substituting "license/certificate" in two instances.

12.4(11) by striking "certificates" and substituting "licenses/certificates"; and

by striking "certificate" and substituting "license/certificate"; and

by striking "certification" and substituting "license/certification".

12.4(13) by striking "certificate" and substituting "license/certificate".

ITEM 8. Amend subrule 12.4(4) to read as follows:

12.4(4) Required administrative personnel. Each board that operates both an elementary school and a secondary school shall employ as its executive officer and chief administrator a person who holds a license/certificate endorsed for service as a superintendent. The board of a school district may meet this requirement by contracting with its area education agency for "superintendency services" as provided by Iowa Code section 273.7A. The individual employed or contracted for as superintendent may serve as elementary principal in that school or school district provided that the superintendent holds the proper licensure/certification but cannot also serve as a high school principal in that school or school district. For purposes of this subrule, high school means a school which commences with either grade 9 or grade 10, as determined by the board of directors of the school district, or by the governing authority of the nonpublic school in the case of nonpublic schools. Boards of school districts may jointly employ a superintendent, provided such arrangements comply with the provisions of Iowa Code subsection 279.23(4).

~~The effective date of a superintendent not serving as a principal in the school or school district is delayed until July 1, 1990. A school or school district unable to meet the requirement stated in this subrule may file a written request with the department of education that the department waive the requirement until July 1, 1991. The request must be filed with the department of education by January 1, 1990, and shall include the following information: description of school system organization structure and administrative staff; reason(s) the school or school district is not able to meet the standard as of July 1, 1990; efforts undertaken to meet the standard including but not limited to attempts to employ staff, share staff, get current staff qualified and other efforts; specific actions proposed by school or school district for meeting the standard including proposed timelines for compliance. A request for waiver must be signed by the board president and the chief administrator.~~

~~The department of education shall grant the waiver if it is able to determine from the information filed that the school or school district has made a good faith effort to~~

~~meet the standard and that there is a reasonable expectation that the standard will be met by July 1, 1991.~~

ITEM 9. Amend subrule 12.4(5), introductory paragraph, as follows:

12.4(5) Staffing policies—elementary schools. The board operating an elementary school shall develop and adopt staffing policies designed to attract, retain, and effectively utilize competent personnel. Each board operating an elementary school shall employ at least one elementary principal. This position may be combined with that of secondary principal or with a teaching assignment at the elementary or secondary level, provided the individual holds the proper licenses/certificates and endorsements. ~~This position cannot be combined with that of superintendent. See effective date and waiver information provided in subrule 12.4(4).~~

ITEM 10. Amend subrule 12.4(6) as follows:

12.4(6) Staffing policies—secondary schools. The board operating a secondary school shall develop and adopt staffing policies designed to attract, retain, and effectively utilize competent personnel. Each board operating a secondary school shall employ at least one secondary principal. This position may be combined with that of elementary principal or with a teaching assignment at the elementary or secondary level, provided the individual holds the proper licenses/certificates and endorsements. This position cannot be combined with that of superintendent. ~~See effective date and waiver information provided in subrule 12.4(4).~~

ITEM 11. Rescind subrule 12.4(7) and adopt the following new subrule in lieu thereof:

12.4(7) Principal. "Principal" means a licensed/certificated member of a school's instructional staff who serves as an instructional leader, coordinates the process and substance of educational and instructional programs, coordinates the budget of the school, provides formative evaluation for all practitioners and other persons in the school, recommends or has effective authority to appoint, assign, promote, or transfer personnel in a school building, implements the local school board's policy in a manner consistent with professional practice and ethics, and assists in the development and supervision of a school's student activities program.

ITEM 12. Amend subrule 12.4(14) as follows:

12.4(14) Physical examination. Except as otherwise provided in 281—43.15(285), the local board shall require each employee to file with it certification of fitness to perform the tasks assigned which shall be in the form of a written report of a physical examination, including a check for tuberculosis, by a licensed physician and surgeon, osteopathic physician and surgeon, osteopath, or qualified doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner. A report shall be filed at the beginning of service and at three-year intervals.

Each doctor of chiropractic licensed as of July 1, 1974, shall affirm on each certificate of physical examination that the affidavit required by Iowa Code section 151.8 is on file with the Iowa board of chiropractic examiners.

ITEM 13. Amend 12.5(1), 12.5(2), 12.5(5)"h," and 12.5(21) as follows:

12.5(1) by striking "certificate certifying" and substituting "license/certificate licensing/certifying".

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12.5(2) by striking "certificated" and substituting "licensed/certificated".

12.5(5)"h" by striking "certificated" and substituting "licensed/certificated".

12.5(21) by striking "certificated" and substituting "licensed/certificated".

ITEM 14. Rescind subrule 12.5(3), paragraph "c," and insert the following new paragraph in lieu thereof:

c. Mathematics. Mathematics instruction shall include number sense and numeration; concepts and computational skills with whole numbers, fractions, mixed numbers, and decimals; estimation and mental arithmetic; geometry; measurement; statistics and probability; and patterns and relationships. This content shall be taught through an emphasis on mathematical problem solving, reasoning, and applications; language and symbolism to communicate mathematical ideas; and connections among mathematical topics and between mathematics and other disciplines. Calculators and computers shall be used in concept development and problem solving.

ITEM 15. Amend subrule 12.5(4), introductory paragraph and paragraphs "i," "j," and "k," as follows:

12.5(4) Junior high program, grades 7 and 8. The following shall be taught in grades 7 and 8: English-language arts, social studies, mathematics, science, health, human growth and development, ~~family and consumer, career, and technology education~~, physical education, music, and visual art, ~~family and consumer education, career education, and technology education~~. Instruction in the following areas shall include the contributions and perspectives of persons with disabilities, both men and women, and persons from diverse racial and ethnic groups, and shall be designed to eliminate career and employment stereotypes.

i. Family and consumer education. Family and consumer education instruction shall include the development of positive self-concept, understanding personal growth and development and relationships with peers and family members in the home, school and community, including men, women, minorities and persons with disabilities. Subject matter emphasizes the home and family, including parenting, child development, textiles and clothing, consumer and resource management, foods and nutrition, housing, and family and individual health. *This subrule shall not apply to nonpublic schools.*

j. Career education. Career education instruction shall include exploration of employment opportunities, experiences in career decision making, and experiences to help students integrate work values and work skills into their lives. *This subrule shall not apply to nonpublic schools. However, nonpublic schools shall comply with subrule 12.5(7).*

k. Technology education. Technology education instruction shall include awareness of technology and its impact on society and the environment; furthering students' career development by contributing to their scientific principles, technical information and skills to solve problems related to an advanced technological society; and orienting students to technologies which impact occupations in all six of the required service areas. The purpose of this instruction is to help students become technologically literate and become equipped with the necessary skills to cope with, live in, work in, and contribute to a highly technological society. *This subrule shall not apply to nonpublic schools.*

ITEM 16. Rescind subrule 12.5(4), paragraph "c," and insert the following new paragraph in lieu thereof:

c. Mathematics. Mathematics instruction shall include number and number relationships including ratio, proportion, and percent; number systems and number theory; estimation and computation; geometry; measurement; statistics and probability; and algebraic concepts of variables, patterns, and functions. This content shall be taught through an emphasis on mathematical problem solving, reasoning, and applications; language and symbolism to communicate mathematical ideas; and connections among mathematical topics and between mathematics and other disciplines. Calculators and computers shall be used in concept development and problem solving.

ITEM 17. Rescind subrule 12.5(5), paragraph "c," and insert the following new paragraph in lieu thereof:

c. Mathematics (six units). Mathematics instruction shall include:

(1) Four sequential units which are preparatory to postsecondary educational programs. These units shall include strands in algebra, geometry, trigonometry, statistics, probability, and discrete mathematics. Mathematical concepts, operations, and applications shall be included for each of these strands. These strands shall be taught through an emphasis on mathematical problem solving, reasoning, and structure; language and symbolism to communicate mathematical ideas; and connections among mathematical topics and between mathematics and other disciplines. Calculators and computers shall be used in concept development and problem solving.

(2) Two additional units shall be taught. These additional units may include mathematical content as identified in, but not limited to, paragraphs 12.5(3)"c," 12.5(4)"c," and 12.5(5)"c"(1). These units are to accommodate the locally identified needs of the students in the school or school district. This content shall be taught through an emphasis on mathematical problem solving, reasoning, and structure; language and symbolism to communicate mathematical ideas; and connections among mathematical topics and between mathematics and other disciplines. Calculators and computers shall be used in concept development and problem solving.

ITEM 18. Amend 12.5(5)"f" by adding the following new subparagraph (3):

(3) An organized and supervised athletic program which requires at least as much time of participation per week as one-eighth unit of physical education.

ITEM 19. Amend 12.5(5)"i," catchwords, as follows:

i. Vocational education—*school districts* (three units each in at least four of the six service areas).

ITEM 20. Amend 12.5(5)"i"(8) as follows:

(8) "Sequential unit" applies to an integrated offering, directly related to the educational and occupational skills preparation of individuals for jobs and preparation for postsecondary education. Sequential units provide a logical framework for the instruction offered in a related occupational area and do not require prerequisites for enrollment. A unit is defined in subrule 12.5(8) (18).

ITEM 21. Add new paragraph 12.5(5)"j" as follows:

j. Vocational education/nonpublic schools (five units). A nonpublic school which provides an educational program that includes grades 9 through 12 shall offer and teach five units of occupational education subjects, which

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

may include, but are not limited to, programs, services, and activities which prepare students for employment in business or office occupations, trade and industrial occupations, consumer and family sciences or home economics occupations, agricultural occupations, marketing occupations, and health occupations. By July 1, 1993, instruction shall be competency-based, articulated with post-secondary programs of study, and may include field, laboratory, or on-the-job training.

ITEM 22. Amend subrule 12.5(8) to read as follows:

**12.5(8)** ~~Board~~ ~~Board's of directors'~~ responsibility for ensuring multicultural, nonsexist approaches to educational programs. ~~This standard applies only to public school districts.~~ The board shall establish a policy to ensure the school district is free from discriminatory practices in its educational programs. In developing or revising this policy, parents, students, instructional and noninstructional staff, and community members shall be involved. In addition, each board shall adopt a written plan, to be evaluated and updated at least every five years, for achieving and maintaining a multicultural, nonsexist educational program. A copy of the plan shall be on file in the administrative office of the *school district*. The plan shall include:

a. Multicultural approaches to the educational program. These shall be defined as processes which foster knowledge of, *and* respect and appreciation for, the historical and contemporary contributions of diverse cultural groups to society. Special emphasis shall be placed on Asian Americans, Black Americans, Hispanic Americans, American Indians, and the ~~handicapped~~ *disabled*. The program shall provide equal opportunity for all participants regardless of race, color, ~~age~~, *marital status*, national origin, religion, or ~~handicap~~ *disability*.

b. Nonsexist approaches to the educational program. These shall be defined as processes which foster knowledge of, and respect and appreciation for, the historical and contemporary contributions of men and women to society. The program shall reflect the wide variety of roles open to both men and women and shall provide equal opportunity to both sexes.

The plan shall also include specific goals and objectives, with implementation timelines for each component of the educational program; specific provisions for the infusion of multicultural, nonsexist concepts into each area of the curriculum developed under the provisions of subrule 12.5(14) (16); a description of the in-service activities planned for all staff members on multicultural, nonsexist education; and evidence of systematic input by men and women, minority groups, and the ~~handicapped~~ *disabled* in developing and implementing the plan. In schools where no minority students are enrolled, minority group resource persons shall be utilized at least annually. A description of a periodic, ongoing system to monitor and evaluate the plan shall also be included.

ITEM 23. Amend subrule 12.5(20), introductory paragraph, as follows:

**12.5(20)** Subject offering. A subject shall be regarded as offered when the teacher of the subject has met the *license and endorsement approval* standards of the state board of ~~education~~ *educational examiners* for that subject; instructional materials and facilities for that subject have been provided; and pupils have been informed, based on their aptitudes, interests, and abilities, about possible value of the subject.

ITEM 24. Amend subrule 12.5(21) to read as follows:

**12.5(21)** Guidance program. Each board operating a prekindergarten through grade 12 or kindergarten through grade 12 program shall provide an articulated sequential elementary-secondary guidance program to assist students with their personal, educational, and career development. Boards operating less than a full elementary-secondary program shall provide a sequential guidance program covering all grade levels operated. The program shall involve not only counselors but also instructional and noninstructional staff, students, parents, and community members. Facilities offering both visual and auditory privacy for counseling shall be provided. Properly *licensed/certificated* staff shall be employed at all program levels.

~~Schools and school districts unable to meet the requirements of this rule as of July 1, 1989, may file a written request with the department of education seeking waiver of the requirement until July 1, 1990. The request must be filed with the department of education by January 1, 1989, and shall include the following information: description of the current guidance program and staff; reason(s) the school or school district is not able to meet the standard including, but not limited to, attempts to employ staff, share staff, or actions to have current staff become qualified; any other issues the school or school district feels justify the request for waiver; and specific actions proposed for meeting the standard including proposed timelines for compliance. Not later than January 1, 1990, the school or school district may request a one-year extension of the waiver for the school year beginning July 1, 1990.~~

~~The department of education shall grant the waiver, or a one-year extension of a previously approved waiver, if it is able to determine from the information filed that the school or school district has made a good faith effort to meet the standard and that there is a reasonable expectation that the standard will be met within the timeline established by the school or school district.~~

~~If a waiver is approved, the school or school district shall, for the period of the waiver or its extension, be in compliance with the requirements of Iowa Code section 256.11, subsection 9A.~~

ITEM 25. Amend subrule 12.5(22) to read as follows:

**12.5(22)** School media center and required staff. The board shall establish and operate a media services program to support the total curriculum. Each attendance center shall have a media center except that attendance centers sharing a physical facility could have a single media center. The board shall adopt a policy and procedure for selection, replacement, gift acceptance, weeding, and reconsideration of school media center and text materials. The collection shall foster a nonsexist, multicultural approach for curriculum studies and individual interest. The budget for each media center shall include funds for replacing and updating materials.

Each media center shall be supervised by a *qualified licensed/certified* media specialist who works with students, teachers, and administrators. A full range of information sources, associated equipment, and services from the media center staff shall be available to students and the faculty. Each media center shall be accessible to students throughout the school day. The school or school district shall develop and implement a curriculum guide covering all grade levels operated for instruction and reinforcement

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

of information search and media skills integrated with classroom instruction.

~~The effective date of this subrule is delayed until July 1, 1990. A school or school district unable to meet the requirements stated in this subrule may file a written request with the department of education that the department waive the requirement until July 1, 1991. The request must be filed with the department of education by January 1, 1990, and shall include the following information: description of current school media services program and staff; reason(s) the school or school district is not able to meet the standard as of July 1, 1990; efforts undertaken to meet the standard including but not limited to attempts to employ staff, share staff, get current staff qualified, adopt appropriate school board policies, adequate facility accessibility, schedule to ensure media center is available to students throughout the school day and other efforts; and specific actions proposed by the school or school district for meeting the standard including proposed timelines for compliance. A request for waiver must be signed by the board president and the chief administrator.~~

~~The department of education shall grant the waiver if it is able to determine from the information filed that the school or school district has made a good faith effort to meet the standard and that there is a reasonable expectation that the standard will be met by July 1, 1991.~~

~~If a waiver is approved, the school or school district shall for the period of the waiver, be in compliance with the requirements of Iowa Code section 256.11, subsection 9, paragraph "b."~~

ITEM 26. Amend 281—Chapter 12 by adding the following new division:

DIVISION VIII  
EXEMPTION PROCESS

**281—12.8(256) Standards exemption process.** Accredited schools engaged in comprehensive school transformation efforts and seeking approval for an exemption from the educational standards shall submit a plan on or before January 1 preceding the beginning of the school year for which the exemption is sought. The exemption request may be approved for a time period not to exceed three years. Annual progress reports shall be made to the department of education for the period of time covered by the approved exemption request. An extension of the exemption beyond the three-year period may be approved by the department of education based upon the demonstrated success of the program. The department shall notify the school of the approval or denial of the exemption request not later than March 1.

**12.8(1) Program plan.** At a minimum, the program plan shall include:

a. A description of the school's transformation plan including, but not limited to, new structures, methodologies, and creative approaches designed to help students achieve at higher levels.

b. Identification of the standard or standards from which the exemption is being sought, including a statement of the reasons for requesting the exemption from the standard or standards.

c. A rationale which includes educational research and best practice evidence that supports the request for the exemption.

d. A statement of the goals and objectives for the program plan.

e. Discussion of the focus on the improvement of student achievement and the attainment of student achievement goals under Iowa Code sections 280.12 and 280.18.

f. Identification of assessment methods to be used in determining the success of the program and the impact on student achievement.

g. Identification of a method for periodic demonstration that student achievement will not be lessened by the granting of the exemption.

h. Description of the relationship between the district's Phase III plan and the comprehensive school transformation plan.

i. Discussion of the administration and implementation of the plan, including the use of personnel, facilities, time, techniques, and activities.

j. Plans for periodic reports to the department of education and the community.

**12.8(2) Review criteria.** The department of education will utilize the following criteria in the review and approval of all requests for exemptions from the educational standards received pursuant to subrule 12.1(8).

a. The plan includes evidence of shared direction based on needs of all students as follows:

(1) Is developed collaboratively with staff and community.

(2) Is meaningful to the school as an organization and to the employees of the school.

(3) Is based on information about students' needs as determined by local and regional demographics of socioeconomic and economic conditions, employment opportunities, and family circumstances and how students learn.

(4) Illustrates that expectations for students are expressed in clear and meaningful ways.

b. The plan illustrates that the school gathers evidence of success including, but not limited to, the following:

(1) Specific performance measures or standards are identified for graduation and for at least one interval at the elementary level and at least one interval at the middle school level and are appropriately assessed utilizing multiple assessment measures.

(2) The student achievement data is collected, analyzed and reported internally.

(3) Evidence of success or the results are reported both internally to staff and externally to parents and members of the community to reinforce or modify direction.

c. The plan includes evidence that the school invests in its staff by providing time and support for planning, staff development, and analysis of the effectiveness of the teaching and learning processes.

d. The plan reflects change that is substantive and comprehensive, emerges from the school site, is designed to make the system relevant, is an integral part of efforts at meeting needs or goals, is consistent with emerging philosophies on restructuring and transformation, and focuses on improvement of student achievement and the attainment of student achievement goals under Iowa Code sections 280.12 and 280.18.

ITEM 27. Amend the implementation clause at the end of **281—Chapter 12** as follows:

These rules are intended to implement Iowa Code sections 256.11, ~~256.17~~, and 280.23.

ITEM 28. Amend **281—Chapter 12** by striking the last unnumbered paragraph as follows:

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~~These rules will become effective from the standpoint of publication in the Iowa Administrative Code, April 27, 1988. Their effective date for compliance by schools and school districts is July 1, 1989, as provided by Iowa Code section 256.17.~~

[Filed 2/11/94, effective 4/6/94]  
[Published 3/2/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/94.

## ARC 4625A

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 234.6, 239.18, 249A.4, and 249C.15 and 1993 Iowa Acts, chapter 97, section 5, the Department of Human Services hereby amends Chapter 7, "Appeals and Hearings," Chapter 41, "Granting Assistance," Chapter 42, "Unemployed Parent," Chapter 43, "Alternate Payees," Chapter 49, "Transitional Child Care Assistance Program," Chapter 51, "Eligibility," Chapter 52, "Payment," Chapter 58, "Emergency Assistance Program," Chapter 75, "Conditions of Eligibility," Chapter 86, "Medically Needy," and Chapter 93, "PROMISE JOBS Program," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments February 9, 1994.

These amendments combine four Notices of Intended Action.

The first set of amendments was previously Adopted and Filed Emergency and published in the December 8, 1993, Iowa Administrative Bulletin as **ARC 4466A**. Notice of Intended Action to solicit comments on that submission was published in the December 8, 1993, Iowa Administrative Bulletin as **ARC 4470A**.

The second set of amendments was previously Adopted and Filed Emergency and published in the January 5, 1994, Iowa Administrative Bulletin as **ARC 4527A**. Notice of Intended Action to solicit comments on that submission was published in the January 5, 1994, Iowa Administrative Bulletin as **ARC 4526A**.

Notice of Intended Action regarding the third set of amendments was published in the Iowa Administrative Bulletin on January 5, 1994, as **ARC 4530A**.

The substance of the majority of the fourth set of amendments was previously Adopted and Filed Without Notice and published in the Iowa Administrative Bulletin on January 5, 1994, as **ARC 4534A**. Notice of Intended Action to solicit comments on that submission and on state options regarding asset transfer was published in the January 5, 1994, Iowa Administrative Bulletin as **ARC 4533A**.

1. The amendments noticed as **ARC 4470A** are submitted to implement the next step of Iowa's welfare reform changes, the Family Investment Agreement (FIA). The FIA was included in the welfare reform legislation passed by the Seventy-fifth General Assembly and in-

cluded in federal waivers approved August 13, 1993. To obtain federal approval of the waivers, both a control group and a treatment group are required. Previous rule changes, effective October 1, 1993, established two divisions for Chapters 41, 42, 49, 58, and 93, along with others. Division I contains the administrative rules that existed prior to welfare reform which are applied to the control group. Division II contains administrative rules established through the waiver process, which are applied to the treatment group.

Division II of Chapters 41, 42, 43, 49, 58, and 93 and Chapter 75 are revised to add the welfare reform policies needed to implement the FIA January 1, 1994, and to incorporate the FIA into the PROMISE JOBS program. This incorporation enables Family Investment Program (FIP) recipients to take advantage of the work and training program expertise already developed under the PROMISE JOBS program as they develop their time-limited plan to achieve self-sufficiency.

Division I of Chapter 42 and Chapter 93 is revised to incorporate changes which are part of the welfare reform policies that will also be applied, under federal waiver approval, to participants in the control group. Chapter 7 is revised to establish appeal rights for the limited benefit plan described below.

The FIA is a time-limited self-sufficiency plan for FIP recipients with time limits based on the specific circumstances of each family. The FIA will detail the participant's plan and responsibilities under the plan as well as the responsibilities of the state in providing services to support the plan.

The FIA is required of each parent living in a home with a child on FIP, each adult on the grant, and other mandatory PROMISE JOBS participants. The person must enter into the FIA unless exempt. Exemptions apply only to parents caring for a child under the age of six months, persons working 30 hours or more per week, persons unable to participate due to a disability, and children under the age of 16 or in school. The FIA shall require each mandatory person to participate in one or more of the following options: full-time or part-time employment, job club or other active job search, high school completion, GED, adult basic education, English as a second language, postsecondary training, family development and self-sufficiency (FaDSS) or other family development program, work experience placement, unpaid community service, or parenting skills training.

The current PROMISE JOBS sanctioning process will be replaced under the FIA. Barriers to participation in the FIA will become issues to be resolved so that participation can result. Persons responsible for the FIA may choose not to participate in the FIA process or choose not to continue participation after signing the FIA. These FIP participants shall enter into a limited benefit plan (LBP). There are variations in the LBP to fit individual circumstances. For example, an LBP for a child differs from an LBP for a parent. In most situations involving adults, the LBP provides up to three months of benefits from the beginning date of the LBP, followed by up to three months of benefits reflecting the needs of the children only. At the end of this period of reduced benefits, the total FIP grant shall be terminated and the person responsible for the FIA shall not be eligible until six months following the end of the LBP.

Participants who choose the LBP before signing the FIA shall have two opportunities to reconsider and enter



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

into the FIA process. Participants who appear to have chosen the LBP after completing the FIA shall have opportunities to renegotiate with the PROMISE JOBS worker and have a PROMISE JOBS supervisory review and a state level review before the LBP begins. All rights of appeal and judicial review apply to the LBP.

2. The amendments noticed as **ARC 4526A** implement the January 1, 1994, Supplemental Security Income (SSI) cost-of-living adjustment increases and the annual adjustment in the maximum amount of resources to be attributed to the community spouse and the amount used for determining the community spouse's maintenance needs. These amendments also increase the personal needs allowance for residents of residential care facilities as mandated by the General Assembly.

The Department received confirmation from the Department of Health and Human Services (DHHS) in a letter dated October 19, 1993, that the Social Security cost-of-living increase which will become effective January 1, 1994, is established at 2.6 percent. The Department has decided to pass along this increase to recipients of state supplementary assistance. Therefore, the SSI increase of \$12 for an individual resulted in an increase in the total allowance in a family life home from \$516.20 to \$528.20. The personal needs allowance for individuals in family life homes is increased by a larger percentage than the payment to the family life home to allow the individuals in family life homes an amount for Medicaid copayment expenses. Individuals in family life homes will receive the same personal needs allowance as residents in residential care facilities. The benefit rate for an essential person increased by \$6 from \$217 to \$223 resulting in the same increase for a dependent person.

The maximum amount of resources to be attributed to a community spouse and the maintenance needs of a community spouse are indexed annually by the consumer price index. The Department has received verbal confirmation from DHHS that the maximum amount of resources to be attributed to the community spouse has increased from \$70,740 to \$72,660 and the maintenance needs of the community spouse have increased from \$1,769 to \$1,816.50.

The Seventy-fifth General Assembly in 1993 Iowa Acts, chapter 172, section 5, required the Department to increase the personal needs allowance for residents of residential care facilities (RCFs) by the same percentage and at the same time as federal Supplemental Security Income and federal Social Security benefits are increased due to a recognized increase in the cost of living. At the current time, residents of RCFs receive a total personal needs allowance of \$61, of which \$56.65 is for personal expenses and \$4.52 is for Medicaid copayment expenses. The study to determine the average Medicaid copayment expense has been redone and the average copayment amount per recipient is now \$4.43. A 2.6 percent increase in the personal expenses part of the allowance increases that part of the allowance to \$58.12. This amount added to the average copayment totals \$62.55. Thus, the personal needs allowance is increased to \$63 effective January 1, 1994.

3. The amendments noticed as **ARC 4530A** make the following changes in policy for Medicaid eligibility:

a. Persons who meet the income and resource requirements of the cash assistance programs will be eligible for Medicaid. Under current policy the medical-only coverage groups only covered persons who were eligible for the

programs in every way, but did not receive the cash assistance.

b. Persons who meet the income and resource guideline of the State Supplementary Assistance (SSA) program, but who are not receiving SSA benefits have been removed from coverage. To determine if a person would be "income eligible" for SSA, an SSA reimbursable need (such as in-home health-related care or residential care facility care) and the value of that need must be established. The income eligibility limit is "variable" and is based on the value of that need. If a person declines to receive SSA benefits, establishing the value of their need and, therefore, their income eligibility for SSA would not be feasible.

c. The FIP-related Medically Needy coverage group for specified relatives (formerly termed caretaker relatives) also changes to require the relatives to meet only income and resource requirements, not the other program requirements. In addition, the child in the specified relative's care need not be eligible for Medicaid or financially needy for the specified relative to be eligible. Policy continues to require, however, that the child must be deprived of parental support or care and be related to the person applying as established by FIP policy.

Changes "a" and "c" above are mandated by federal regulations if the state wishes to continue covering these persons.

4. The amendments noticed as **ARC 4533A** revise policies associated with transfer of assets and policies relating to the effect of trusts on Medicaid eligibility as mandated by the Omnibus Budget Reconciliation Act (OBRA) of 1993 (Public Law 103-66, section 13611).

These amendments make the following changes in policies associated with transfer of assets. The amendments:

a. Expand services affected by the period of ineligibility to include no Medicaid payment for home health care services, home and community care for functionally disabled elderly persons, personal care services and other long-term care services. OBRA 93 did give the Department the option of applying transfer penalties to these noninstitutionalized services. The Department is proposing to elect that option.

b. Expand the look-back period for the disposal of assets for less than fair market value that occur after August 10, 1993, to 36 months for all transfers except transfers into or by a trust. The look-back period is expanded to 60 months for transfers of assets into or by a trust created after August 10, 1993.

The current look-back period is 30 months. For institutionalized individuals the look-back period is figured from the first date on which the individual is both institutionalized and has applied for Medicaid. For noninstitutionalized individuals receiving long-term care services subject to penalty, the look-back period is from the date on which the Medicaid application is filed or the date of transfer, if later.

c. Eliminate concurrent penalty periods. The penalty period begins the first month during or after which assets were transferred and which doesn't occur in any other periods of ineligibility.

d. Eliminate the maximum penalty period of 30 months for transfers that occurred after August 10, 1993. OBRA 93 did give the Department the option of determining shorter penalty periods to noninstitutionalized persons receiving long-term care services. The Department is proposing not to elect that option. The penalty period shall

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

be determined by dividing the total uncompensated value of assets transferred by the average cost of private nursing facility services.

e. Exempt transfers to the spouse, another for the benefit of the spouse, a blind or disabled child, and to trusts established for a blind or disabled child or for a disabled individual under the age of 65.

f. Provide that if either owner of a jointly held asset reduces the individual's ownership, it constitutes an uncompensated transfer.

g. Provide that if a transfer made by the spouse affects the individual, the penalty period is divided between the spouse and individual if the spouse becomes otherwise eligible.

h. Clarify that transfers of income are a transfer of assets and may be penalized.

i. Clarify that transfers of assets includes assets the individual is entitled to, but does not receive, due to an action by the individual, the individual's spouse, or a person, including a court or administrative body with legal authority to act in place of, on the behalf of, or at the request or direction of the individual or the individual's spouse.

These amendments make the following changes in policies associated with trusts established after August 10, 1993. These amendments apply to any trust or similar legal device, including a conservatorship, established with an individual's assets by the individual, the individual's spouse, or a person, including a court or administrative body with legal authority to act in place of, on the behalf of, or at the request or direction of the individual or the individual's spouse. The amendments:

a. Define assets as income and resources of the individual and of the individual's spouse including income or resources to which the individual or the individual's spouse are entitled but not receiving due to action by the individual, the individual's spouse, legal representative, or anyone acting on the individual's request.

b. Distinguish between revocable and irrevocable trusts.

(1) The principal of a revocable trust is a countable resource, payments from the trust are countable income and any payments to others from the trust are a transfer of assets for less than fair market value.

(2) The principal and interest earned on the principal of an irrevocable trust are countable as a resource; payments from the trust to the beneficiary are countable as income. Inaccessible principal and interest and payments to others from the trust are a transfer of assets for less than fair market value.

c. Exempt trusts containing the assets of a disabled individual if the trust is established and managed by a non-profit organization, a separate account is maintained for each beneficiary, accounts are established solely for the benefit of the individual and any remaining funds up to the total Medicaid spent must be paid to the state at the time of the individual's death.

d. Exempt trusts established for disabled individuals under the age of 65 and trusts composed only of pension, Social Security, and other income to the individual, if the state will receive all amounts remaining in the trust up to the total Medicaid paid upon the death of the individual.

The amendments noticed as **ARC 4526A**, **ARC 4530A**, and **ARC 4533A** are identical to those published under Notice of Intended Action.

The following revisions were made to the amendments noticed as **ARC 4470A**:

Rule 441—7.5(217) was revised in response to public comment and concerns expressed by members of the Administrative Rules Review Committee (ARRC). The change provides three opportunities for FIP participants to appeal the establishment of the limited benefit plan rather than the one opportunity in the current rule.

Rule 441—41.24(239) was revised to correct a typographical error in the parenthetical implementation statute.

Subrule 41.24(8), paragraph "a," subparagraphs (1), (2), (3), and (6), were revised to make certain terms consistent with other rules. Paragraph "a," subparagraph (5), was revised to make certain terms consistent with other rules and to clarify the status of persons who may do the inquiry into the well-being of the children after a family chooses the LBP. This change is made as a result of concerns expressed in public comment and by the Council on Human Services. Paragraph "b" and paragraph "d," subparagraph (1), were revised to clarify that an LBP which affects one person is always composed of three months of benefits for the entire eligible group, a three-month period of reduced benefits with the needs of the individual removed, and six months of ineligibility for that person. These changes were in response to concerns expressed by a member of the Council on Human Services.

Subrule 41.24(9) was revised to include the Bureau of Refugee Services in the conciliation process for PROMISE JOBS volunteers in PROMISE JOBS and the FIA.

Subrule 42.24(1), paragraph "b," was revised to make language consistent with other rules and to remove an incorrect reference.

Subrule 42.24(2) was revised to make language consistent with other rules.

Subrule 75.23(1) was revised to delete duplicated language.

Subrule 93.10(8), paragraph "a," was revised to clarify the intent of the rule.

Subrule 93.11(2) was revised to correct typographical errors.

Subrule 93.110(8), paragraph "a," was revised to clarify the intent of the rule.

Subrule 93.114(10), paragraph "b," was revised to include the appropriate form name and form numbers to be used in writing the FIA.

Subrule 93.129(1) was revised to make certain terms consistent with other rules.

Subrule 93.129(2), introductory paragraph, was revised to include the Bureau of Refugee Services in the conciliation process for PROMISE JOBS volunteers in PROMISE JOBS and the FIA and to clarify the purpose of the conciliation period which is offered to exempt participants who have volunteered for PROMISE JOBS and have subsequently abandoned their Family Investment Agreement. Paragraph "c" was revised to correct a form number and title.

Rule 441—93.132(249C), numbered paragraph "11," was revised to remove an inconsistency with the other rules.

Rule 441—93.133(249C), introductory paragraph, was revised to add limiting or reducing hours of employment as an item for which problems with participation must be considered in response to concerns expressed by members of the ARRC.

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Subrule 93.133(2), introductory paragraph, and subrule 93.133(3) were revised to incorporate the change for limiting or reducing hours of employment.

Subrule 93.135(4) was revised to clarify the intent of the rule.

Subrule 93.138(2), paragraph "b," subparagraph (2), and paragraph "c," and subrule 93.138(3), paragraph "d," were revised to make Chapter 93 consistent with subrule 41.24(8) regarding the check on the well-being of the children.

Subrule 93.138(4) was added to clearly establish the process for the check on the well-being of children when families have chosen the LBP. This is in response to public comment and concerns expressed by members of the Council on Human Services.

If at any of the visits, initial or follow-up, the family denies entry to the qualified social services professional, this fact shall be reported to the Department and no further action shall be taken. This is consistent with the concept that families can choose their path to self-sufficiency and have the best interest of their children at heart. Any more intrusive process seems to assume that any family which chooses the LBP is not capable of making appropriate decisions.

It is important to remember that families already come into contact with persons and entities which are concerned about their well-being and are likely to report abuse or neglect through the channels which already exist to protect children. Many of these entities are child abuse mandatory reporters.

Subrule 93.140(2) was revised to incorporate the change from subrule 7.5(8) into the PROMISE JOBS chapter.

These amendments are intended to implement Iowa Code sections 234.12, 239.2, 239.5, 239.6, 239.21, 249.3, 249.4, and 249A.4, Iowa Code chapter 249C, and 1993 Iowa Acts, chapter 97, section 3, and chapter 172, section 5.

These amendments shall become effective May 1, 1994, at which time the Adopted and Filed Emergency amendments and the Adopted and Filed Without Notice amendments are rescinded.

The following amendments are adopted.

ITEM 1. Amend rule 441—7.5(217) by adding the following new subrule 7.5(8):

**7.5(8)** Appeal rights under the family investment program limited benefit plan. A person only has the right to appeal the establishment of the limited benefit plan once but there shall be three opportunities to appeal. A person may appeal the limited benefit plan at the time of the Notice of Decision, Form PA-3102-0, establishing the beginning date of the limited benefit plan, at the time of the notice establishing the first month of the period of reduced benefits, or at the time of the notice establishing the six-month period of ineligibility. When the reason for an appeal is based on incorrect grant computation, error in determining the eligible group, or other worker error, a hearing may be granted.

ITEM 2. Amend subrule 41.7(2), paragraph "d," subparagraph (1), as follows:

(1) An applicant or recipient is not eligible for the standard work expense, child or adult care expense, or the disregards of earned income described in subrule 41.7(2)"c" for one month if within 30 days preceding the

month of application or the report month the individual terminated employment, reduced earned income, or refused to accept a bona fide offer of employment, as defined in rule 441—42.1(239), in which the individual was able to engage, without good cause as defined in ~~subrule 41.4(1)~~ and rule 441—93.33(249C).

ITEM 3. Rescind rule 441—41.24(239C) and insert the following new rule in lieu thereof:

**441—41.24(239) Promoting independence and self-sufficiency through employment job opportunities and basic skills (PROMISE JOBS) program.** An application for assistance constitutes a registration for the program for all members of the family investment program (FIP) case. Persons in any FIP case who are not exempt from referral to PROMISE JOBS shall enter into a family investment agreement (FIA) as a condition of receiving FIP, except as described at 41.24(8).

**41.24(1) Referral to PROMISE JOBS.**

a. All persons whose needs are included in a grant under the FIP program shall be referred to PROMISE JOBS as FIA-responsible persons unless the county office determines the persons are exempt.

b. Any parent living in the home of a child receiving a grant shall also be referred to PROMISE JOBS as an FIA-responsible person unless the county office determines the person is exempt.

c. Persons determined exempt from referral, including applicants, may volunteer for PROMISE JOBS.

**41.24(2) Exemptions.** The following persons are exempt from referral:

a. A person who is the parent or other relative of a child under six months of age, except as specified at 41.24(3), who is personally providing care for the child. Only one parent or other relative in a case shall be exempt under this provision. This exemption is not applicable when the child is born during the period that the person has an FIA in effect. When there is an FIA in effect, the case shall be treated in accordance with rule 441—93.133(249C).

b. A person who is working 30 or more hours a week (129 or more hours a month) in unsubsidized employment at the time of the initial determination of PROMISE JOBS exemption status, so long as employment continues. When a recipient who has been previously determined to be a mandatory PROMISE JOBS participant accepts employment of 30 or more hours per week, either through PROMISE JOBS, the department of employment services or another source, the recipient does not become exempt as a result of accepting employment. For self-employed persons, hours of employment shall be determined by dividing the average net monthly income from self-employment by the state or federal minimum wage, whichever is greater. "Net monthly income" means income remaining after deduction of allowable business expenses as described in 41.27(2)"k," "l," "m," "n," and "o."

c. A person who is under the age of 16 and is not a parent.

d. A person who is disabled, according to the Americans with Disabilities Act, and unable to participate. Medical evidence of disability may be obtained from either an independent physician or psychologist or the state rehabilitation agency in the same manner specified in 41.21(5)"c."

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

e. A person who is aged 16 to 19, and is not a parent, who attends an elementary, secondary or equivalent level of vocational or technical school full-time.

(1) A person shall be considered to be attending school full-time when enrolled or accepted in a full-time (as certified by the school or institute attended) elementary, secondary or the equivalent level of vocational or technical school or training leading to a certificate or diploma. Correspondence school is not an allowable program of study.

(2) A person shall also be considered to be in regular attendance in months when the person is not attending because of an official school or training program vacation, illness, convalescence, or family emergency. A child meets the definition of regular school attendance until the child has been officially dropped from the school rolls.

(3) When a person's education is temporarily interrupted pending adjustment of the education or training program, exemption shall be continued for a reasonable period of time to complete the adjustment.

**41.24(3) Parents aged 19 and under.**

a. A parent aged 18 or 19 who has not successfully completed a high school education (or its equivalent) shall be required to participate in educational activities, directed toward the attainment of a high school diploma or its equivalent, regardless of the exemption criteria specified at 41.24(2)"a." The parent shall be required to participate in other PROMISE JOBS options if the person fails to make good progress in completing educational activities or if it is determined that participation in educational activities is inappropriate for the parent.

b. A parent aged 17 or younger who has not successfully completed a high school education or its equivalent shall be required to participate in high school completion activities, directed toward the attainment of a high school diploma or its equivalent, regardless of the exemption criteria specified at 41.24(2)"a."

**41.24(4) Method of referral.** When the FIP application is approved or when exempt status is lost, volunteers and persons who are not exempt from referral to PROMISE JOBS shall receive a letter which contains information about participant responsibility under PROMISE JOBS and the FIA and reminds the FIP participant to contact PROMISE JOBS within ten calendar days to schedule the PROMISE JOBS orientation. A referral file of volunteers and persons who are not exempt from referral shall be provided to the appropriate PROMISE JOBS provider agencies.

**41.24(5) Changes in status and redetermination of exempt status.** Any exempt person shall report any change affecting the exempt status to the county office within ten days of the change. The county office shall reevaluate exempt persons when changes in status occur and at the time of six-month or annual review. The recipient and the PROMISE JOBS unit shall be notified of any change in a recipient's exempt status.

**41.24(6) Volunteers.** Any applicant and any recipient may volunteer for referral. The income maintenance worker shall not refer an applicant to the program when it appears that the applicant shall be ineligible for FIP.

**41.24(7) Referral to vocational rehabilitation.** The department shall make the department of education, division of vocational rehabilitation services, aware of any person determined exempt from referral to PROMISE JOBS because of a medically determined physical or mental im-

pairment. However, acceptance of vocational rehabilitation services by the client is optional.

**41.24(8) The limited benefit plan (LBP).** When persons responsible for signing and meeting the terms of the FIA as described at rule 441—93.109(249C) choose not to fulfill those responsibilities, the FIP case, or the individual FIP recipient, will enter into the limited benefit plan (LBP) or individual limited benefit plan as described below.

a. From the effective date of the LBP, the FIP household will be eligible for up to three months of benefits for the entire eligible group, followed by up to three months of benefits based on the needs of the children only. At the end of the three-month period of reduced benefits, the FIP case shall be canceled and there shall be a six-month period of ineligibility. Exceptions for specific case circumstances are described in 41.24(8)"b" to "f."

(1) A person who does not establish an orientation appointment or who fails to keep or reschedule an orientation appointment shall receive a reminder letter which reminds the person that those who do not attend orientation have indicated a choice of the LBP.

(2) A person who chooses not to respond to the reminder letter within ten calendar days from the mailing date shall receive Form PA-3102-0, Notice of Decision, establishing the beginning date of the LBP, the beginning date of the period of reduced benefits, and the beginning and ending dates of the six-month period of ineligibility. Timely and adequate notice provisions as described at 441—subrule 7.7(1) apply.

(3) A person who chooses not to sign the FIA after attending PROMISE JOBS orientation shall enter into the LBP as described in 41.24(8)"a"(2).

(4) A person who chooses the LBP in circumstances as described in subparagraphs (2) and (3) above shall have 45 days following the effective date of the LBP to reconsider and begin development of the FIA. The person can contact the department or the appropriate PROMISE JOBS office anytime during the first 45 days of the LBP, sign the FIA during the orientation and assessment process, and no reduction or termination of benefits will occur related to the LBP.

(5) If the person does not reconsider during the first 45 days following the effective date of the LBP, the person shall have another opportunity to enter the FIA process during the last two months (months five and six) of the reduced benefit period. If the person signs the FIA during the orientation and assessment process after entering the FIA process in either of the following circumstances, no termination of benefits will occur:

1. During the last two months of the period of reduced benefits, a qualified social services professional shall make inquiry into the well-being of the children. The department may contract out for these services. If the FIA-responsible person indicates a desire to develop an FIA, the qualified professional will initiate an appointment with the appropriate PROMISE JOBS office.

2. If the FIA-responsible person independently contacts the department or the appropriate PROMISE JOBS office anytime during the last two months of the reduced benefit period and signs the FIA during the orientation and assessment process, no termination of benefits will occur related to the LBP.

(6) A person who signs the FIA but does not carry out FIA responsibilities and, consequently, has chosen the

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LBP is not eligible for the reconsideration options described in 41.24(8)"a"(4) and (5). A qualified social services professional shall make inquiry as to the well-being of the children after the three-month reduced benefit period ends.

b. When the FIA-responsible person is a person included in the eligible group as described at 41.28(1)"b"(2), (3), and (4), who chooses the LBP in circumstances as described in 41.24(8)"a"(2), (3), and (6), the LBP shall be described as follows: From the effective date of the LBP, the FIP household will be eligible for up to three months of benefits for the entire eligible group, followed by three months of reduced benefits and six months of ineligibility for the FIA-responsible person. The FIA-responsible person shall be ineligible during the three-month period of reduced benefits except as described at 41.24(8)"a"(4) and (5).

c. When the FIP eligible group holds a minor parent living with a parent who receives FIP, as described at 41.28(2)"b"(2), and both parents are FIA-responsible persons, each parent is responsible for a separate FIA, and the LBP shall be described as follows:

(1) When the adult parent chooses the LBP in circumstances as described in 41.24(8)"a"(2), (3) and (6), the policies of the LBP shall apply to the entire eligible group, even though the minor parent has not chosen the LBP. The minor parent could reapply for FIP as a minor parent living with self-supporting parents and continue in the FIA process.

(2) When the minor parent chooses the LBP in circumstances as described in 41.24(8)"a"(2), (3) and (6), the policies of the LBP shall apply to the minor parent and child(ren).

(3) If the minor parent is the only child in the home and the minor parent chooses the LBP, the adult parent shall remain eligible as long as the adult parent fulfills FIA responsibilities and other FIP eligibility factors are met.

d. When the FIP eligible group holds children who are mandatory PROMISE JOBS participants, children would not have a separate FIA, but would be asked to sign the family FIA and carry out the activities of the FIA, and an LBP could be applied as follows:

(1) While the FIA-responsible parent meets FIA responsibilities, a child who is a mandatory PROMISE JOBS participant could choose an individual LBP in circumstances as described in 41.24(8)"a"(2), (3), and (6). In these situations, the FIP household shall be eligible for up to three months of benefits for the entire eligible group, followed by up to three months of reduced benefits and six months of ineligibility for the child who has chosen the LBP. The child shall be ineligible during the three-month period of reduced benefits except as described at 41.24(8)"a"(4) and (5).

(2) If the child who is a mandatory PROMISE JOBS participant is the only child in the home and chooses the individual LBP, the parent or parents shall remain eligible as long as the parent or parents fulfill FIA responsibilities and other FIP eligibility factors are met.

e. When the FIP eligible group holds a parent or parents who are exempt and children who are mandatory PROMISE JOBS participants, the children are responsible for completing an FIA. If a child who is a mandatory PROMISE JOBS participant chooses the LBP, the circumstances of the LBP shall be as described in 41.24(8)"d"(1) and (2).

f. When the FIP household contains two parents the following LBP policies shall apply:

(1) When only one parent of a child on the grant is an FIA-responsible person and that person chooses the LBP in circumstances as described in 41.24(8)"a"(2), (3), and (6), the LBP cannot be ended by volunteer participation by the exempt parent. However, the exempt parent can remain on the grant during the three-month reduced benefit period by participating in the FIP-UP work program described at rule 441—93.122(249C).

(2) When both parents of a child on the grant are FIA-responsible persons, both are expected to sign the FIA. If either parent chooses the LBP in circumstances as described in 41.24(8)"a"(2), (3), and (6), the LBP cannot be ended by the participation by the other parent. However, the exempt parent can remain on the grant during the three-month reduced benefit period by participating in the FIP-UP work program described at rule 441—93.122(249C).

(3) If parents from a two-parent household in the LBP separate, the LBP would follow only a parent who chose the LBP and any children in the home of that parent.

#### 41.24(9) Nonparticipation by volunteers.

a. Volunteer participants are not subject to the limited benefit plan as described at 41.24(8).

(1) Volunteer participants who do not schedule or keep an appointment for orientation or who choose not to complete an FIA after attending orientation shall have PROMISE JOBS referral status changed to exempt by the income maintenance worker. No penalty is involved.

(2) Volunteers who complete the FIA and choose not to carry out the activities or meet the responsibilities of the FIA, including resolving participation issues as described at rule 441—93.132(249C), shall be deactivated from the PROMISE JOBS program after completion of the conciliation process described below. Volunteers who are deactivated from the program after completing the FIA shall not be eligible for priority program services as long as other participants are waiting for services.

b. Conciliation for volunteers shall be provided by a conciliation unit established by the PROMISE JOBS local service delivery area. PROMISE JOBS staff from DES shall conciliate in cases decided by JTPA workers and PROMISE JOBS staff from JTPA shall conciliate in cases decided by DES workers. The bureau of refugee services shall arrange with PROMISE JOBS staff of DES and JTPA to provide conciliation services when the need arises. If the local service delivery area has developed interagency teams of PROMISE JOBS staff, teams shall be assigned to conciliate in cases decided by other teams.

(1) When the PROMISE JOBS worker determines that an exempt volunteer, after signing the FIA, has chosen not to carry out the activities or responsibilities of the FIA, the worker shall notify the conciliation unit of the PROMISE JOBS local service delivery area. This notice shall include documentation of the issues of participation or problems of participation which have not been resolved. The conciliation unit shall review the material to determine if the nonfinancial sanction of loss of priority service is applicable. If the conciliation unit disagrees with the PROMISE JOBS worker, the conciliation unit shall contact the worker to resolve the issue. If the conciliation unit agrees with the PROMISE JOBS worker, the conciliation unit shall initiate a 30-day conciliation period by issuing the Notice of Potential Sanction—Exempt Volunteers, Form 470-2667, to the participant. During this

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30-day period, the participant can present additional information to the conciliation unit to resolve the issues of participation or problems with participation, or identify barriers to participation which should be addressed in the FIA. If the conciliation unit finds that the participant has chosen not to carry out the activities or responsibilities of the FIA, a nonfinancial sanction of loss of priority service shall be imposed. The conciliation period begins the day following the day the Notice of Potential Sanction—Exempt Volunteers is issued.

(2) If the participant presents additional information which indicates resolution of issues of participation or problems with participation, or which indicates a barrier to participation which will be addressed in the FIA, the conciliation unit shall review these with the PROMISE JOBS worker, with conciliation staff having the final say. If the issues and problems are not resolved, barriers to participation are not identified, or the participant indicates unwillingness to include the barriers to participation in a renegotiated FIA, the conciliation unit shall notify the PROMISE JOBS worker to apply the loss of priority services sanction.

**41.24(10) Notification of services.**

a. The department shall inform all applicants for and recipients of FIP of the advantages of employment under FIP.

b. The department shall provide a full explanation of the family rights, responsibilities, and obligations under PROMISE JOBS and the FIA, with information on the time-limited nature of the agreement.

c. The department shall provide information on the employment, education and training opportunities, and support services to which they are entitled under PROMISE JOBS, as well as the obligations of the department. This information shall include explanations of transitional child care and transitional Medicaid.

d. The department shall inform applicants for and recipients of FIP benefits of the grounds for exemption from FIA responsibility and from participation in the PROMISE JOBS program.

e. The department shall explain the LBP and the process by which FIA-responsible persons and mandatory PROMISE JOBS participants can choose the LBP or individual LBP.

f. The department shall inform all applicants for and recipients of FIP of their responsibility to cooperate in establishing paternity and enforcing child support obligations.

g. Within 30 days of the date of application for FIP, the department shall notify the applicant or recipient of the opportunity to volunteer for the program. Notification shall include a description of the procedure to be used in volunteering for the program.

**41.24(11) Phase-in for PROMISE JOBS and FIA referrals.** Persons who were active or considered persons on a FIP case and who were exempt from referral to PROMISE JOBS prior to January 1, 1994, shall be referred to PROMISE JOBS when a change in circumstances, other than the age of a child, becomes known to the income maintenance worker or at the time of the annual face-to-face interview as described at 441—subrule 40.27(1), whichever is earlier. Exemptions due to the age of a child shall be reviewed only at the time of the annual face-to-face interview.

This subrule is not applicable to cases which experience a break in assistance.

This rule is intended to implement Iowa Code sections 239.2, 239.5, 239.18, 249C.6, and 249C.17.

ITEM 4. Amend rule 441—41.27(239) as follows:

Amend subrule **41.27(2)**, paragraph "d," subparagraph (1), as follows:

(1) Except for persons in 41.27(8)"b" and 41.27(8)"c," a person whose earned income must be considered is not eligible for the 20 percent earned income deduction or the child or adult care expense described in 41.27(2)"a" and "b" for one month if within 30 days preceding the month of application or the report month the individual terminated employment, reduced earned income, or refused to accept a bona fide offer of employment, as defined in rule 441—42.21(239), in which the individual was able to engage, ~~without good cause as defined in subrule 41.24(1) and rule 441—93.133(249C) unless the individual has identified problems with participation of a temporary or incidental nature as described in rule 441—93.133(249C) or barriers to participation as described in rule 441—93.134(249C).~~ However, the individual is eligible for the 50 percent work incentive deduction as described at 41.27(2)"c," if there are earnings to be considered.

Amend subrule **41.27(7)**, paragraph "ag," as follows:

ag. Terminated income of recipient households who are subject to retrospective budgeting beginning with the calendar month the source of the income is absent, provided the absence of the income is timely reported as described at 441—40.27(4)"f"(1). EXCEPTION: Income that ~~terminates terminated~~ in one of the two initial months occurring at time of an initial application that was not used prospectively shall be considered retrospectively as required by 41.27(9)"b"(1). In the case of earned income, the exemption does not apply to any person who quit employment ~~without good cause as defined at subrule 41.24(1) and rule 441—93.133(249C) unless the person has identified problems with participation of a temporary or incidental nature as described at rule 441—93.133(249C) or barriers to participation as described at rule 441—93.134(249C).~~ If income ~~terminates terminated~~ and is timely reported but a grant adjustment cannot be made effective the first of the next month, a payment adjustment shall be made. This subrule shall not apply to nonrecurring lump-sum income defined at 41.27(9)"c"(2).

ITEM 5. Amend rule 441—42.24(239) as follows:

Amend subrule **42.24(1)**, paragraphs "b" and "e," as follows:

b. The parent who is an applicant who is out of work due to refusal without good cause of a bona fide offer of employment or training for employment shall not be considered unemployed. The parent who is a recipient who is out of work due to refusal without good cause of a bona fide offer of employment or training shall be subject to ~~the sanctions described in subrules 41.24(7) and 42.24(4).~~

e. Notwithstanding any other provision of this subrule, while the application is pending the parent ~~who is not participating in an approved training plan~~ shall cooperate with the department of employment services in actively searching for employment or training for employment, *unless the parent is participating in a training plan, or working at least 30 hours a week (129 hours a month), or providing care to a child as described at 441—paragraph 41.24(2)"a."* Either parent who fails or refuses to cooperate with the department of employment



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services without good cause, as defined in subrule 42.24(6) 42.24(3), shall not be considered unemployed. In addition, while the application is pending and after assistance has been approved, the parent who is out of work due to failure to make an active and earnest search for work as described in employment services' rule 345-4.22(3)"a" which results or would result in disqualification for job insurance benefits shall not be considered unemployed.

Amend subrule 42.24(2) as follows:

42.24(2) Failure to cooperate. A parent shall not, without good cause, end, limit, or reduce hours of employment; refuse job search assistance or counseling when a counselor is assigned from employment services; or refuse a bona fide offer of employment or training for employment. Failure to follow up on a job or training referral shall be considered the same as a refusal.

When either parent who is an applicant fails to cooperate, the parent is not considered to be unemployed. The needs of any person in the eligible group whose eligibility is dependent on either parent's unemployment shall not be included in the assistance grant. When the parent is a recipient, then the eligible group is subject to the sanction described in subrules 41.24(7) and 42.24(4), regardless of whether the parent is a mandatory PROMISE JOBS participant, following the conciliation process described at subrule 41.24(7)"a."

Amend subrule 42.24(3), paragraphs "b" and "c," as follows:

b. Good cause for limiting or reducing hours, ending or refusing a bona fide offer of employment or training exists when any of the good cause criteria problems with participation of a temporary or incidental nature specified in rule 441-93.133(249C) are met identified or barriers to participation as described at rule 441-93.134(249C) are identified.

c. When an offer of employment or training is through the PROMISE JOBS program, the determination as to whether the offer is bona fide, or whether there was is good cause to refuse it, will shall be made by PROMISE JOBS program staff, subject to review by income maintenance staff in accordance with paragraph 41.24(7)"a," who shall initiate the limited benefit plan as described at 441-subrule 41.24(8). Any appeal from a mandatory referral shall be directed to the department.

Amend subrule 42.24(4) as follows:

42.24(4) Relationship with the PROMISE JOBS program. Unless determined exempt, both parents shall be referred to and shall be required to participate in the PROMISE JOBS program. Any parent may volunteer for the program.

When the county office receives notice from PROMISE JOBS staff that a parent on a family investment program unemployed parent case failed to participate, or when either parent who is a recipient fails to cooperate in accordance with subrule 42.24(2), the parent is subject to the sanctions described in subrule 41.24(7). Also, the needs of the other parent in the home are subject to sanction unless the other parent is participating or chooses to participate in the program.

The policies of the family investment agreement (FIA) described at rule 441-93.109(249C) and the family investment program-unemployed parent work program described at rule 441-93.122(249C) are applicable to both parents. When FIA-responsible persons choose not to sign the FIA or choose not to meet the responsibilities of the

FIA, the household has chosen the limited benefit plan, as described at 441-subrule 41.24(8).

ITEM 6. Rescind and reserve subrule 43.22(1), paragraph "b."

ITEM 7. Amend subrules 49.25(1) and 49.25(3) as follows:

49.25(1) The family is not eligible for transitional child care assistance for any remaining portion of the 24-month period beginning with the month after the caretaker relative, without good cause as defined identified problems with participation of a temporary or incidental nature as described at rule 441-93.133(249C) or barriers to participation as described at rule 441-93.134(249C), terminates terminated employment which would have caused or did cause ineligibility for FIP.

49.25(3) If the caretaker relative loses a job with good cause, as defined identified problems with participation of a temporary or incidental nature as described at rule 441-93.133(249C) or barriers to participation as described at rule 441-93.134(249C), and then finds another job, the family can qualify for the remaining portion of the 24-month eligibility period.

ITEM 8. Amend subrule 51.4(1) as follows:

51.4(1) Income. Income of a dependent relative shall be less than \$217 \$223. When the dependent's income is from earnings, an exemption of \$65 shall be allowed to cover work expense.

ITEM 9. Amend rule 441-51.7(249) as follows:

441-51.7(249) Income from providing board and room. In determining profit from furnishing room and board or providing family life home care, \$217 \$223 per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

ITEM 10. Amend rule 441-52.1(249) as follows:

Amend subrules 52.1(1) and 52.1(2) as follows:

52.1(1) Protective living arrangement. The following assistance standards have been established for state supplementary assistance for persons living in a protective living arrangement:

Family life home certified under rules in 441-Chapter 111.

\$455-20	\$465.20	care allowance
61-00	63.00	personal allowance
\$516-20	\$528.20	Total

52.1(2) Dependent relative. The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient's home.

a. Aged or disabled client and a dependent relative	\$651	\$669
b. Aged or disabled client, eligible spouse, and a dependent relative	\$869	\$892
c. Blind client and a dependent relative	\$673	\$691
d. Blind client, aged or disabled spouse and a dependent relative	\$891	\$914
e. Blind client, blind spouse and a dependent relative	\$913	\$936

Amend subrule 52.1(3), paragraph "a," subparagraph (2), as follows:



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(2) Effective ~~January 1, 1993~~ *January 1, 1994*, a \$61 \$63 allowance to meet personal expenses and Medicaid copayment expenses.

ITEM 11. Amend subrule 58.24(5), introductory paragraph, as follows:

**58.24(5)** Child in need. To be considered in need, the child shall be destitute or be without living arrangements unless assistance is provided. The child is not in destitution or need if a child aged 16 ~~and or~~ older, who is not attending elementary, secondary or the equivalent level of vocational or technical school full-time, or another member of the household, without ~~good cause, as defined at rule 441-93.133(249C) with the exclusion of 93.133(2)"m,"~~ *identified problems with participation of a temporary or incidental nature as described at rule 441-93.133(249C) or barriers to participation as described at rule 441-93.134(249C)*, in the 30 days prior to approval for emergency assistance:

ITEM 12. Amend subrule 75.1(17) as follows:

**75.1(17)** Persons who ~~would be eligible for but are not receiving~~ *meet the income and resource requirements of the cash assistance programs*. Medical assistance shall be available to *the following* persons who ~~would be eligible for~~ *meet the income and resource guidelines of the family investment program, supplemental security income, state supplementary assistance, or refugee cash assistance, but who are not receiving cash assistance:*

- a. *Aged and blind persons, as defined at 75.13(2).*
- b. *Disabled persons, as defined at 441-75.20(249A).*
- c. *Specified relatives, as listed at 441-subrule 41.22(3), taking care of a child who is determined to be dependent (or would be if needy) because the child is deprived of parental support or care.*
- d. *Pregnant women.*

ITEM 13. Amend subrule **75.1(31)**, paragraph "i," subparagraph (2), as follows:

(2) The caretaker relative had no earnings in one or more of the previous three months, unless the lack of earnings was due to an involuntary loss of employment, illness, or ~~other good cause as provided in there were instances when problems could negatively impact the client's achievement of self-sufficiency as described at 441-subrule 93.133(4).~~

ITEM 14. Amend subrule **75.5(3)**, paragraph "d," as follows:

d. Method of attribution. The resources attributed to the institutionalized spouse shall be one-half of the documented resources of both the institutionalized and community spouse as of the first moment of the first day of the month of the spouse's first entry to a medical facility. However, if one-half of the resources is less than \$24,000, then \$24,000 shall be protected for the community spouse. Also, when one-half of the resources attributed to the community spouse exceeds ~~\$70,740~~ *\$72,660* the amount over ~~\$70,740~~ *\$72,660* shall be attributed to the institutionalized spouse. (The maximum limit shall be indexed annually by the consumer price index.)

If the institutionalized spouse has transferred resources to the community spouse under a court order for the support of the community spouse, the amount transferred shall be the amount attributed to the community spouse if it exceeds the specified limits above.

ITEM 15. Amend subrule 75.9(1) as follows:

**75.9(1)** A Medicaid qualifying trust is a trust or similar legal device established, *on or before August 10, 1993*, other than by will by a person or that person's spouse under which the person may be the beneficiary of payments from the trust and the distribution of these payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the person. Trusts or initial trust decrees established prior to April 7, 1986, solely for the benefit of a mentally retarded person who resides in an intermediate care facility for the mentally retarded, are exempt.

ITEM 16. Amend subrule **75.13(1)**, paragraph "c," as follows:

c. Persons ~~sanctioned from ineligible for FIP for not cooperating with PROMISE JOBS, and persons participating in a strike are not eligible for Medicaid under the coverage groups established at 75.1(1); and 75.1(2); and 75.1(17).~~ Persons receiving Medicaid under the coverage group established at 75.1(1) are referred to PROMISE JOBS and must cooperate with PROMISE JOBS to remain eligible for Medicaid under this coverage group.

ITEM 17. Amend rule 441-75.15(249A) as follows:  
Amend the catchwords as follows:

**441-75.15(249A)** *Disposal of resources for less than fair market value on or after July 1, 1989, or on or after October 1, 1989, between spouses, and on or before August 10, 1993.*

Amend subrule 75.15(1), introductory paragraph, as follows:

**75.15(1)** In determining Medicaid eligibility for persons described in 441-Chapters 75, 83, and 86, transfers of resources occurring on or after October 1, 1989, between spouses ~~and or~~ on or after July 1, 1989, ~~to between~~ others, *and on or before August 10, 1993*, will affect Medicaid ~~eligibility payment for medical services as provided in this rule.~~ Resources transferred by an institutionalized person or an institutionalized person's spouse during or after the 30-month period before the date the person entered the medical institution (for persons eligible for Medicaid on that date), or (for persons not eligible on that date), the date application is made while a person is residing in a medical institution, shall disqualify the institutionalized person for *Medicaid payment of nursing facility services and for a level of care in a medical institution equivalent to that of nursing facility services and for home- and community-based waiver services with these exceptions:*

Amend subrule **75.15(2)**, paragraph "a," as follows:

a. When there is more than one transfer of resources within the 30 months before application *for nursing facility care or home- and community-based waiver services* or after assistance is granted *for nursing facility care or HCBW services*, and the penalty periods *for the multiple transfers have been determined to overlap, then the uncompensated value of the transferred resources shall be added together and the to determine the period of ineligibility.* The penalty period shall begin with the month of the first transfer ~~of resources, and the period shall not exceed 30 months from the last transfer.~~

ITEM 18. Amend subrule **75.16(2)**, paragraph "d," subparagraph (3), as follows:

(3) Needs of spouse. The maintenance needs of the spouse shall be determined by subtracting the spouse's gross income from ~~\$1769~~ *\$1816.50*. (This amount shall

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be indexed for inflation annually according to the consumer price index.)

However, if either spouse established through the appeal process that the community spouse needs income above ~~\$1769~~ \$1816.50, due to exceptional circumstances resulting in significant financial duress, an amount adequate to provide additional income as is necessary shall be substituted.

Also, if a court has entered an order against an institutionalized spouse for monthly income to support the community spouse, then the community spouse income allowance shall not be less than this amount.

ITEM 19. Amend 441—Chapter 75 by adding the following new rules:

**441—75.23(249A) Disposal of assets for less than fair market value after August 10, 1993.** In determining Medicaid eligibility for persons described in 441—Chapters 75, 83, and 86, a transfer of assets occurring after August 10, 1993, will affect Medicaid payment for medical services as provided in this rule.

**75.23(1) Ineligibility for services.**

a. If an institutionalized individual or the spouse of the individual disposed of assets for less than fair market value on or after the look-back date specified in 75.23(2), the institutionalized individual is ineligible for medical assistance for nursing facility services, a level of care in any institution equivalent to that of nursing facility services, and home- and community-based waiver services during the period beginning on the first day of the first month during or after which assets were transferred for less than fair market value and which does not occur in any other periods of ineligibility under this rule and equal to the number of months specified in 75.23(3).

b. If a noninstitutionalized individual or the spouse of the individual disposed of assets for less than fair market value on or after the look-back date specified in 75.23(2), the individual is ineligible for medical assistance for home health care services, home and community care for functionally disabled elderly individuals, personal care services, and other long-term care services during the period beginning on the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this rule and equal to the number of months specified in 75.23(3).

**75.23(2) Look-back date.** The look-back date is the date that is 36 months (or, in the case of payments from a trust or portion of a trust that are treated as assets disposed of by the individual, 60 months) before the date an institutionalized individual is both an institutionalized individual and has applied for medical assistance or the date the noninstitutionalized individual applies for medical assistance.

**75.23(3) Period of ineligibility.** The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in 75.23(2), divided by the statewide average private pay rate for nursing facility services at the time of application. The statewide average private pay rate for nursing facility services is set forth at 75.15(2)"b."

**75.23(4) Reduction of period of ineligibility.** The number of months of ineligibility otherwise determined with respect to the disposal of an asset shall be reduced by

the months of ineligibility applicable to the individual prior to a change in institutional status.

**75.23(5) Exceptions.** An individual shall not be ineligible for medical assistance, under this rule, to the extent that:

a. The assets transferred were a home and title to the home was transferred to either:

(1) A spouse of the individual.

(2) A child who is under the age of 21 or is blind or permanently and totally disabled as defined in 42 U.S.C. section 1382c.

(3) A sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of at least one year immediately before the individual became institutionalized.

(4) A son or daughter of the individual who was residing in the individual's home for a period of at least two years immediately before the date of institutionalization and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility.

b. The assets were transferred:

(1) To the individual's spouse or to another for the sole benefit of the individual's spouse.

(2) From the individual's spouse to another for the sole benefit of the individual's spouse.

(3) To a trust established solely for the benefit of a child who is blind or permanently and totally disabled as defined in 42 U.S.C. section 1382c.

(4) To a trust established solely for the benefit of an individual under 65 years of age who is disabled as defined in 42 U.S.C. section 1382c.

c. A satisfactory showing is made that:

(1) The individual intended to dispose of the assets either at fair market value, or for other valuable consideration.

(2) The assets were transferred exclusively for a purpose other than to qualify for medical assistance.

(3) All assets transferred for less than fair market value have been returned to the individual.

d. The denial of eligibility would work an undue hardship as set forth in 75.15(3).

**75.23(6) Assets held in common.** In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset, or the affected portion of the asset, shall be considered to be transferred by the individual when any action is taken, either by the individual or by any other person, that reduces or eliminates the individual's ownership or control of the asset.

**75.23(7) Transfer by spouse.** In the case of a transfer by a spouse of an individual which results in a period of ineligibility for medical assistance under the state plan for the individual, the period of ineligibility shall be apportioned between the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the state plan. The remaining penalty period shall be evenly divided on a monthly basis, with any remaining month of penalty (prorated as a half month to each spouse) applied to the spouse who initiated the transfer action.

If a spouse subsequently dies prior to the end of the penalty period, the remaining penalty period shall be applied to the surviving spouse's period of ineligibility.

**75.23(8) Definitions.** In this rule the following definitions apply:

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"Assets" shall include all income and resources of the individual and the individual's spouse, including any income or resources which the individual or the individual's spouse is entitled to but does not receive because of action by:

1. The individual or the individual's spouse.
2. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse.
3. Any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

"Income" shall be defined by 42 U.S.C. section 1382a.

"Institutionalized individual" shall mean an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility or who is eligible for home- and community-based waiver services.

"Resources" shall be defined by 42 U.S.C. section 1382b without regard (in the case of an institutionalized individual) to the exclusion of the home and land appertaining thereto.

**441—75.24(249A) Treatment of trusts established after August 10, 1993.** For purposes of determining an individual's eligibility for, or the amount of, medical assistance benefits, trusts established after August 10, 1993, (except for trusts specified in 75.24(3)) shall be treated in accordance with 75.24(2).

**75.24(1) Establishment of trust.**

a. For the purposes of this rule, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the principal of the trust and if any of the following individuals established the trust other than by will: the individual, the individual's spouse, a person (including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse), or a person (including a court or administrative body) acting at the direction or upon the request of the individual or the individual's spouse.

b. The term "assets," with respect to an individual, includes all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or the individual's spouse is entitled to but does not receive because of action by the individual or the individual's spouse, by a person (including a court or administrative body, with legal authority to act in place of or on behalf of the individual's spouse), or by any person (including a court or administrative body) acting at the direction or upon the request of the individual or the individual's spouse.

c. In the case of a trust, the principal of which includes assets of an individual and assets of any other person or persons, the provisions of this rule shall apply to the portion of the trust attributable to the individual.

d. This rule shall apply without regard to:

- (1) The purposes for which a trust is established.
- (2) Whether the trustees have or exercise any discretion under the trust.
- (3) Any restrictions on when or whether distribution may be made for the trust.
- (4) Any restriction on the use of distributions from the trust.

e. The term "trust" includes any legal instrument or device that is similar to a trust, including a conservatorship.

**75.24(2) Treatment of revocable and irrevocable trusts.**

a. In the case of a revocable trust:

(1) The principal of the trust shall be considered an available resource.

(2) Payments from the trust to or for the benefit of the individual shall be considered income of the individual.

(3) Any other payments from the trust shall be considered assets disposed of by the individual, subject to the penalties described at rule 441—75.23(249A) and 441—Chapter 89.

b. In the case of an irrevocable trust:

(1) If there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the principal from which, or the income on the principal from which, payment to the individual could be made shall be considered an available resource to the individual and payments from that principal or income to or for the benefit of the individual shall be considered income to the individual. Payments for any other purpose shall be considered a transfer of assets by the individual subject to the penalties described at rule 441—75.23(249A) and 441—Chapter 89.

(2) Any portion of the trust from which, or any income on the principal from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust (or, if later, the date on which payment to the individual was foreclosed), to be assets disposed of by the individual subject to the penalties specified at 75.23(3) and 441—Chapter 89. The value of the trust shall be determined for this purpose by including the amount of any payments made from this portion of the trust after this date.

**75.24(3) Exceptions.** This rule shall not apply to any of the following trusts:

a. A trust containing the assets of an individual under the age of 65 who is disabled (as defined in section 1614(a)(3) of the Social Security Act) and which is established for the benefit of the individual by a parent, grandparent, legal guardian of the individual, or a court if the state will receive all amounts remaining in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual.

b. A trust established for the benefit of an individual if the trust is composed only of pension, social security, and other income to the individual (and accumulated income of the trust), and the state will receive all amounts remaining in the trust upon the death of the individual up to the amount equal to the total medical assistance paid on behalf of the individual.

c. A trust containing the assets of an individual who is disabled (as defined in 1614(a)(3) of the Social Security Act) that meets the following conditions:

(1) The trust is established and managed by a non-profit association.

(2) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(3) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in 1614(a)(3) of the Social Security Act) by the parent,

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grandparent, or legal guardian of the individuals, by the individuals or by a court.

(4) To the extent that amounts remaining in the beneficiary's account upon death of the beneficiary are not retained by the trust, the trust pays to the state from the remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary.

ITEM 20. Amend rule 441—86.1(249A) by rescinding the definition of "Caretaker relative."

ITEM 21. Rescind subrule 86.8(5) and insert the following new subrule in lieu thereof:

**86.8(5)** FIP-specified relatives. Persons whose income or resources exceed the family investment program's limit and who are a specified relative as listed at 441—subrule 41.22(3) taking care of a child who is determined to be dependent (or would be if needy) because the child is deprived of parental support or care.

ITEM 22. Amend 441—Chapter 93, Division I, Preamble, as follows:

This chapter implements the PROMISE JOBS program which is designed to increase the availability of employment and training opportunities to family investment program (FIP) recipients. The program assigns responsibility for the provision of services to the Iowa department of employment services (DES) and the *department of economic development (DED) as the administrative entity for the Job Training Partnership Act (JTPA)* program, Iowa's two primary providers of employment-oriented services. In addition, the bureau of refugee services (BRS) of the department of human services is assigned the responsibility of providing program services, *to the extent compatible with resources available, to all refugees.*

~~Program~~ PROMISE JOBS services include orientation, assessment, job-seeking skills training, *group and individual* job search, classroom training programs ranging from basic education to postsecondary education opportunities, ~~and~~ work experience, *unpaid community service, parenting skills training, and the FIP-unemployed parent work program.* In addition, ~~clients~~ participants have access to all services offered by the provider agencies.

The program also implements the federal Job Opportunities and Basic Skills (JOBS) program of the Family Support Act of 1988.

ITEM 23. Rescind and reserve rule 441—93.2(249C).

ITEM 24. Rescind rule 441—93.3(249C) and insert the following new rule in lieu thereof:

**441—93.3(249C)** Contracts with provider agencies for provision of services. The department of human services shall contract with the departments of employment services and economic development to provide PROMISE JOBS services to FIP recipients. Services shall include orientation, assessment, job-seeking skills training, group and individual job search, job placement and job development, high school completion, adult basic education (ABE), general educational development (GED), and English as a second language (ESL), vocational classroom training, postsecondary education, work experience, unpaid community service, parenting skills training, and the FIP-UP work program.

The bureau of refugee services shall provide the above services, to the extent compatible with resources avail-

able, to persons who entered the United States with refugee status.

ITEM 25. Amend subrule 93.5(3), introductory paragraph and paragraph "b," as follows:

**93.5(3)** Waiting lists. Because of state and federal budgetary limitations on the PROMISE JOBS program, persons who are not designated parents on FIP-UP cases who complete orientation and assessment ~~and job club~~ shall be placed on a waiting list, when appropriate, for any further PROMISE JOBS services. Persons shall be removed from the waiting list and placed in additional components as funds and training slots become available. The department shall have the administrative authority to determine agency and geographical breakdowns *or to designate specific PROMISE JOBS components or supportive service levels* for a waiting list. Persons who are designated parents on FIP-UP cases will not be placed on a waiting list, provided sufficient funds are available to serve them.

b. The department shall also have the administrative authority to remove nontarget group members and SEID *and ISHIP* participants from the waiting list and make services available to them, subject to the restraints described at 93.5(3)"a"(1) to (3).

ITEM 26. Amend rule 441—93.6(249C) as follows:

Rescind subrule 93.6(1) and insert the following new subrule in lieu thereof:

**93.6(1)** Requirements of orientation. During orientation, each participant shall receive a full explanation of the advantages of employment under the family investment program (FIP), services available under PROMISE JOBS, a review of participant rights and responsibilities under the family investment agreement (FIA) and PROMISE JOBS, a review of the limited benefit plan (LBP) as described at 441—subrule 41.24(7) (even though control group FIP participants are not eligible for the FIA and the LBP does not apply to them), an explanation of the benefits of cooperation with the child support recovery unit, and an explanation of the other programs available through PROMISE, specifically the cash bonus and transitional Medicaid and child care assistance programs.

a. Each participant shall sign Form WI-3305, Your Rights and Responsibilities, acknowledging that the information described above has been provided.

b. Participants are required to complete a current employment services registration, Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, when requested by PROMISE JOBS staff.

c. Orientation may also include completing self-assessment documents.

d. The PROMISE JOBS worker shall meet with each participant, or family if appropriate when two parents or children who are mandatory PROMISE JOBS participants are involved, to determine readiness to participate, establish expenses and a payment schedule and to discuss child care needs.

Rescind subrule 93.6(3).

ITEM 27. Rescind rule 441—93.8(249C) and insert the following new rule in lieu thereof:

**441—93.8(249C)** Self-initiated training. Registrants who have attended one or more days of training prior to participating in a PROMISE JOBS orientation are considered to be self-initiated. For registrants who at time of call-up for PROMISE JOBS orientation are in self-

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initiated classroom training, including government-sponsored training programs, PROMISE JOBS staff shall determine whether the training program meets acceptable criteria as prescribed for the classroom training component at rule 441—93.14(249C).

**93.8(1) Nonapprovable training.** When it is determined that the self-initiated training does not meet the criteria of rule 441—93.14(249C), the registrant may be required to participate in PROMISE JOBS activities or may be deactivated or have participation waived as long as the training, although not approvable by PROMISE JOBS standards, can still be reasonably expected to result in self-sufficiency. PROMISE JOBS expense allowances are not available for persons in nonapprovable training.

**93.8(2) Approvable training.** When a self-initiated training program meets PROMISE JOBS program standards, including SEID and ISHIP as described at 441—subrule 48.3(4), the participant shall be enrolled in the classroom training component in order to be eligible for child care and transportation assistance. Eligibility for payment of transportation and child care allowances shall begin for that month in which the training plan is approved or the participant is removed from a waiting list as described at 93.5(3), whichever is later. Self-initiated participants are not eligible for expenses allowances to pay for tuition, fees, books, or supplies.

ITEM 28. Amend rule 441—93.9(249C) as follows:

Amend the introductory paragraph as follows:

**441—93.9(249C) Employability plan.** Prior to active participation, a ~~ease self-sufficiency~~ plan shall be developed for each registrant using Form WI-3304, Employability Plan, and Form 470-2926, Employability Plan Guide Book.

Amend subrule **93.9(1)**, paragraphs "c" and "d," as follows:

c. The employability plan shall, to the maximum extent possible, reflect the goals of the registrant, subject to program rules, funding, the registrant's capability, experience and aptitude, and the potential market for the job skills currently possessed or to be developed. ~~When no specific JTPA activity is being contemplated, the employability plan shall document the referral to JTPA for the provision of additional services.~~

d. The employability plan shall also describe services to be provided, including the FIP-UP work program, child care and other supportive services, and the activities that will be undertaken by the participant to achieve the employment goal, including *job-seeking skills, job search, high school completion, GED, ABE, ESL, unpaid community service, parenting skills training, and* vocational classroom training activities when appropriate.

ITEM 29. Amend rule 441—93.10(249C) as follows:

Amend the introductory paragraph as follows:

**441—93.10(249C) Arranging for services.** Staff is responsible for providing or ~~arranging~~ *helping the participant to arrange* for employment-oriented services, as required, to facilitate the registrants' successful participation, including client assessment or case management, employment education, transportation, child care, referral for medical examination, and supportive services under the family development and self-sufficiency program described in 441—Chapter 165. PROMISE JOBS funds shall be used to pay costs of obtaining a birth certificate when the birth certificate is needed in order for the registrant to

complete the employment service registration process described in rule 441—93.6(249C). PROMISE JOBS funds may also be used to pay expenses for clients enrolled in JTPA-funded components when those expenses are allowable under these rules. Clients shall submit Form PA-8121-5, Estimate of Cost, to initiate allowances or change the amount of payment.

Amend subrule 93.10(1), introductory paragraph, as follows:

**93.10(1) Payment for child care.** Payment for child care, if required for participation in *any* PROMISE JOBS component other than orientation, not specifically prohibited elsewhere in these rules, and not available from any other source, shall be provided for participants after service has been received. Payment shall be made monthly unless the child care provider requires more frequent payment. ~~The PROMISE JOBS worker shall make payment~~ *Payment shall be authorized* directly to the child care provider unless circumstances indicate that payment should be issued to the participant. These circumstances include reimbursement for the participant who documents payment for child care with personal funds and other circumstances as deemed appropriate *and documented by the PROMISE JOBS worker and approved by the central office of the PROMISE JOBS provider agency staff authorizing the payment.*

Rescind subrule **93.10(1)**, paragraph "e."

Amend subrule 93.10(6), introductory paragraph, as follows:

**93.10(6) Transportation allowances.** Participants may receive a transportation allowance for each day of participation, if transportation is required for participation in a PROMISE JOBS activity, ~~including the assessment component described at 93.11(9)~~, but shall not receive a transportation allowance for orientation or for assessment activities ~~sponsored solely by JTPA except as specified at subrule 93.2(3) which occur on the same day as orientation.~~ The transportation allowance shall be paid monthly at the start of each month of participation or when participation begins, whichever is earlier.

Amend subrule 93.10(7) as follows:

**93.10(7) Expense allowances during a month of FIP suspension.** Payment for expenses shall be made for a month of FIP suspension if the client chooses to participate during that month in a PROMISE JOBS component to which the client has been previously assigned.

Amend subrule **93.10(8)**, paragraph "a," as follows:

a. When the participant ~~fails to attend any~~ attends none of the scheduled days of participation in a PROMISE JOBS activity, the entire transportation allowance shall be considered an overpayment. Recovery of the overpayment shall be initiated when it becomes clear that subsequent participation in the activity is not possible for reasons such as, but not limited to, family investment program ineligibility, PROMISE JOBS sanction, deactivation from PROMISE JOBS, or exemption from PROMISE JOBS participation requirements.

ITEM 30. Rescind rule 441—93.11(249C) and insert the following new rule in lieu thereof:

**441—93.11(249C) Assessment and assignment to other activities and components.** PROMISE JOBS components include assessment, job search activities, basic education services, work experience, unpaid community service, parenting skills training, postsecondary classroom training, and the FIP-UP work program.

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**93.11(1) Assessment.** The purpose of assessment is to provide for a thorough self-evaluation by the FIP participant or family and to provide a basis for PROMISE JOBS staff to determine employability potential and to determine the services that will be needed to achieve self-sufficiency as described in the PROMISE JOBS employability plan. Assessment shall be conducted so as to ensure that participants can make well-informed choices and PROMISE JOBS workers can provide appropriate guidance as they complete the employability plan to achieve the earliest possible self-sufficiency for the FIP family. Assessment services shall be provided through coordination among PROMISE JOBS provider agencies.

Assessment services shall be delivered through options known as assessment I, assessment II, and assessment III. These options may be provided as separate services, delivered at appropriate times during the duration of the employability plan, or may be delivered as a continuous service up to the level necessary to provide the assessment needed for participant and PROMISE JOBS worker decisions while completing the employability plan.

a. Assessment I shall be provided for all FIP participants. PROMISE JOBS staff shall meet individually with FIP recipients who are referred to PROMISE JOBS for development of the employability plan. This assessment meeting, at a minimum, shall assess the family's financial situation, family profile and goals, employment background, educational background, housing needs, child care needs, transportation needs, health care needs, and other barriers which may require referral to entities other than PROMISE JOBS for services.

(1) Assessment I may be the level of assessment appropriate for persons for whom: a part-time job has the potential to become full-time; there is an expectation of securing immediate employment; there are obvious literacy or other basic education barriers; family responsibilities limit the time that can be dedicated toward achieving self-sufficiency; there are transportation barriers; or there are multiple barriers which indicate that FaDSS, other family development services, or other social services are appropriate before other significant steps can be taken toward self-sufficiency.

(2) Persons in these circumstances may, based on the results of assessment I, complete the employability plan to participate in activities such as, but not limited to, job search, unpaid community service, parenting skills training, FaDSS or other family development services, other social services, or basic or remedial education, perhaps in conjunction with other services.

(3) The services of assessment I shall be provided in one individual session unless the PROMISE JOBS worker documents a need for additional time.

(4) Participants shall have the option of substituting assessment information which they have completed with another agency or person such as, but not limited to, JTPA, Head Start, public housing authorities, child welfare workers, and family development services for assessment I. Participants shall authorize PROMISE JOBS to obtain these assessment results by signing Form MH-2201-0, Consent to Release or Obtain Information. To be used in place of assessment I, the assessment results must contain all or nearly all of the items from paragraph "a" above and must have been completed within the past 12 months.

(5) Participants shall have the option to supplement assessment I with information in the manner as described

in subparagraph (4) above and to establish communication between PROMISE JOBS staff and other agencies or persons in order to ensure that the employability plan activities do not conflict with any case plans which have already been established for the family. Authorizing this communication is not required in order to complete the employability plan but PROMISE JOBS staff shall have the authority to ask for verification of activities planned under another case plan when the participant reports conflicts.

b. Assessment II services shall be provided for those who, during assessment I, have no barriers to limit participation, have no specific career goal or plan, and need further assessment services to complete the employability plan; and those who are ready to advance to other components after completing PROMISE JOBS or other services which were determined after assessment I and are part of the employability plan.

(1) The services of assessment II may include, but are not limited to, literacy and aptitude testing, educational level and basic skills assessment, self-esteem building, interest assessment, exposure to nontraditional jobs, exposure to job retention skills, goal setting, motivational exercises, exposure to job-seeking skills, and exposure to role models.

(2) Persons who complete assessment II may complete the employability plan to participate in PROMISE JOBS components such as, but not limited to, job club or other job search activities, work experience placement, or referral for entrepreneurial training.

(3) Assessment III services shall be provided for those who, during assessment I or II, request postsecondary classroom training as part of the employability plan; or those whose previous participation indicates a need for and a likelihood of success in postsecondary classroom training.

c. Services of assessment III shall provide occupational-specific assessment or guidance before completing the employability plan for postsecondary classroom training. These services may be provided by PROMISE JOBS staff or other entities as arranged locally.

It is expected that assessment II and assessment III activities shall be provided in a maximum of 20 hours for each option unless the PROMISE JOBS worker documents a need for additional time.

d. FIP participants who previously participated in assessment options and then were canceled from FIP may be required to participate in any assessment option again when the PROMISE JOBS worker determines that updated assessment is needed for development or amendment of the employability plan.

e. Family development and self-sufficiency (FaDSS) program participants attend orientation but are not referred to assessment until the FaDSS grantee approves the assignment of the FaDSS participant to other PROMISE JOBS activities. FaDSS participants who have completed assessment in the past may be required to complete assessment again when the FaDSS grantee approves assignment to other PROMISE JOBS activities if the PROMISE JOBS worker believes that extended assessment is necessary to reassess the participant's abilities and circumstances.

f. Except for assessment activities which occur on the same day as orientation, persons participating in assessment options are eligible for allowances for transportation



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and child care needed to allow the scheduled participation. Persons who miss any portion of scheduled assessment services may be required to make up the missed portion of the sessions, based on worker judgment and participant needs. When make-up sessions are required, the participant shall not receive an additional transportation allowance, but necessary child care shall be paid.

g. A participant who has completed assessment I and who wishes to include postsecondary classroom training in the employability plan shall be required to participate in assessment II and assessment III unless the participant is not required to do so because:

(1) The person had been accepted for training by either SEID or an ISHIP training provider.

(2) The person is already involved in approvable self-initiated training at the time of PROMISE JOBS orientation.

(3) Participation in assessment II and assessment III would interfere with training initiated by the participant after orientation and the training is approvable under PROMISE JOBS. Participants who initiate training after orientation are not considered self-initiated but are otherwise treated in accordance with rule 441—93.8(249C) or in accordance with 93.11(2).

**93.11(2)** Assessment-related restrictions on expense allowance assistance for self-initiated training. When persons described at 93.11(1)"g"(2) and (3) are still within the first quarter or semester of involvement with the training program that they have chosen, expense allowance assistance through PROMISE JOBS cannot be approved, even if the training is otherwise approvable, until the persons have completed the assessment II and assessment III options or have successfully completed the first quarter or semester of the training program in accordance with the requirements of the educational institution being attended. Persons involved in training programs where quarters or semesters are not used must successfully complete four months of the training program before assistance can begin, except for SEID and ISHIP participants who are exempt from the limitations of this paragraph. Otherwise, assistance shall only be approved effective with the second quarter or semester, or with the fifth month of participation in the training program, as applicable to the client's situation.

**93.11(3)** Requirements for parents who have not completed high school. Assessment and development of the employability plan shall follow these guidelines for parents under the age of 20.

a. Parents under the age of 16 who have not completed high school shall be expected to use enrollment or continued attendance in high school completion as a first step in the employability plan.

b. Parents aged 16 or 17 who have not completed high school shall be expected to use enrollment or continued attendance in high school completion or the GED program as a first step in the employability plan. Participants deemed incapable of participating in these activities by the local education agency shall choose other PROMISE JOBS components.

c. Parents who are aged 18 or 19 who have not completed high school shall be expected to use enrollment or continued attendance in high school completion or the GED program as a first step in the employability plan if assessment indicates the participants are capable of completing regular high school, alternate high school, or GED. Participants deemed incapable of participating in

these activities shall choose other PROMISE JOBS components.

**93.11(4)** Participation after completion of appropriate assessment. After completion of the appropriate assessment level, participants shall be referred for the PROMISE JOBS component services or supportive services which are designated in the completed employability plan.

**93.11(5)** Retention of a training slot. Once a person has been assigned a PROMISE JOBS training slot, that person retains that training slot until FIP eligibility is lost for more than four consecutive months, or the person becomes exempt from PROMISE JOBS and the person does not choose to volunteer to continue to participate in the program.

ITEM 31. Rescind rule 441—93.12(249C) and insert the following new rule in lieu thereof:

**441—93.12(249C) Job search options.** Employment is the final goal of the employability plan as described at rule 441—93.9(249C) and PROMISE JOBS participants shall have several options to search for work: job club, individual job search, and self-directed job search. The participant and the PROMISE JOBS worker shall incorporate into the self-sufficiency plan the job search option which is appropriate for the previous work history, skill level, and life circumstances of the participant. Job search contacts shall be documented by PROMISE JOBS staff or by participants, as appropriate. Participant documentation shall be provided on Form 470-3099, Job Search Record, as described at 93.35(3). For job search planning and reporting purposes, each job search contact documented by the participant shall be considered to require one hour of participation.

**93.12(1) Job club.** Job club consists of one week of job-seeking skills training and two weeks of group job search. It is expected that job clubs will be designed to require at least 20 hours a week of participation in each week. However, less than 20 hours a week may be scheduled based on local office need and resources. Participants who choose job club shall receive a child care allowance, if required, and an allowance as described at 93.10(6) to cover costs of transportation, if required. The transportation allowance shall be paid in full at the start of participation.

Job-seeking skills training includes, but is not limited to: self-esteem building, goal attainment planning, resumé development, grooming, letters of application and follow-up letters, job application completion, job retention skills, motivational exercises, identifying and eliminating employment barriers, positive impressions and self-marketing, finding job leads, obtaining interviews, use of telephones, interviewing skills development and practice interviewing.

a. All participants who choose the job club option shall receive one week of job-seeking skills training. Daily attendance during the one week of job-seeking skills training is necessary. Participants who miss any portion of the job-seeking skills training shall repeat the entire week of training.

(1) Participants who must repeat the job-seeking skills training because of absence due to good cause as described elsewhere in these rules shall receive an additional transportation allowance as described at 93.10(6) and required child care payment shall be made.

(2) Participants who must repeat job-seeking skills training for absence without good cause shall not receive



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an additional transportation allowance. Required child care payment shall be allowed.

b. Participants shall then take part in a structured employment search activity for a period not to exceed two weeks. Scheduled activities and required hours of participation shall reflect proven job-search techniques and the employment environment of the community of the local office and may be varied due to the resources available and the needs of the participants.

Participants who choose job club shall make up absences which occur during the two-week job search period. Additional transportation allowances shall not be paid to these persons. Required child care payments shall be allowed.

c. Job club participants other than designated parents on FIP-UP cases who obtain employment of 86 or more but less than 129 hours per month may discontinue job club at their option.

d. Job club participants who, during participation, obtain part-time employment of less than 86 hours per month shall continue job club unless the scheduled job club hours conflict with the scheduled hours of employment. PROMISE JOBS participation shall be scheduled to occur during those hours where no conflict with work hours exists.

e. Refer to rule 441—93.22(249C) for job club participation requirements for FIP-UP qualifying parents.

**93.12(2)** Individual job search. The individual job search component shall be available to participants for whom job club is not appropriate or not available. It is especially to be considered for participants who have completed training or have recent ties with the work force. The total period for each episode of individual job search shall not exceed 12 weeks or 3 calendar months.

a. The participant shall, in consultation with PROMISE JOBS staff, design and provide a written plan of the individual job search activities. The plan shall contain a designated period of time, not to exceed four weeks or a calendar month, and the specific locations of the job search. It shall also contain, but not be limited to, information as specific as possible pertaining to, for example, areas of employment interest and employers to be contacted.

b. Participants who choose individual job search shall receive a child care allowance, if required, and an allowance as described at 93.10(6) to cover costs of transportation, if required.

(1) Payment for required child care shall be limited to 20 hours per week.

(2) The transportation allowance shall be paid in full at the start of each designated time period of the individual job search. The anticipated days for job search shall be included in the written plan so as to provide the most effective use of transportation funds. Transportation allowances for any missed days of job search activity shall be subject to transportation overpayment policies as described at 93.10(8).

**93.12(3)** Self-directed job search. PROMISE JOBS participants who indicate, during assessment I, a desire to complete an independent job search or who have achieved an employability plan interim goal which should lead to employment shall be provided the option of first engaging in self-directed job search activities before beginning other employability plan options. This option does not apply to parents under the age of 20 who are required to participate in high school completion activities and FIP-UP designated parents who are aged 20 and over.

a. The participant shall, in consultation with PROMISE JOBS staff, design and provide a written plan of job search activities. The plan shall contain a designated period of time, not to exceed four weeks or a calendar month, and the specific locations of the job search. It shall also contain, but not be limited to, information as specific as possible pertaining to, for example, areas of employment interest and employers to be contacted.

b. The participant will not be required to provide documentation of the job search activities.

c. Transportation and child care allowances are not available for this job search option.

ITEM 32. Rescind and reserve rule **441—93.13(249C)**.

ITEM 33. Amend rule 441—93.14(249C) as follows:

Amend subrule **93.14(1)**, paragraph "a," as follows:

a. The plan shall be approved for training facilities which are approved or registered with the state or accredited by an appropriate accrediting agency. *Institutional training can be provided by both public and private agencies.*

Amend subrule 93.14(6) as follows:

**93.14(6)** *Testing and grade transcripts before training plan approval.* Prior to training plan approval and as part of the continuing assessment process *described at rule 441—93.11(249C)*, staff may require that clients take nationally recognized vocational tests, including the general aptitude test battery, as well as provide grade transcripts from previous training. ~~A participant who has not previously taken part in all three weeks of assessment and who agrees that more assessment is needed may be referred back to DES for one or more additional weeks of assessment on an exception basis only when both DES and JTPA believe that additional assessment is needed. However, assessment shall not exceed three weeks total before participation in another PROMISE JOBS component.~~

Add the following new subrules 93.14(12), 93.14(13), and 93.14(14):

**93.14(12)** Participation allowances. An allowance shall be made for expenses of training. This shall include tuition; fees, including graduation, books, basic school supplies, specific school supplies related to obtaining credit for a course and required of all students in a course, GED testing and certificates, required uniforms, and other fees required for completion of training; child care; and transportation and travel costs required for certification or testing. In addition, allowances shall be made for enrollment, school testing or school application fees, educational grant or scholarship application fees, and certain practicum expenses as described at 93.14(12)"a"(4). PROMISE JOBS is authorized to provide payment for expenses allowable under these rules to the training facility for the educational expenses of tuition and fees and books and supplies which are provided by the facility and billed to the PROMISE JOBS participant. Payment may also be made to the client in those situations where this is determined to be appropriate by the PROMISE JOBS worker.

a. PROMISE JOBS allowances for classroom training are limited as follows:

(1) Tuition allowance for baccalaureate degree programs shall not exceed the maximum undergraduate Iowa resident rate charged by a state university in Iowa.

(2) Tuition allowances for all other programs shall not exceed the rate charged by the state of Iowa area school located nearest to the participant's residence which offers a course program comparable to the one in which the par-

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

participant plans to enroll. If an area school in Iowa does not offer a comparable program, the maximum tuition rate payment shall not exceed the Iowa resident rate charged by the area school located nearest to the participant's residence.

(3) A standard allowance of \$10 per term or actual cost, whichever is higher, for basic school supplies shall be allowed for those participants who request it and who do not have sufficient educational financial awards to cover purchase of basic supplies or who must purchase basic school supplies before educational awards are received or are made available. A claim for actual costs higher than \$10 must be verified by receipts.

(4) A per diem allowance of \$10 for living costs during a practicum shall be allowed when the practicum required by the curriculum of the training facility would require a round-trip commuting time of three hours or more per day and is not available closer to the client's home. If practicum earnings or any nonreimbursable assistance is available to meet practicum living costs, no allowance shall be made.

(5) Allowances may also be authorized to meet the costs of travel required for certification and testing, not to exceed the transportation allowance as described at 93.10(6) and the current state employee reimbursement rate for meals and lodging.

(6) No allowance shall be made for any item that is being paid for through earnings that are diverted for that purpose.

(7) Funds may not be used to purchase supplies to enable a participant to begin a private business.

b. Participants shall submit Form PA-8121-5, Estimate of Cost, to initiate allowances or change the amount of payment. Participants shall use PROMISE JOBS allowances which they receive to pay authorized expenses.

c. Participants shall furnish receipts for expenditures which they pay, except for transportation allowances and items purchased with the \$10 standard allowance for basic school supplies, unless issued in accordance with 93.14(12)"a"(3), within ten days of receipt of allowances. Failure to provide receipts will preclude additional payments.

d. Receipts may be requested for allowances paid directly to the training provider if the PROMISE JOBS worker determines it is appropriate.

**93.14(13) Payment of allowances.**

a. Participant eligibility for payment of transportation and child care allowances shall commence for that month that the participant begins training under an approved plan or is removed from a waiting list as described at 93.5(3), whichever is later, and shall be terminated when training is terminated.

b. PROMISE JOBS responsibility for financial assistance begins with that month during which the participant begins training under an approved plan or is removed from a waiting list as described at 93.5(3), whichever is later.

c. Retroactive payments shall only be allowed under the following conditions:

(1) If plan approval or removal from a waiting list as described at 93.5(3), whichever is later, occurs after the start of the term due to administrative delay or worker delay, payments shall be approved retroactive to the start of the term for which the plan is approved or removal from the waiting list is authorized. If costs were already paid by the participant with private resources, the partici-

pant shall be reimbursed. Payment shall be approved for all expenses allowable under these rules.

(2) If plan approval or removal from a waiting list as described at 93.5(3), whichever is later, is delayed due to the suspension of FIP benefits, retroactive payments for the month of suspension shall be made. If costs were already paid by the participant with private resources, the participant shall be reimbursed.

(3) If plan approval is delayed due to the fault of the participant, payment eligibility shall begin with the first day of the month during which the plan is approved or the month in which the participant is removed from a waiting list as described at 93.5(3), whichever is later. In this instance, there shall be no reimbursement for training costs already paid by the participant.

d. In all instances reimbursements shall not be made if costs were paid with educational awards that are not subject to repayment.

e. When a participant receives transportation payment from another program which equals or exceeds that possible under PROMISE JOBS, transportation shall not be paid by PROMISE JOBS for any month covered by the other programs. When the amount received from another program is less than that possible under PROMISE JOBS, a supplemental payment may be made as long as the combined payment does not exceed that normally paid by PROMISE JOBS.

f. Payments shall not exceed the rate that the provider would charge a private individual.

**93.14(14) Completion or termination of a training plan.**

a. Participants who successfully complete their training plans may keep any books or supplies, including tools, which were purchased with PROMISE JOBS funds.

b. Participants who do not complete their training program and do not obtain training-related employment within 60 days of leaving training shall return all reusable supplies, including books and tools but not clothing, purchased by PROMISE JOBS.

(1) Staff are authorized to donate to nonprofit organizations any items which they determine are unusable by the program.

(2) When tools are not returned, the amount of the PROMISE JOBS payment shall be considered an overpayment unless the participant verifies theft of the tools through documentation of timely report to a law enforcement agency.

c. When a participant enrolled in the classroom training component drops out of training without good cause, or the training plan is terminated for failure to comply with PROMISE JOBS requirements as specified at 93.14(14)"d," "e," and "f," the participant shall be denied additional PROMISE JOBS-funded classroom training services for a minimum of one year from the time that the participant dropped out, or from the time that the training plan was terminated for failure to comply with PROMISE JOBS requirements. This one-year period of denied classroom training service does not apply to participants who are under the age of 18 and who are required to participate in high school completion activities.

d. A worker shall terminate a training plan for any of the following reasons:

(1) The participant fails to appear for two consecutive scheduled appointments with the worker without good cause. The client shall have been notified of the appointments in writing.

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(2) The participant, after a school term of probation as described in 93.14(8), is unable to achieve the cumulative grade point average required by the training facility. This rule does not apply to parents under the age of 18 who are enrolled in high school completion activities.

(3) The participant refuses or fails to apply for outside funding resources when it is known that these sources are available.

(4) The participant misuses expense allowances to the extent that the training plan is no longer achievable.

(5) The participant states that there is no intent to become employed after completing training.

(6) The participant fails to provide verification, as described at 93.35(2), of hours of attendance in an educational program.

e. The training plan shall be terminated immediately for any participant who knowingly provides receipts or any other written statements which have been altered, forged, or, in any way, are not authentic.

f. A worker may terminate a training plan for any of the following reasons:

(1) The participant fails to cooperate in providing information concerning grades, academic progress, financial resources, change of address, change of telephone number, or change of family composition.

(2) It can be documented that the participant's continuation in the training program is detrimental to family functioning.

(3) The participant withdraws from courses or from the training program without prior PROMISE JOBS approval.

g. When it becomes apparent that the participant cannot complete the training plan within the maximum participation limit, as described at 93.14(3), the PROMISE JOBS worker shall determine whether termination of the training plan is appropriate.

(1) When the participant cannot complete the training plan within the maximum participation limit as described at 93.14(3), the worker shall continue the plan and pay expenses, if appropriate, up to the limit of the maximum participation limit when the counselor or lead instructor in the educational program verifies in writing that the student's progress or achievements meet the grade-point requirement, and the student's interest and participation indicate there is likelihood of successful completion of the program, and the remaining coursework could be completed with the additional six-month period of time. In addition, the student must be able to demonstrate access to financial resources which will enable completion of the program during the additional six months.

(2) In addition, when it is determined that the participant can complete the training plan within six months after the expiration of the maximum participation limit described at 93.14(3), the worker shall waive participation in other components after the end of the maximum participation period as long as the participant is attending the training facility.

(3) The PROMISE JOBS worker shall terminate the training plan at the point in time when it becomes obvious that the participant cannot complete the training plan within six months after expiration of the maximum participation period described at 93.14(3).

h. Unless the participant will be subject to the conciliation process described at 441—subrules 41.1(7) and 41.4(8), when the PROMISE JOBS worker issues a Notice of Decision: Services, Form SS-1104-0, to terminate

the training plan, the participant has 30 days from the date of the notice to discuss the situation with the PROMISE JOBS worker and attempt to resolve the issues causing termination. If the issue can be resolved, the PROMISE JOBS worker shall reinstate the training plan. This rule in no way affects the participant's ability to appeal the Notice of Decision: Services in accordance with rule 441—93.40(249C).

i. Participants whose PROMISE JOBS training plans are terminated for misuse of funds or for providing records which they have falsified, or participants who fail to return supplies, when required, shall not be eligible for future classroom training services for a period of two years from the date of plan termination.

(1) In addition, future classroom training services shall not be approved unless receipts for previous allowances are provided; PROMISE JOBS-funded items, when required, are returned; or the value of the items is refunded.

(2) When the amount of the PROMISE JOBS payment for tools has been considered an overpayment as described at 93.14(14)"b"(2), the participant may refund the claim balance as recorded in the overpayment recovery system to meet this requirement.

ITEM 34. Rescind rule 441—93.15(249C) and insert the following new rule in lieu thereof:

**441—93.15(249C) Unpaid community service.** Unpaid community service shall provide participants with opportunities to establish or reestablish contact with the work force in a nonthreatening environment while providing services which are of direct benefit to the community.

**93.15(1) Unpaid community service work sites.** Unpaid community service work sites shall be public or private nonprofit organizations.

a. When the participant and the PROMISE JOBS worker agree that an unpaid community service placement is appropriate, the participant is responsible for locating and making arrangements with the work site.

b. The PROMISE JOBS provider agencies shall develop local listings of potential unpaid community service work sites which participants can use when selecting a work site.

c. Work site organizations which provide unpaid community service work sites shall receive a written explanation of the following placement criteria. The placement shall:

(1) Not be related to political, electoral or partisan activities.

(2) Not be developed in response to or in any way associated with the existence of a strike, lockout or other bona fide labor dispute.

(3) Not violate any existing labor agreement between employees and employer.

(4) Comply with applicable state and federal health and safety standards.

(5) Not be used by work site organizations to displace current employees or to infringe on their promotional opportunities, shall not be used in place of hiring staff for established vacant positions, and shall not result in placement of a participant in a position when any other person is on layoff from the same or an equivalent position in the same unit.

**93.15(2)** Appropriate use of unpaid community service. The unpaid community service component is expected to be used by participants for whom more intensive

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

efforts toward self-sufficiency are not appropriate at the moment. Participants may combine this activity with another such as, but not limited to, GED or other high school completion, ESL, FaDSS or other family development services, and parenting skills training. It is expected that the unpaid community service work site will be less demanding than work experience placements and specific skills-training tasks are not required.

**93.15(3) Participation requirements.**

a. Formal interviews are not required to establish the relationship between the participant and the work site organization.

b. The length of the work site assignment and the weekly hours of participation shall be determined through agreement among the work site organization, the participant, and the PROMISE JOBS worker.

c. The director (or designee) of the work site organization shall be asked to verify the monthly hours of participation using Form 470-3097, Unpaid Community Service Monthly Report, provided by the PROMISE JOBS provider agencies.

**93.15(4) Allowances for unpaid community service placement.** Unpaid community service work sites may offer on-site child care and other participant-friendly services. A child care allowance and a transportation allowance for each month of participation or part thereof, as described at 93.10(6), shall be paid if these services are not provided by the work site organization and are required for participation.

ITEM 35. Rescind rule 441—93.16(249C) and insert the following new rule in lieu thereof:

**441—93.16(249C) Parenting skills training.** Activities which strengthen the participant's ability to be a better parent can be approvable training under PROMISE JOBS as long as the participant is active in at least one other PROMISE JOBS component. Approvable parenting skills training could be enrollment in a parenting education program or any other arrangement which provides specific parenting skills training.

A child care allowance, payment for fees or books, and a transportation allowance for each month of participation, or part thereof, as described at 93.10(6), shall be paid if these services are not provided by any other entity and are required for participation.

ITEM 36. Amend rule 441—93.17(249C) as follows:

**441—93.17(249C) Health and safety.** The ~~worker~~ *PROMISE JOBS staff* may require a person to complete a physical examination prior to ~~approval of a training plan including a particular PROMISE JOBS component or other activity in the employability plan~~ when a ~~client~~ *participant* specifies or exhibits any physical conditions which might jeopardize successful participation in the program.

**93.17(1) Physician's report.** The physician should indicate to the best of the physician's knowledge that the person is capable of completing the ~~training~~ *PROMISE JOBS component or other activity* or continuing with appropriate employment.

**93.17(2) ~~If physical or emotional disabilities are present, these shall be under control prior to enrollment in training. Reserved.~~**

**93.17(3) Safety precautions.** If the work or training activity is so hazardous that safety glasses, hard hats, and so forth are needed, *participation shall not be arranged or*

*approved unless these safety precautions shall be provided are available.*

ITEM 37. Rescind and reserve rules **441—93.18(249C)** to **441—93.20(249C)**.

ITEM 38. Rescind subrules 93.21(1) and 93.21(10) and insert the following new subrules in lieu thereof:

**93.21(1) Work experience requirements.** Work experience shall combine work site assignment and job search activities.

a. Participants who choose work experience placement shall be assigned to work sites on a schedule which uses eight hours per day, between the hours of 8 a.m. and 6 p.m., Monday through Friday, unless the participant agrees to another schedule. The number of days per week shall be determined by agreement among the participant, the sponsor, and the PROMISE JOBS worker, with a maximum of four days and a minimum of one day. The number of days, the scheduled hours, and the length of the assignment shall reflect the assessed needs of the participant and the needs of the sponsor, using the standard that participation shall be equivalent to the level of commitment required for full-time employment or significant so as to move toward that level.

b. Work experience placements may be combined with part-time employment or with participation in other PROMISE JOBS activities such as, but not limited to, GED or other high school completion activities, parenting skills training, postsecondary classroom training, or placement on a PROMISE JOBS waiting list for postsecondary classroom training.

c. In addition to work experience placement, participants shall also engage in job-seeking activities one day per week unless they are also participating in classroom training activities.

Job-seeking activities for work experience participants shall include contacting a minimum of five employers per week unless fewer are specified by staff. Job search contacts shall be documented with Form 470-3099, Job Search Record, as described at 93.35(3).

d. Each work experience assignment shall not exceed six months in duration. Persons who complete a work experience assignment may move to another option as provided under the employability plan, be assigned to a different work site, or be reassigned to the same work site, whichever is appropriate under the employability plan.

e. Participants who are assigned to work experience may move to another component to facilitate regular employment before completing the months of the assignment when it is felt that sufficient work experience has been gained.

**93.21(10) Required clothing and equipment.** Clothing, shoes, gloves, and health and safety equipment for the performance of work at a work site under the program, which the participant does not already possess, shall be provided by the entity responsible for the work site or, in the case of safety equipment which the work site entity does not normally provide to employees, through PROMISE JOBS expense allowances. Under no circumstances shall participants be required to use their assistance or their income or resources to pay any portion of their participation costs.

a. Items which are provided by the entity responsible for the work site shall remain the property of the entity

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responsible for the work site, unless the participant and the entity agree to a different arrangement.

b. Safety equipment which the entity responsible for the work site does not normally provide to employees, including, but not limited to, steel-toed shoes, may be provided through PROMISE JOBS expense allowances up to a limit of \$100 per participant per work site assignment.

ITEM 39. Amend rule 441—93.22(249C) as follows:

Amend the introductory paragraph as follows:

**441—93.22(249C) FIP-UP work program.** When required to meet the federal requirements as described at 93.5(1)"c," one parent from any FIP-UP case shall be enrolled into the FIP-UP work program upon call-up by ~~DES~~ *PROMISE JOBS*. When both parents are mandatory PROMISE JOBS participants or when one parent is a mandatory participant and one is a volunteer, the PROMISE JOBS worker shall consult with the parents before responsibility is assigned for the FIP-UP work program participation. When one parent is mandatory and one is exempt, the exempt parent may volunteer for PROMISE JOBS in order to fulfill the responsibility for the FIP-UP work program participation. The parent obligated or chosen to fulfill this responsibility shall be known as the designated parent *and the employability plan shall include the appropriate FIP-UP work program activities for the designated parent.*

Amend subrule 93.22(1) as follows:

**93.22(1) Activities of the FIP-UP work program.** The FIP-UP work program will provide orientation, assessment I, job club, and work experience activities for the designated parent.

Amend subrule **93.22(5)**, paragraph "a," as follows:

a. Designated parents on FIP-UP cases shall be assigned to work sites *three days per week, eight hours per day, between the hours of 8 a.m. and 6 p.m., Monday through Friday, unless the participant agrees to another schedule, for six-calendar-month periods, at the end of which the participant shall be reassessed and, if appropriate, the designated parent's employability plan shall be revised. This revision may include assignment to a different work site, if one is available, or reassignment to the same work site, whichever is appropriate.*

ITEM 40. Amend rule 441—93.35(249C) as follows:

Amend the introductory paragraph as follows:

**441—93.35(249C) Required client documentation.** *Documentation necessary to verify that the PROMISE JOBS participant is carrying out the terms of the employability plan shall be provided by the participant.*

Amend subrule **93.35(2)**, paragraph "d," as follows:

d. In those instances where the participant is involved in an activity, ~~such as other than job search~~, which is not directly monitored by the PROMISE JOBS worker or an outside training provider, the participant shall record the hours of participation on the PROMISE JOBS Time and Attendance Report, Form 470-2617, and shall sign and date the form. The PROMISE JOBS worker shall review the form. The participant's hours shall be accepted unless the PROMISE JOBS worker has justifiable cause to doubt the accuracy of the hours. If the PROMISE JOBS worker accepts the hours, the PROMISE JOBS worker shall also sign and date the form. The form shall be returned within ten calendar days following the end of each month. If the hours reported are questioned, the PROMISE JOBS worker shall meet with the participant to resolve the discrepan-

cy. The participant shall provide further verification, if required.

Add the following new subrule 93.35(3) as follows:

**93.35(3) Job search documentation.** Documentation of any job search activities which cannot be documented by the PROMISE JOBS worker shall be provided by the participant using Form 470-3099, Job Search Record. The Job Search Record shall include the name and address of the employer, the name and telephone number of the contact person, the date on which contact was made, and the outcome of the contact. It shall also contain authorization for PROMISE JOBS staff to telephone any listed employer to verify the contact.

The Job Search Record shall be provided within five working days after the last working day of any week during which the participant has chosen to make the employer contacts.

ITEM 41. Amend rule 441—93.41(249C) as follows:

Amend subrule **93.41(1)**, paragraph "e," as follows:

e. When the participant is entitled to have participation in other components waived in accordance with ~~subrule 93.20(6).~~ **93.14(14)"g."**

Amend subrule 93.41(2) as follows:

**93.41(2) Deactivation.**

a. The PROMISE JOBS worker may deactivate a participant when the PROMISE JOBS worker determines that the participant or the participant's family is dysfunctional to the extent that the participant cannot be expected to meaningfully participate in the program. The action to deactivate may be made upon the recommendation of the local human services income maintenance unit in accordance with 441—41.4(7)"a"(7).

b. *A participant, other than a designated parent on a FIP-UP case, who has participated in three significant job search activities without finding employment may be deactivated following completion of the third job search activity.*

c. *Except for designated parents on FIP-UP cases, staff is authorized to deactivate participants when they determine that additional PROMISE JOBS services are not required, are not available, or are not suitable to the needs of the participant.*

Rescind subrule 93.41(3) and insert the following new subrule in lieu thereof:

**93.41(3) Interagency referral process.** PROMISE JOBS provider agencies in each local service delivery area shall coordinate development of the employability plan and arrange referrals between agencies so that there is agreement on the services described in the employability plan; the services are arranged and available in a timely fashion, consistent with rule 441—93.5(249C) and other applicable rules; and the participant's changing circumstances are recognized, assessed when PROMISE JOBS staff and the participant agree that additional assessment is needed, and incorporated into the employability plan when necessary.

ITEM 42. Amend rule 441—93.43(249C) as follows:

**441—93.43(249C) Confidentiality.** The departments of education, employment services and economic development, Job Training Partnership Act agencies, and local education agencies shall safeguard client information in conformance with Iowa Code section 217.30.

*The department and PROMISE JOBS provider agencies may disclose client information to other state agencies, or to any other entity or person who is not subject to the*

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*Iowa Administrative Procedure Act, when that agency or other entity or person must have that information in order to provide services to PROMISE JOBS participants which have been determined to be necessary for successful participation in PROMISE JOBS.*

ITEM 43. Amend **441—Chapter 93, Division II**, by rescinding the **Preamble** and inserting the following **new Preamble** in lieu thereof:

## PREAMBLE

This chapter implements the PROMISE JOBS program which is designed to increase the availability of employment and training opportunities to family investment program (FIP) recipients. It implements the family investment agreement (FIA) as directed in legislation passed by the Seventy-fifth General Assembly and signed by the governor on May 4, 1993, and approved under federal waiver August 13, 1993. The program also implements the federal Job Opportunities and Basic Skills (JOBS) program of the Family Support Act of 1988.

The program assigns responsibility for the provision of services to the Iowa department of employment services (DES) and the department of economic development (DED) as the administrative entity for the Job Training Partnership Act (JTPA) program, Iowa's two primary providers of employment-oriented services. In addition, the bureau of refugee services (BRS) is assigned the responsibility of providing program services, to the extent compatible with resources available, to all refugees.

PROMISE JOBS services, which are also FIA options, include orientation, assessment, job-seeking skills training, group and individual job search, classroom training programs ranging from basic education to postsecondary education opportunities, work experience, unpaid community service, parenting skills training, monitored employment, and the FIP-unemployed parent work program, FaDSS, and other family development services. In addition, participants have access to all services offered by the provider agencies. Persons in other work and training programs outside of PROMISE JOBS or not approvable by PROMISE JOBS can use those as FIA options.

ITEM 44. Rescind rule 441—93.101(249C) and insert the following **new** rule in lieu thereof:

**441—93.101(249C) Program area.** The department of human services shall administer an employment and training program known as PROMISE JOBS. The PROMISE JOBS program shall include the family investment agreement (FIA). The program shall be available statewide. If the department determines that sufficient funds are not available to offer on-location services in each county, it shall prioritize the availability of services in those counties having the largest FIP populations.

ITEM 45. Rescind and reserve rule **441—93.102(249C)**.

ITEM 46. Amend rule 441—93.103(249C) as follows:

**441—93.103(249C) Contracts with other provider agencies and for provision of services.** The department of human services shall contract with the departments of employment services and economic development to provide ~~employment and training~~ PROMISE JOBS and FIA services to FIP recipients. Services shall include orientation, assessment, job-seeking skills training, group and in-

dividual job search, job placement and job development, high school completion, *adult basic education (ABE), general educational development (GED), and English as a second language (ESL), vocational classroom training, postsecondary education, work experience, unpaid community service, parenting skills training, monitored employment, FaDSS, other family development services,* and the FIP-UP work program. ~~If the department determines that sufficient funds are not available to offer on-location services in each county, it shall prioritize the availability of services in those counties having the largest FIP populations.~~

*The bureau of refugee services shall provide the above services, to the extent compatible with resources available, to persons who entered the United States with refugee status.*

ITEM 47. Amend rule 441—93.104(249C) by rescinding the introductory paragraph and inserting the following **new** paragraphs in lieu thereof:

**441—93.104(249C) Registration and referral requirements.** An application for assistance constitutes a registration for the PROMISE JOBS program and the FIA for all members of the FIP case and all other persons responsible for the FIA as specified at 441—41.24(239) unless the county office determines a person is exempt as specified in 441—subrule 41.24(2).

All registrants may volunteer for services.

Applicants for FIP assistance may volunteer for and are eligible to receive job placement services prior to approval of the FIP application. Applicants who participate in the program shall receive a transportation allowance, as well as payment of child care, if required. The transportation allowance shall be paid at the start of participation. The income maintenance worker shall not refer an applicant to the program when it appears that the applicant will be ineligible for FIP.

A referral file of volunteers and persons who are not exempt from referral shall be provided to the appropriate PROMISE JOBS provider agencies.

Volunteers and persons who are responsible for the FIA shall contact the appropriate PROMISE JOBS office, to schedule an appointment for PROMISE JOBS orientation, within ten calendar days of notice that the FIP application is approved or that exempt status is lost and FIA responsibility has begun.

ITEM 48. Amend rule 441—93.105(249C) as follows:

Rescind subrule 93.105(2) and insert the following **new** subrule in lieu thereof:

**93.105(2) Call-up.** FIP participants who are referred to PROMISE JOBS after January 1, 1994, shall initiate call-up for PROMISE JOBS orientation by contacting the appropriate PROMISE JOBS office within ten calendar days of the mailing date of the notice of FIP approval or within ten calendar days of notice that exempt status has been lost and FIA responsibility has begun, as required under 441—subrule 41.24(5).

For FIP recipients who were referred to PROMISE JOBS prior to January 1, 1994, PROMISE JOBS provider agencies shall initiate the FIA process within six months unless an extension is granted by the department. The department is authorized to extend this time frame for up to six months if program funds are insufficient to convert the entire population to the FIA process during January through June, 1994.



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PROMISE JOBS provider agencies shall schedule FIA orientation appointments at the earliest available times for FIP participants who contact the appropriate PROMISE JOBS office within the ten days except when the department exercises administrative authority to require the following prioritization of orientation services to ensure that parents aged 21 and under are promptly served, to encourage FIP participants in entrepreneurial efforts, to move FIP participants into the family development and self-sufficiency (FaDSS) program or to meet the federal participation requirements described at 93.105(1). The specific groups subject to prioritization are:

- a. Teen parents aged 19 and under.
- b. Young parents aged 20 and 21.
- c. FIP recipients in other target groups as described at 93.105(1) who receive supportive services from the FaDSS program under 441—Chapter 165.
- d. Parents on FIP-UP cases.
- e. Participants in entrepreneurial training such as the self-employment investment demonstration project or Iowa's self-employed household incentive program as described at 441—Chapter 48.

f. FaDSS participants who are not in target groups. The department reserves the authority to prioritize these groups in whatever order best fits the needs of the PROMISE JOBS program.

FIP participants who volunteer shall first be called up to receive priority service for orientation.

Participants who are participating in the food stamp employment and training (FSET) program at the time of call-up shall be allowed to use the FSET component in which they are currently enrolled as the first step in the FIA. This does not apply to persons who drop out of the FSET component.

Amend subrule 93.105(3), introductory paragraph and paragraph "b," as follows:

**93.105(3) Waiting lists.** Because of state and federal budgetary limitations on the PROMISE JOBS program, persons who are not designated parents on FIP-UP cases who complete orientation and assessment ~~and job club~~ shall be placed on a waiting list, when appropriate, for any further PROMISE JOBS services. Persons shall be removed from the waiting list and placed in additional components as funds and training slots become available. The department shall have the administrative authority to determine agency and geographical breakdowns *or to designate specific PROMISE JOBS components or supportive service levels* for a waiting list. Persons who are designated parents on FIP-UP cases ~~will~~ shall not be placed on a waiting list provided sufficient funds are available to serve them.

b. The department shall also have the administrative authority to remove nontarget group members ~~of~~, *job corps solo parent program participants, and SEID and ISHIP participants* from the waiting list and make services available to them, subject to the restraints described at 93.105(3)"a"(1) to (3).

ITEM 49. Rescind rule 441—93.106(249C) and insert the following new rule in lieu thereof:

**441—93.106(249C) Orientation for PROMISE JOBS and the FIA.** Every FIP participant who schedules and keeps an orientation appointment as described at 93.105(2) shall receive orientation services.

**93.106(1) Requirements of orientation.** During orientation, each participant shall receive a full explana-

tion of the advantages of employment under the family investment program (FIP), services available under PROMISE JOBS, a review of participant rights and responsibilities under the FIA and PROMISE JOBS, a review of the LBP as described at 441—subrule 41.24(8), an explanation of the benefits of cooperation with the child support recovery unit, and an explanation of the other programs available through PROMISE, specifically the cash bonus and transitional Medicaid and child care assistance programs.

a. Each participant shall sign Form WI-3305, Your Rights and Responsibilities, acknowledging that information described above has been provided.

b. Participants are required to complete a current employment services registration, Form 60-0330, Application for Job Placement and/or Job Insurance, when requested by PROMISE JOBS staff.

c. Orientation may also include completing self-assessment instruments.

d. The PROMISE JOBS worker shall meet with each participant, or family if appropriate when two parents or children who are mandatory PROMISE JOBS participants are involved, to determine readiness to participate, establish expenses and a payment schedule and to discuss child care needs.

**93.106(2) Beginning PROMISE JOBS participation.** An individual becomes a PROMISE JOBS participant when that person attends the first day of the assessment component, as described at rule 441—93.111(249C), or provides the substitute assessment information as described at 93.111(1)"a"(4).

ITEM 50. Rescind rule 441—93.108(249C) and insert the following new rule in lieu thereof:

**441—93.108(249C) Self-initiated training.** Registrants who have attended one or more days of training prior to participating in a PROMISE JOBS orientation are considered to be self-initiated. For registrants who at time of call-up for PROMISE JOBS orientation are in self-initiated classroom training, including government-sponsored training programs, PROMISE JOBS staff shall determine whether the training program meets acceptable criteria as prescribed for the classroom training component at rule 441—93.114(249C).

**93.108(1) Nonapprovable training.** When it is determined that the self-initiated training does not meet the criteria of rule 441—93.114(249C), the registrant has the option to participate in other PROMISE JOBS options or to use the nonapprovable training to meet the obligations of the FIA, under the other education and training component, as long as the training can still be reasonably expected to result in self-sufficiency. PROMISE JOBS expense allowances are not available for persons in nonapprovable training.

**93.108(2) Approvable training.** When a self-initiated training program meets PROMISE JOBS program standards, including SEID and ISHIP as described at 441—subrule 48.3(4), the participant shall be enrolled in the classroom training component in order to be eligible for child care and transportation assistance. Eligibility for payment of transportation and child care allowances shall begin for that month in which the training plan is approved or the participant is removed from a waiting list as described at 93.105(3), whichever is later. Self-initiated participants are not eligible for expense allowances to pay for tuition, fees, books, or supplies.



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ITEM 51. Rescind rule 441—93.109(249C) and insert the following new rule in lieu thereof:

**441—93.109(249C) The family investment agreement (FIA).** Families and individuals eligible for FIP shall, through any persons referred to PROMISE JOBS, enter into and carry out the activities of the FIA. Those who choose not to enter into the FIA or who choose not to continue its activities after signing the FIA shall enter into the limited benefit plan (LBP) as described at 441—subrule 41.24(8).

**93.109(1) FIA-responsible persons.**

a. All parents who are not exempt from PROMISE JOBS shall be responsible for signing and carrying out the activities of the FIA.

b. In addition, any other adults whose needs are included in the FIP grant shall be responsible for the FIA.

c. Persons who volunteer for PROMISE JOBS shall be responsible for the FIA as appropriate to their status as a parent or child on the case.

d. When the FIP eligible group holds a minor parent living with a parent who receives FIP, as described at 441—41.28(2)"b"(2), and both are referred to PROMISE JOBS, each parent is responsible for a separate FIA.

e. When the FIP eligible group holds a parent or parents and a child or children who are all mandatory PROMISE JOBS participants, each parent and each child would not have a separate FIA. All would be asked to sign one FIA with the family and to carry out the activities of that FIA. Copies of the FIA would be placed in individual case files.

f. When the FIP eligible group holds a parent or parents who are exempt and a child or children who are mandatory PROMISE JOBS participants, each child is responsible for completing a separate FIA.

**93.109(2) FIA requirements.** The FIA shall be developed during the orientation and assessment process through discussion between the FIP participants and PROMISE JOBS staff of coordinating PROMISE JOBS provider agencies, using Form 470-3095, Family Investment Agreement, and Form 470-3096, FIA Steps to Achieve Self-Sufficiency.

a. The FIA shall require the FIA-responsible persons and family members who are referred to PROMISE JOBS to choose participation in one or more activities which are described below. The level of participation in one or more of the options shall be equivalent to the level of commitment required for full-time employment or shall be significant so as to move toward that level.

(1) The options of the FIA shall include, but are not limited to, all of the following: orientation, assessment, self-directed job search, job-seeking skills training, group and individual job search, the FIP-UP work program, high school completion activities, GED, ABE, ESL, post-secondary classroom training, work experience, unpaid community service, parenting skills training, monitored part-time or full-time employment, and participation in FaDSS or other family development programs.

(2) In addition, participants have access to all services offered by the provider agencies. Persons in work and training programs funded outside of PROMISE JOBS or not approvable by PROMISE JOBS can use those as FIA options, except for work toward a graduate degree when the undergraduate degree was earned under PROMISE JOBS.

(3) It is expected that employment shall be the principal activity of the FIA or shall be combined with other

FIA options whenever it is possible for the participant to do so as part of the plan to achieve self-sufficiency.

(4) Participants who are placed on a waiting list, as described at 93.105(3), for a PROMISE JOBS component or supportive service shall include employment in the FIA unless family circumstances indicate that employment is not appropriate.

b. The FIA shall reflect, to the maximum extent possible, the goals of the family, subject to program rules, funding, the capability, experience and aptitudes of family members, and the potential market for the job skills currently possessed or to be developed.

(1) The FIA shall include the long-term goals of the family for achieving self-sufficiency and shall establish a time frame, with a specific ending date, during which the FIA family expects to become self-sufficient, after which FIP benefits will be terminated.

(2) The FIA shall outline the expectations of the PROMISE JOBS program and of the family, clearly establishing interim goals necessary to reach the long-term goals and self-sufficiency.

1. It shall identify barriers to participation so that the FIA may include a plan, appropriate referrals, and supportive services necessary to eliminate the barriers.

2. It shall stipulate specific services to be provided by the PROMISE JOBS program, including the FIP-UP work program for designated parents on FIP-UP cases, child care, transportation, family development services, and other supportive services.

c. The FIA may incorporate a self-sufficiency plan which the family has developed with another agency or person, such as, but not limited to, Head Start, public housing authorities, child welfare workers, and FaDSS grantees, so long as that self-sufficiency plan meets the requirements of these rules and is deemed by PROMISE JOBS staff to be appropriate to the family circumstances. Participants shall authorize PROMISE JOBS to obtain the self-sufficiency plan and to arrange coordination with the manager of the self-sufficiency plan by signing Form MH-2201-0, Consent to Release or Obtain Information.

d. The FIA shall contain a provision for extension of the time frames and amendment of the FIA if funding for PROMISE JOBS components included in the FIA or required supportive services is not available.

e. The FIA shall be signed by the FIA-responsible person or persons and other family members who are referred to PROMISE JOBS, the PROMISE JOBS worker, and the project supervisor, before the FIA is considered to be completed.

f. If the FIA-responsible person demonstrates effort and is carrying out the steps of the FIA but is unable to achieve self-sufficiency within the time frame specified in the FIA, the FIA shall be renegotiated, the time frame shall be extended and the FIA shall be amended to describe the new plan for self-sufficiency.

g. Participants who choose not to cooperate in the renegotiation process shall be considered to have chosen the LBP.

ITEM 52. Amend rule 441—93.110(249C) as follows:  
Amend the introductory paragraph as follows:

**441—93.110(249C) Arranging for services.** Staff is responsible for providing or arranging helping the participant to arrange for employment-oriented services, as required, to facilitate the registrants' successful participation, including client assessment or case management,

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employment education, transportation, child care, referral for medical examination, and supportive services under the family development and self-sufficiency program described in 441—Chapter 165 or other family development programs. PROMISE JOBS funds shall be used to pay costs of obtaining a birth certificate when the birth certificate is needed in order for the registrant to complete the employment service registration process described in rule 441—93.106(249C). PROMISE JOBS funds may also be used to pay expenses for clients enrolled in JTPA-funded components when those expenses are allowable under these rules. Clients shall submit Form PA-8121-5, Estimate of Cost, to initiate allowances or change the amount of payment.

Amend subrule 93.110(1), introductory paragraph, as follows:

**93.110(1) Payment for child care.** Payment for child care, if required for participation in any PROMISE JOBS component other than orientation or employment, not specifically prohibited elsewhere in these rules, and not available from any other source, shall be provided for participants after service has been received. Payment shall be made monthly unless the child care provider requires more frequent payment. ~~The PROMISE JOBS worker shall make payment~~ Payment shall be authorized directly to the child care provider unless circumstances indicate that payment should be issued to the participant. These circumstances include reimbursement for the participant who documents payment for child care with personal funds and other circumstances as deemed appropriate and documented by the ~~PROMISE JOBS worker and approved by the central office of the PROMISE JOBS provider agency staff authorizing the payment.~~ Persons employed shall be entitled to the child care deduction described at 441—41.27(2)"b" and "d."

Further amend subrule 93.110(1) by rescinding and reserving paragraph "e."

Amend subrule 93.110(6), introductory paragraph, as follows:

**93.110(6) Transportation allowances.** Participants may receive a transportation allowance for each day of participation, if transportation is required for participation in a PROMISE JOBS activity, ~~including the assessment component described at 93.111(9),~~ but shall not receive a transportation allowance for orientation or for assessment activities ~~sponsored solely by JTPA except as specified at subrule 93.102(3) which occur on the same day as orientation or for employment.~~ The transportation allowance shall be paid monthly at the start of each month of participation or when participation begins, whichever is earlier. Persons employed shall be entitled to the work expense deduction described at 441—41.27(2)"a" and "d."

Amend subrule 93.110(7) as follows:

**93.110(7) Expense allowances during a month of FIP suspension.** Payment for expenses shall be made for a month of FIP suspension if the client chooses to participate during that month in a PROMISE JOBS component or other FIA activity for which expense allowance payment is allowable under these rules and to which the client has been previously assigned.

Amend subrule 93.110(8), paragraph "a," as follows:

a. When the participant ~~fails to attend any~~ attends none of the scheduled days of participation in a PROMISE JOBS activity, the entire transportation allowance shall be considered an overpayment. Recovery of the

overpayment shall be initiated when it becomes clear that subsequent participation in the activity is not possible for reasons such as, but not limited to, family investment program ineligibility, establishment of a limited benefit plan, ~~PROMISE JOBS sanction, deactivation from PROMISE JOBS,~~ or exemption from PROMISE JOBS participation requirements.

ITEM 53. Rescind rule 441—93.111(249C) and insert the following new rule in lieu thereof:

**441—93.111(249C) Assessment and assignment to other activities and components.** PROMISE JOBS components and FIA options include assessment, job-seeking skills training, job search activities, monitored employment, basic education services, work experience, unpaid community service, parenting skills training, postsecondary classroom training, FaDSS and other family development services, and the FIP-UP work program.

**93.111(1) Assessment.** The purpose of assessment is to provide for a thorough self-evaluation by the FIP participant or family and to provide a basis for PROMISE JOBS staff to determine employability potential and to determine the services that will be needed to achieve self-sufficiency through PROMISE JOBS and the FIA. Assessment shall be conducted so as to ensure that participants can make well-informed choices and PROMISE JOBS workers can provide appropriate guidance as they complete the FIA to achieve the earliest possible self-sufficiency for the FIP family. Assessment services shall be provided through coordination among PROMISE JOBS provider agencies.

Assessment services shall be delivered through options known as assessment I, assessment II, and assessment III. These options may be provided as separate services, delivered at appropriate times during the duration of the FIA, or may be delivered as a continuous service up to the level necessary to provide the assessment needed for participant and PROMISE JOBS worker decisions while completing the FIA.

a. Assessment I shall be provided for all FIP participants. PROMISE JOBS staff shall meet individually with FIP recipients who are referred to PROMISE JOBS and who choose to develop the FIA. This assessment meeting, at a minimum, shall assess the family's financial situation, family profile and goals, employment background, educational background, housing needs, child care needs, transportation needs, health care needs, and other barriers which may require referral to entities other than PROMISE JOBS for services.

(1) Assessment I may be the level of assessment appropriate for persons for whom: a part-time job has the potential to become full-time; there is an expectation of securing immediate employment; there are obvious literacy or other basic education barriers; family responsibilities limit the time that can be dedicated toward achieving self-sufficiency; there are transportation barriers; or there are multiple barriers which indicate that FaDSS, other family development services, or other social services are appropriate before other significant steps can be taken toward self-sufficiency.

(2) Persons in these circumstances may, based on the results of assessment I, complete the FIA to participate in activities such as, but not limited to, monitored part-time or full-time employment, job search, unpaid community service, parenting skills training, FaDSS or other family development services, other social services, or basic or

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remedial education, perhaps in conjunction with other services.

(3) The services of assessment I shall be provided in one individual session unless the PROMISE JOBS worker documents a need for additional time.

(4) Participants shall have the option of substituting for assessment I assessment information which they have completed with another agency or person such as, but not limited to, JTPA, Head Start, public housing authorities, child welfare workers, and family development services. Participants shall authorize PROMISE JOBS to obtain these assessment results by signing Form MH-2201-0, Consent to Release or Obtain Information. To be used in place of assessment I, the assessment results must contain all or nearly all of the items from paragraph "a" above and must have been completed within the past 12 months.

(5) Participants shall have the option to supplement assessment I with information in the manner as described in subparagraph (4) above and to establish communication between PROMISE JOBS staff and other agencies or persons in order to ensure that the family investment agreement activities do not conflict with any case plans which have already been established for the family. Authorizing this communication is not mandatory under the FIA but PROMISE JOBS staff shall have the authority to ask for verification of activities planned under another case plan when the participant reports conflicts.

b. Assessment II services shall be provided for those who, during assessment I, have no barriers to limit participation, have no specific career goal or plan, and need further assessment services to complete the FIA; and for those who are ready to advance to other components after completing a PROMISE JOBS activity or other services which were determined after assessment I and are part of the FIA.

(1) The services of assessment II may include, but are not limited to, literacy and aptitude testing, educational level and basic skills assessment, self-esteem building, interest assessment, exposure to nontraditional jobs, exposure to job-retention skills, goal setting, motivational exercises, exposure to job-seeking skills, and exposure to role models.

(2) Persons who complete assessment II may complete the FIA to participate in FIA activities such as, but not limited to, job club or other job search activities, work experience placement, or referral for entrepreneurial training.

(3) Assessment III services shall be provided for those who, during assessment I or II, request postsecondary classroom training as part of the FIA; or those whose previous participation indicates a need for and a likelihood of success in postsecondary classroom training.

c. Services of assessment III shall provide occupational specific assessment or guidance before completing the FIA for postsecondary classroom training. These services may be provided by PROMISE JOBS staff or other entities as arranged locally.

It is expected that assessment II and assessment III activities shall be provided in a maximum of 20 hours per week for each option unless the PROMISE JOBS worker documents a need for additional time.

d. FIP participants who previously participated in assessment options and then were canceled from FIP or entered an LBP may be required to participate in any assessment option again when the PROMISE JOBS worker determines that updated assessment is needed for development or amendment of the FIA.

e. Family development and self-sufficiency (FaDSS) program participants attend orientation but are not referred to assessment until the FaDSS grantee approves the assignment of the FaDSS participant to other PROMISE JOBS activities. FaDSS participants who have completed assessment in the past may be required to complete assessment again when the FaDSS grantee approves assignment to other PROMISE JOBS activities if the PROMISE JOBS worker believes that extended assessment is necessary to reassess the participant's abilities and circumstances.

f. Except for assessment activities which occur on the same day as orientation, persons participating in assessment options are eligible for allowances for transportation and child care needed to allow the scheduled participation. Persons who miss any portion of scheduled assessment services may be required to make up the missed portion of the sessions, based on worker judgment and participant needs. When make-up sessions are required, the participant shall not receive an additional transportation allowance, but necessary child care shall be paid.

g. A participant who has completed assessment I and who wishes to include postsecondary classroom training in the FIA shall be required to participate in assessment II and assessment III unless the participant is not required to do so because:

(1) The person had been accepted for training by either SEID or an ISHIP training provider.

(2) The person is already involved in approvable self-initiated training at the time of PROMISE JOBS orientation.

(3) Participation in assessment II and assessment III would interfere with training initiated by the participant after orientation and the training is approvable under PROMISE JOBS. Participants who initiate training after orientation are not considered self-initiated but are otherwise treated in accordance with rule 441-93.108(249C) or in accordance with 93.111(2).

**93.111(2)** Assessment-related restrictions on expense allowance assistance for self-initiated training. When persons described at 93.111(1)"g"(2) and (3) are still within the first quarter or semester of involvement with the training program that they have chosen, expense allowance assistance through PROMISE JOBS cannot be approved, even if the training is otherwise approvable, until the persons have completed the assessment II and assessment III options or have successfully completed the first quarter or semester of the training program in accordance with the requirements of the educational institution being attended. Persons involved in training programs where quarters or semesters are not used must successfully complete four months of the training program before assistance can begin, except for SEID and ISHIP participants who are exempt from the limitations of this paragraph. Otherwise, assistance shall only be approved effective with the second quarter or semester, or with the fifth month of participation in the training program, as applicable to the client's situation.

**93.111(3)** Requirements for parents who have not completed high school. Assessment and development of FIA options shall follow these guidelines for parents under the age of 20.

a. Parents under the age of 16 who have not completed high school shall be expected to use enrollment or continued attendance in high school completion as a first step in the FIA.

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b. Parents aged 16 or 17 who have not completed high school shall be expected to use enrollment or continued attendance in high school completion or the GED program as a first step in the FIA. Participants deemed incapable of participating in these activities by the local education agency shall choose other FIA options.

c. Parents who are aged 18 or 19 who have not completed high school shall be expected to use enrollment or continued attendance in high school completion or the GED program as a first step in the FIA if assessment indicates the participants are capable of completing regular high school, alternate high school, or GED. Participants deemed incapable of participating in these activities shall choose other FIA options.

**93.111(4)** Participation after completion of appropriate assessment. After completion of the appropriate assessment level, participants shall be referred for the PROMISE JOBS component services or supportive services which are designated in the completed FIA.

**93.111(5)** Retention of a training slot. Once a person has been assigned a PROMISE JOBS training slot, that person retains that training slot until FIP eligibility is lost for more than four consecutive months, an LBP chosen after completing an FIA is in effect, or the person becomes exempt from PROMISE JOBS and the person does not choose to volunteer to continue to participate in the program.

ITEM 54. Rescind rule 441—93.112(249C) and insert the following new rule in lieu thereof:

**441—93.112(249C) Job search options.** Employment is an emphasis of the FIA as described at rule 441—93.109(249C) and PROMISE JOBS participants shall have several options to search for work: job club, individual job search, and self-directed job search. The participant and the PROMISE JOBS worker shall incorporate into the self-sufficiency plan the job search option which is appropriate for the previous work history, skill level, and life circumstances of the participant. Job search contacts shall be documented by PROMISE JOBS staff or by participants, as appropriate. Participant documentation shall be provided as described at 93.135(3). For job search planning and reporting purposes, each in-person job search contact documented by the participant shall be considered to require one hour of participation.

**93.112(1) Job club.** Job club consists of one week of job-seeking skills training and two weeks of group job search. It is expected that job clubs will be designed to require at least 20 hours a week of participation in each week. However, less than 20 hours a week may be scheduled based on local office need and resources. Participants who choose job club shall receive a child care allowance, if required, and an allowance as described at 93.110(6) to cover costs of transportation, if required. The transportation allowance shall be paid in full at the start of participation.

Job-seeking skills training includes, but is not limited to: self-esteem building, goal attainment planning, resumé development, grooming, letters of application and follow-up letters, job application completion, job retention skills, motivational exercises, identifying and eliminating employment barriers, positive impressions and self-marketing, finding job leads, obtaining interviews, use of telephones, interviewing skills development and practice interviewing.

a. All participants who choose the job club option shall receive one week of job-seeking skills training. Daily attendance during the one week of job-seeking skills training is necessary. Participants who miss any portion of the job-seeking skills training shall repeat the entire week of training.

(1) Participants who must repeat the job-seeking skills training because of absence due to reasons as described at rule 441—93.133(249C) shall receive an additional transportation allowance as described at 93.110(6) and required child care payment shall be made.

(2) Participants who must repeat job-seeking skills training for absence due to reasons other than those described at rule 441—93.133(249C) shall not receive an additional transportation allowance. Required child care payment shall be allowed.

b. Participants shall then take part in a structured employment search activity for a period not to exceed two weeks. Scheduled activities and required hours of participation shall reflect proven job search techniques and the employment environment of the community of the local office and may be varied due to the resources available and the needs of the participants.

Participants who choose job club shall make up absences which occur during the two-week job search period. Additional transportation allowances shall not be paid to these persons. Required child care payments shall be allowed.

c. Job club participants other than designated parents on FIP-UP cases who obtain employment of 86 or more but less than 129 hours per month may discontinue job club if part-time employment was the FIA goal.

d. Job club participants who, during participation, obtain part-time employment of less than 86 hours per month shall continue job club unless the scheduled job club hours conflict with the scheduled hours of employment. PROMISE JOBS participation shall be scheduled to occur during those hours where no conflict with work hours exists.

e. Refer to rule 441—93.122(249C) for job club participation requirements for FIP-UP designated parents.

**93.112(2) Individual job search.** The individual job search component shall be available to participants for whom job club is not appropriate or not available, such as, but not limited to, participants who have completed training or have recent ties with the work force. The total period for each episode of individual job search shall not exceed 12 weeks or three calendar months.

a. The participant shall, in consultation with PROMISE JOBS staff, design and provide a written plan of the individual job search activities. The plan shall contain a designated period of time, not to exceed four weeks or a calendar month, and the specific locations of the job search. It shall also contain, but not be limited to, information as specific as possible pertaining to, for example, areas of employment interest and employers to be contacted.

b. Participants who choose individual job search shall receive a child care allowance, if required, and an allowance as described at 93.110(6) to cover costs of transportation, if required.

(1) Payment for required child care shall be limited to 20 hours per week.

(2) The transportation allowance shall be paid in full at the start of each designated time period of the individu-

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al job search. The anticipated days for job search shall be included in the written plan so as to provide the most effective use of transportation funds. Transportation allowances for any missed days of job search activity shall be subject to transportation overpayment policies as described at 93.110(8).

**93.112(3) Self-directed job search.** PROMISE JOBS participants who indicate, during assessment I, a desire to complete a short-term FIA or who have achieved an FIA interim goal which should lead to employment shall be provided the option of first engaging in self-directed job search activities before beginning other FIA options. This option does not apply to parents under the age of 20 who are required to participate in high school completion activities and FIP-UP designated parents who are aged 20 and over.

a. The participant shall, in consultation with PROMISE JOBS staff, design and provide a written plan of job search activities. The plan shall contain a designated period of time, not to exceed four weeks or a calendar month, and the specific locations of the job search. It shall also contain, but not be limited to, information as specific as possible pertaining to, for example, areas of employment interest and employers to be contacted.

b. The participant shall not be required to provide documentation of the job search activities.

c. Transportation and child care allowances are not available for this job search option.

ITEM 55. Rescind rule 441—93.113(249C) and insert the following new rule in lieu thereof:

**441—93.113(249C) Monitored employment.** Employment leading to self-sufficiency is the goal of the FIA. Full-time employment or part-time employment are options under the FIA. Employment shall be the primary activity of the FIA whenever compatible with the self-sufficiency goal. Employment leading to better employment shall be an acceptable option under the FIA. Anticipated and actual hours of employment shall be verified by the participant, when not available from any other source, and documented in the case file. Transportation and child care allowances are not paid through PROMISE JOBS but are covered by FIP earned income deductions.

**93.113(1) Full-time employment.** Persons who become employed 30 or more hours per week (129 hours per month) while participating in PROMISE JOBS shall meet the obligations of the FIA by continuing in that employment if FIP eligibility continues and the end date of the FIA has not been reached. Persons who have not achieved self-sufficiency through full-time employment before the end date of the FIA may have the FIA extended. Persons who choose not to enter into the renegotiation process to extend the FIA shall be considered to have chosen the LBP.

**93.113(2) Part-time employment.** Persons who are employed less than 30 hours per week (129 hours per month) shall meet the obligations of the FIA by continuing employment at that level as long as that employment is part of the FIA. For some participants, this may be the only activity described in the self-sufficiency plan of the FIA. For other participants, in order to move to self-sufficiency at the earliest possible time, the FIA shall most often include part-time employment in combination with participation in other PROMISE JOBS activities such as, but not limited to, high school completion, GED,

ABE, or ESL, unpaid community service, parenting skills training, or placement on a PROMISE JOBS waiting list.

ITEM 56. Amend rule 441—93.114(249C) as follows:

Amend subrule **93.114(1)**, paragraph "a," as follows:

a. The plan shall be approved for training facilities which are approved or registered with the state or accredited by an appropriate accrediting agency. *Institutional training can be provided by both public and private agencies.*

Amend subrule 93.114(6) as follows:

**93.114(6) Testing and grade transcripts before training plan approval.** Prior to training plan approval and as part of the continuing assessment process described at rule 441—93.111(249C), staff may require that clients take nationally recognized vocational tests, including the general aptitude test battery, as well as provide grade transcripts from previous training. ~~A participant who has not previously taken part in all three weeks of assessment and who agrees that more assessment is needed may be referred back to DES for one or more additional weeks of assessment on an exception basis only when both DES and JTPA believe that additional assessment is needed. However, assessment shall not exceed three weeks total before participation in another PROMISE JOBS component.~~

Amend subrule **93.114(10)**, paragraph "b," as follows:

b. A client must provide all information required to approve an ~~Employability Plan a Family Investment Agreement, Form WI-3304-0 470-3095, and FIA Steps to Achieve Self-Sufficiency, Form 470-3096, which include~~ for vocational classroom training as an interim goal.

Amend subrule **93.114(11)**, paragraph "d," as follows:

d. When a person described at ~~93.111(1)"a"(4) or 93.111(1)"a"(5) 93.111(1)"g"(2) and (3)~~ is still within the first quarter or semester of involvement in the person's chosen training program, expense allowances cannot be approved, even if the training is otherwise approvable, until the person has completed assessment or has successfully completed the first quarter or semester of the training program in accordance with the requirements of the educational institution. Persons involved in training programs where quarters or semesters are not used must successfully complete four months of the training program before assistance can begin.

Assistance shall be approved effective with the second quarter or semester, or with the fifth month of participation in the training program, as applicable to the client's situation.

Add the following new subrules 93.114(12), 93.114(13), and 93.114(14):

**93.114(12) Participation allowances.** An allowance shall be made for expenses of training. This shall include tuition; fees including graduation, books, basic school supplies, specific school supplies related to obtaining credit for a course and required of all students in a course, GED testing and certificates, required uniforms and other fees required for completion of training; child care; and transportation and travel costs required for certification or testing. In addition, allowances shall be made for enrollment, school testing or school application fees, educational grant or scholarship application fees, and certain practicum expenses as described in 93.114(12)"a"(4). PROMISE JOBS is authorized to provide payment for expenses allowable under these rules to the training facility for the educational expenses of tuition and fees and books and supplies which are provided by

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

the facility and billed to the PROMISE JOBS participant. Payment may also be made to the client in those situations where this is determined to be appropriate by the PROMISE JOBS worker.

a. PROMISE JOBS allowances for classroom training are limited as follows:

(1) Tuition allowance for baccalaureate degree programs shall not exceed the maximum undergraduate Iowa resident rate charged by a state university in Iowa.

(2) Tuition allowances for all other programs shall not exceed the rate charged by the state of Iowa area school located nearest to the participant's residence which offers a course program comparable to the one in which the participant plans to enroll. If an area school in Iowa does not offer a comparable program, the maximum tuition rate payment shall not exceed the Iowa resident rate charged by the area school located nearest to the participant's residence.

(3) A standard allowance of \$10 per term or actual cost, whichever is higher, for basic school supplies shall be allowed for those participants who request it and who do not have sufficient educational financial awards to cover purchase of basic supplies or who must purchase basic school supplies before educational awards are received or are made available. A claim for actual costs higher than \$10 must be verified by receipts.

(4) A per diem allowance of \$10 for living costs during a practicum shall be allowed when the practicum is required by the curriculum of the training facility, would require a round-trip commuting time of three hours or more per day, and is not available closer to the client's home. If practicum earnings or any nonreimbursable assistance is available to meet practicum living costs, no allowance shall be made.

(5) Allowances may also be authorized to meet the costs of travel required for certification and testing, not to exceed the transportation allowance as described at 93.110(6) and the current state employee reimbursement rate for meals and lodging.

(6) No allowance shall be made for any item that is being paid for through earnings that are diverted for that purpose.

(7) Funds may not be used to purchase supplies to enable a participant to begin a private business.

b. Participants shall submit Form PA-8121-5, Estimate of Cost, to initiate allowances or change the amount of payment. Participants shall use PROMISE JOBS allowances which they receive to pay authorized expenses.

c. Participants shall furnish receipts for expenditures which they pay, except for transportation allowances and items purchased with the \$10 standard allowance for basic school supplies, unless issued in accordance with 93.114(12)"a"(3), within ten days of receipt of allowances. Failure to provide receipts will preclude additional payments.

d. Receipts may be requested for allowances paid directly to the training provider if the PROMISE JOBS worker determines it is appropriate.

#### 93.114(13) Payment of allowances.

a. Participant eligibility for payment of transportation and child care allowances shall commence for that month that the participant begins training under an approved plan or is removed from a waiting list as described at 93.105(3), whichever is later, and shall be terminated when training is terminated.

b. PROMISE JOBS responsibility for financial assistance begins with that month during which the participant begins training under an approved plan or is removed from a waiting list as described at 93.105(3), whichever is later.

c. Retroactive payments shall only be allowed under the following conditions:

(1) If plan approval or removal from a waiting list as described at 93.105(3), whichever is later, occurs after the start of the term due to administrative delay or worker delay, payments shall be approved retroactive to the start of the term for which the plan is approved or removal from the waiting list is authorized. If costs were already paid by the participant with private resources, the participant shall be reimbursed. Payment shall be approved for all expenses allowable under these rules.

(2) If plan approval or removal from a waiting list as described at 93.105(3), whichever is later, is delayed due to the suspension of FIP benefits, retroactive payments for the month of suspension shall be made. If costs were already paid by the participant with private resources, the participant shall be reimbursed.

(3) If plan approval is delayed due to the fault of the participant, payment eligibility shall begin with the first day of the month during which the plan is approved or the month in which the participant is removed from a waiting list as described at 93.105(3), whichever is later. In this instance, there shall be no reimbursement for training costs already paid by the participant.

d. In all instances reimbursements shall not be made if costs were paid with educational awards that are not subject to repayment.

e. When a participant receives transportation payments from another program which equals or exceeds that possible under PROMISE JOBS, transportation shall not be paid by PROMISE JOBS for any month covered by the other program. When the amount received from another program is less than that possible under PROMISE JOBS, a supplemental payment may be made as long as the combined payment does not exceed that normally paid by PROMISE JOBS.

f. Payments shall not exceed the rate that the provider would charge a private individual.

93.114(14) Completion or termination of a training plan.

a. Participants who successfully complete their training plans may keep any books or supplies, including tools, which were purchased with PROMISE JOBS funds.

b. Participants who do not complete their training program and do not obtain training-related employment within 60 days of leaving training shall return all reusable supplies, including books and tools, but not clothing, purchased by PROMISE JOBS.

(1) Staff are authorized to donate to nonprofit organizations any items which they determine are unusable by the program.

(2) When tools are not returned, the amount of the PROMISE JOBS payment shall be considered an overpayment unless the participant verifies theft of the tools through documentation of timely report to a law enforcement agency.

c. When a participant enrolled in the classroom training component chooses the limited benefit plan, or drops out of training for reasons which are not described as acceptable at rule 441—93.133(249C), or the training plan



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

is terminated for failure to comply with PROMISE JOBS requirements as specified at 93.114(14)"d"(1), (3), (4), (5), and (6), 93.114(14)"e," and 93.114(14)"f"(1) and (3), the participant shall be denied additional PROMISE JOBS-funded classroom training services for a minimum of one year from the time that the participant dropped out, or from the time that the training plan was terminated for failure to comply with PROMISE JOBS requirements. This one-year period of denied classroom training service does not apply to participants who are under the age of 18 and who are required to participate in high school completion activities.

d. A worker shall terminate a training plan for any of the following reasons:

(1) The participant fails to appear for two consecutive scheduled appointments with the worker without good cause. The client shall have been notified of the appointments in writing.

(2) The participant, after a school term of probation as described in 93.114(8), is unable to achieve the cumulative grade point average required by the training facility. This subparagraph does not apply to parents under the age of 18 who are enrolled in high school completion activities.

(3) The participant refuses or fails to apply for outside funding resources when it is known that these sources are available.

(4) The participant misuses expense allowances to the extent that the training plan is no longer achievable.

(5) The participant states that there is no intent to become employed after completing training.

(6) The participant fails to provide verification, as described at 93.135(2), of hours of attendance in an educational program.

e. The training plan shall be terminated immediately for any participant who knowingly provides receipts or any other written statements which have been altered, forged, or, in any way, are not authentic.

f. A worker may terminate a training plan for any of the following reasons:

(1) The participant fails to cooperate in providing information concerning grades, academic progress, financial resources, change of address, change of telephone number, or change of family composition.

(2) It can be documented that the participant's continuation in the training program is detrimental to family functioning.

(3) The participant withdraws from courses or from the training program without prior PROMISE JOBS approval.

g. When it becomes apparent that the participant cannot complete the training plan within the maximum participation limit, as described at 93.114(3), the PROMISE JOBS worker shall determine whether termination of the training plan is appropriate.

(1) When the participant cannot complete the training plan within the maximum participation limit as described at subrule 93.114(3), the worker shall continue the plan and pay expenses, if appropriate, up to the limit of the maximum participation limit when the counselor or lead instructor in the educational program verifies in writing that the student's progress or achievement meets the grade-point requirement, and the student's interest and participation indicate there is likelihood of successful completion of the program, and the remaining coursework could be completed within the additional six-month period

of time. In addition, the student must be able to demonstrate access to financial resources which will enable completion of the program during the additional six months.

(2) In addition, when it is determined that the participant can complete the training plan within six months after the expiration of the maximum participation limit described at 93.114(3), the worker shall waive participation in other components after the end of the maximum participation period as long as the participant is attending the training facility.

(3) The PROMISE JOBS worker shall terminate the training plan at the point in time when it becomes obvious that the participant cannot complete the training plan within six months after expiration of the maximum participation period described at 93.114(3).

h. Termination of the training plan is not always considered to indicate a choice of the limited benefit plan. Unless the participant is mandated to participate in high school completion activities, when the PROMISE JOBS worker issues a Notice of Decision: Services, Form SS-1104-0, to terminate the training plan, the participant has 30 days from the date of the notice to discuss the situation with the PROMISE JOBS worker and attempt to resolve the issues causing termination. Resolution of the issue can mean reinstatement of the training plan or renegotiation and amendment of the FIA. This paragraph in no way affects the participant's ability to appeal the Notice of Decision: Services in accordance with rule 441—93.140(249C).

i. Participants whose PROMISE JOBS training plans are terminated for misuse of funds or for providing records which they have falsified, or participants who fail to return supplies, when required, shall not be eligible for future classroom training services for a period of two years from the date of plan termination.

(1) In addition, future classroom training services shall not be approved unless receipts for previous allowances are provided; PROMISE JOBS-funded items, when required, are returned; or the value of the items is refunded.

(2) When the amount of the PROMISE JOBS payment for tools has been considered an overpayment as described in 93.114(14)"b"(2), the participant may refund the claim balance as recorded in the Overpayment Recovery System to meet this requirement.

ITEM 57. Rescind rule 441—93.115(249C) and insert the following new rule in lieu thereof:

**441—93.115(249C) Unpaid community service.** Unpaid community service shall provide participants with opportunities to establish or reestablish contact with the work force in a nonthreatening environment while providing services which are of direct benefit to the community.

**93.115(1) Unpaid community service work sites.** Unpaid community service work sites shall be public or private nonprofit organizations.

a. When the participant and the PROMISE JOBS worker agree that an unpaid community service placement is appropriate, the participant is responsible for locating and making arrangements with the work site.

b. The PROMISE JOBS provider agencies shall develop local listings of potential unpaid community service work sites which participants can use when selecting a work site.



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

c. Work site organizations which provide unpaid community service work sites shall receive a written explanation of the following placement criteria. The placement shall:

(1) Not be related to political, electoral or partisan activities.

(2) Not be developed in response to or in any way associated with the existence of a strike, lockout or other bona fide labor dispute.

(3) Not violate any existing labor agreement between employees and employer.

(4) Comply with applicable state and federal health and safety standards.

(5) Not be used by work site organizations to displace current employees or to infringe on their promotional opportunities, shall not be used in place of hiring staff for established vacant positions, and shall not result in placement of a participant in a position when any other person is on layoff from the same or an equivalent position in the same unit.

**93.115(2)** Appropriate use of unpaid community service. The unpaid community service component is expected to be used by participants for whom more intensive efforts toward self-sufficiency are not appropriate at the moment. Participants may combine this activity with another such as, but not limited to, GED or other high school completion, ESL, FaDSS or other family development services, and parenting skills training. It is expected that the unpaid community service work site will be less demanding than work experience placements and specific skills-training tasks are not required.

**93.115(3)** Participation requirements.

a. Formal interviews are not required to establish the relationship between the participant and the work site organization.

b. The length of the work site assignment and the weekly hours of participation will be determined through agreement among the work site organization, the participant, and the PROMISE JOBS worker.

c. The director (or designee) of the work site organization shall be asked to verify the monthly hours of participation using Form 470-3097, Unpaid Community Service Monthly Report, provided by the PROMISE JOBS provider agencies.

**93.115(4)** Allowances for unpaid community service placement. Unpaid community service work sites may offer on-site child care and other participant-friendly services. A child care allowance and a transportation allowance for each month of participation or part thereof, as described at subrule 93.110(6), shall be paid if these services are not provided by the work site organization and are required for participation.

ITEM 58. Rescind rule 441—93.116(249C) and insert the following new rule in lieu thereof:

**441—93.116(249C) Parenting skills training.** Activities which strengthen the participant's ability to be a better parent can be approvable training under PROMISE JOBS as long as the participant is active in at least one other PROMISE JOBS component. Approvable parenting skills training could be enrollment in a parenting education program or any other arrangement which provides specific parenting skills training.

A child care allowance, payment for fees or books, and a transportation allowance for each month of participation, or part thereof, as described at 93.110(6), shall be

paid if these services are not provided by any other entity and are required for participation.

ITEM 59. Amend rule 441—93.117(249C) as follows:

**441—93.117(249C) Health and safety.** The worker PROMISE JOBS staff may require a person to complete a physical examination prior to approval of a training plan including a particular PROMISE JOBS component or other activity in the FIA when a client participant specifies or exhibits any physical conditions which might jeopardize successful participation in the program.

**93.117(1) Physician's report.** The physician should indicate to the best of the physician's knowledge that the person is capable of completing the training FIA activity or continuing with appropriate employment.

**93.117(2)** ~~If physical or emotional disabilities are present, these shall be under control prior to enrollment in training.~~ *Reserved.*

**93.117(3) Safety precautions.** If the work or training FIA activity is so hazardous that safety glasses, hard hats, and so forth are needed, participation shall not be arranged or approved unless these safety precautions shall be provided are available.

ITEM 60. Rescind and reserve rules 441—93.118(249C) to 441—93.120(249C).

ITEM 61. Rescind subrules 93.121(1) and 93.121(10) and insert the following new subrules in lieu thereof:

**93.121(1) Work experience requirements.** Work experience shall combine work site assignment and job search activities.

a. Participants who choose work experience placement shall be assigned to work sites on a schedule which uses eight hours per day, between the hours of 8 a.m. and 6 p.m., Monday through Friday, unless the participant agrees to another schedule. The number of days per week shall be determined by agreement among the participant, the sponsor, and the PROMISE JOBS worker, with a maximum of four days and a minimum of one day. The number of days, the scheduled hours, and the length of the assignment shall reflect the assessed needs of the participant and the needs of the sponsor, using the standard that participation shall be equivalent to the level of commitment required for full-time employment or significant so as to move toward that level.

b. Work experience placements may be combined with monitored employment or with participation in other PROMISE JOBS activities such as, but not limited to, GED or other high school completion activities, parenting skills training, postsecondary classroom training, or placement on a PROMISE JOBS waiting list for postsecondary classroom training.

c. In addition to work experience placement, participants shall also engage in job-seeking activities one day per week unless they are also participating in classroom training activities.

Job-seeking activities for work experience participants shall include contacting a minimum of five employers per week unless fewer are specified by staff. Job search contacts shall be documented as described at 93.135(3).

d. Each work experience assignment shall not exceed six months in duration. Persons who complete a work experience assignment may move to another option as provided under the FIA, be assigned to a different work site, or be reassigned to the same work site, whichever is appropriate under the FIA.

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

e. Participants who are assigned to work experience may move to another component to facilitate regular employment before completing the months of the assignment when it is felt that sufficient work experience has been gained.

**93.121(10) Required clothing and equipment.** Clothing, shoes, gloves, and health and safety equipment for the performance of work at a work site under the program, which the participant does not already possess, shall be provided by the entity responsible for the work site or, in the case of safety equipment which the work site entity does not normally provide to employees, through PROMISE JOBS expense allowances. Under no circumstances shall participants be required to use their assistance or their income or resources to pay any portion of their participation costs.

a. Items which are provided by the entity responsible for the work site shall remain the property of the entity responsible for the work site, unless the participant and the entity agree to a different arrangement.

b. Safety equipment which the entity responsible for the work site does not normally provide to employees, including, but not limited to, steel-toed shoes, may be provided through PROMISE JOBS expense allowances up to a limit of \$100 per participant per work site assignment. Participants who complete the FIA activity keep the safety equipment. Participants who choose the limited benefit plan shall return all reusable safety equipment, excluding clothing.

ITEM 62. Amend rule 441—93.122(249C) as follows:

Amend the introductory paragraph and subrules 93.122(1) and 93.122(2), as follows:

**441—93.122(249C) FIP-UP work program.** When required to meet the federal requirements as described at 93.105(1)"c," one parent from any FIP-UP case shall be enrolled into the FIP-UP work program upon call-up by DES as described at 93.105(2), as one of the FIA options. When both parents are mandatory PROMISE JOBS participants or when one parent is a mandatory participant and one is a volunteer, the PROMISE JOBS worker shall consult with the parents before responsibility is assigned for the FIP-UP work program participation. When one parent is mandatory and one is exempt, the exempt parent may volunteer for PROMISE JOBS in order to fulfill the responsibility for the FIP-UP work program participation. The parent obligated or chosen to fulfill this responsibility shall be known as the designated parent and the FIA shall include the appropriate FIP-UP work program activities for the designated parent.

**93.122(1) Activities of the FIP-UP work program.** The FIP-UP work program will shall provide orientation, assessment I, job club, and work experience activities for the designated parent.

**93.122(2) Designated parent referral to JTPA for work experience placement.** FIP-UP designated parents who do not find employment of 129 hours or more per month before completing job club shall be immediately referred to JTPA for work experience placement.

Amend subrule 93.122(3), paragraph "b," as follows:

b. FIP-UP designated parents aged 20 through 24 who have not completed high school or an equivalent course of education will meet the FIP-UP work program participation requirement if they are participating in educational activities such as high school completion, GED, English as a second language, and adult basic education (ABE)

and these activities are included in an employability plan ~~an FIA.~~

Amend subrule 93.122(5), paragraph "a," as follows:

a. Designated parents on FIP-UP cases shall be assigned to work sites *three days per week, eight hours per day, between the hours of 8 a.m. and 6 p.m., Monday through Friday, unless the participant agrees to another schedule*, for six-calendar-month periods, at the end of which the participant shall be reassessed and, if appropriate, the designated parent's ~~employability plan FIA~~ shall be revised. This revision may include assignment to a different work site, if one is available, or reassignment to the same work site, whichever is appropriate.

ITEM 63. Rescind rule 441—93.129(249C) and insert the following new rule in lieu thereof:

**441—93.129(249C) Nonparticipation by volunteers.** Volunteer participants are not subject to the limited benefit plan as described at 441—subrule 41.24(8).

**93.129(1) Consequences of nonparticipation by volunteers.**

a. Volunteer participants who do not schedule or keep an appointment for orientation or who choose not to sign an FIA after attending orientation shall have PROMISE JOBS referral status changed to exempt by the income maintenance worker. No penalty is involved.

b. Volunteers who sign the FIA and choose not to carry out the activities or meet the responsibilities of the FIA, including resolving participation issues as described at rule 441—93.132(249C), shall be deactivated from the PROMISE JOBS program after completion of the conciliation process described below. Volunteers who are deactivated from the program after signing the FIA shall not be eligible for priority program services as long as other participants are waiting for services.

**93.129(2) Conciliation period for volunteers.** The purpose of the conciliation period is to identify and remove or resolve barriers to participation, to ensure that volunteer participants do not unknowingly lose their right to priority service, and to identify the steps that the participant and the PROMISE JOBS staff will take to ensure successful participation. Conciliation for volunteers shall be provided by a conciliation unit established by the PROMISE JOBS provider agencies in each local service delivery area. PROMISE JOBS staff from DES shall conciliate decisions made by JTPA workers. PROMISE JOBS staff from JTPA shall conciliate DES decisions. The bureau of refugee services shall arrange with PROMISE JOBS staff of DES and JTPA to provide conciliation services when the need arises. If the local service delivery area assigns interagency teams, decisions by a team shall be conciliated by the other teams.

a. When the PROMISE JOBS worker determines that an exempt volunteer, after signing the FIA, has chosen not to carry out the activities or responsibilities of the FIA, the worker shall notify the conciliation unit of the PROMISE JOBS local service delivery area. This notice shall include documentation of the issues of participation or problems of participation which have not been resolved. The conciliation unit shall review the material to determine if the nonfinancial sanction of loss of priority service is applicable.

b. If the conciliation unit disagrees with the PROMISE JOBS worker, the conciliation unit shall contact the worker to resolve the issue.

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c. If the conciliation unit agrees with the PROMISE JOBS worker, the conciliation unit shall initiate a 30-day conciliation period by issuing the Notice of Potential Loss of Priority Service—Exempt Volunteers, Form 470-3116, to the participant. The conciliation period begins the day following the day the Notice of Potential Loss of Priority Service—Exempt Volunteers is issued. During this 30-day period, the participant can present additional information to the conciliation unit to resolve the issues of participation or problems with participation, or identify barriers to participation which should be addressed in the FIA.

d. If the participant presents additional information which indicates resolution of issues of participation or problems with participation, or which indicates a barrier to participation which will be addressed in the FIA, the conciliation unit shall review these with the PROMISE JOBS worker, with conciliation staff having the final say. If the conciliation unit finds that the activities of the FIA can be resumed or the FIA can be renegotiated, the conciliation unit shall notify the PROMISE JOBS worker of that finding.

e. If the conciliation unit finds that the participant has chosen not to carry out the activities or responsibilities of the FIA, i.e., the issues and problems are not resolved, barriers to participation are not identified, or the participant indicates unwillingness to include the barriers to participation in a renegotiated FIA, the conciliation unit shall notify the PROMISE JOBS worker to apply the loss of priority services sanction.

ITEM 64. Rescind and reserve rule 441—93.130(249C).

ITEM 65. Rescind rule 441—93.131(249C) and insert the following new rule in lieu thereof:

**441—93.131(249C) Failure to participate in classroom training.**

**93.131(1)** Participants aged 18 and older. FIA-responsible persons and other mandatory PROMISE JOBS participants who choose not to continue to participate in classroom training shall renegotiate the FIA unless the participant is younger than the age of 18.

**93.131(2)** Participants aged 17 or younger. A participant aged 17 or younger who chooses not to participate in high school completion activities shall be considered to have chosen the LBP. The participant may choose other FIA options only if the local education agency will not allow a participant to enroll in high school completion activities.

ITEM 66. Rescind rule 441—93.132(249C) and insert the following new rule in lieu thereof:

**441—93.132(249C) Participation issues for FIA-responsible persons.** PROMISE JOBS participants who do not carry out the responsibilities of the FIA are considered to have chosen the limited benefit plan, as described at 441—subrule 41.24(8).

The participation issues in this rule are those which are important for effective functioning in the workplace or training facility and to the completion of the FIA.

Participants aged 18 or older who, for reasons other than those described at rule 441—93.133(249C), do not resolve these issues shall be considered to have chosen the limited benefit plan, unless participant circumstances are revealed which indicate that a barrier to participation exists which should be addressed in the FIA.

Those who may be considered to have chosen the limited benefit plan are:

1. Participants who are more than 15 minutes late for a third time within three months of the first lateness, after receiving a written reminder of the importance of complying with the FIA at the time the second lateness occurred.

2. Participants who do not, for a second time after receiving a written reminder of the importance of complying with the FIA at the first occurrence, appear for scheduled appointments, participate in appraisal activities, complete required forms, or take required vocational or aptitude tests, or are absent from activities designated in the FIA or other self-sufficiency plan.

3. Participants who do not, for a second time after receiving written reminder of the importance of complying with the FIA at the first occurrence, notify work experience sponsors or PROMISE JOBS staff of absence within one hour of the time at which they are due to appear.

4. Participants who exhibit disruptive behavior for a second time after receiving a written reminder of the importance of complying with the FIA at the first occurrence. Disruptive behavior means the participant hinders the performance of other participants or staff, refuses to follow instructions, uses abusive language, or is under the influence of alcohol or drugs.

5. Participants who fail to secure required physical examinations after a written request to do so.

6. Participants who continue an offense after being notified that the behavior is disruptive and in what manner it is disruptive.

7. Participants whose performance continues to be unsatisfactory after being notified by program or provider agency staff of unacceptable performance and what is necessary to make performance acceptable. Notification of unsatisfactory performance may be oral initially, but shall be documented to the participant in writing.

8. Participants who make physical threats to other participants or staff. A physical threat is defined as having a dangerous weapon in one's possession and either threatening with or using the weapon or committing assault.

9. Participants who do not accept work experience assignments when the work experience option is part of the FIA or required under the FIP-UP work program.

10. Participants who do not, for a second time after receiving written reminder of the importance of complying with the FIA at the first occurrence, appear for work experience interviews.

11. Participants who do not follow up on job referrals or refuse offers of employment or terminate employment.

12. Participants who do not secure adequate child care when registered or licensed facilities are available.

13. Participants for whom child care, transportation, or educational services become unavailable as a result of failure to use PROMISE JOBS funds to pay the provider or failure to provide required receipts, or when a training plan is terminated based on 93.114(14)"f"(3). Except for persons required to participate in high school completion activities, these actions do not lead to the limited benefit plan for persons in classroom training when the participant chooses other options under the FIA.

14. FIA-responsible persons who are required to participate in high school completion activities and whose training plan is terminated due to failure to refund overpayments or due to failure to provide grade transcripts or reports.

ITEM 67. Rescind rule 441—93.133(249C) and insert the following new rule in lieu thereof:

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**441—93.133(249C) Problems with participation of a temporary or incidental nature.** Problems with participation as described below shall be considered to be of a temporary or incidental nature when participation can be easily resumed. These problems are acceptable instances when a participant is excused from participation or for refusing or quitting a job or limiting or reducing hours.

**93.133(1)** Acceptable instances when a person is excused from participation.

a. Illness. When a participant is ill more than three consecutive days or if illness is habitual, staff may require medical documentation of the illness.

b. Required in the home due to illness of another family member. Staff may require medical documentation for the same reasons as when a participant is ill.

c. Family emergency, using reasonable standards of an employer.

d. Bad weather, using reasonable standards of an employer.

e. Absent or late due to participant's or spouse's job interview. When possible, the participant shall provide notice of the interview at least 24 hours in advance including the name and address of the employer conducting the interview. When 24-hour notice is not possible, notice must be given as soon as possible and prior to the interview.

f. Leave due to the birth of a child. When a child is born during the FIA, necessary absence shall be determined in accordance with the Family Leave Act of 1993.

**93.133(2)** Acceptable instances when a person is excused from participation or for refusing or quitting a job or limiting or reducing hours.

a. Required travel time from home to the job or available work experience or unpaid community service site exceeds one hour each way. This does not include additional travel time necessary to take a child to a child care provider.

b. Except as described in 441—subrule 41.25(5) and 441—paragraph 42.24(1)"c," work offered is at a site subject to a strike or lockout, unless the strike has been enjoined under Section 208 of the Labor-Management Relations Act (29 U.S.C. 78A) (commonly known as the Taft-Hartley Act), or unless an injunction has been issued under Section 10 of the Railway Labor Act (45 U.S.C. 160).

c. Violates applicable state or federal health and safety standards or workers' compensation insurance is not provided.

d. Job is contrary to the participant's religious or ethical beliefs.

e. The participant is required to join, resign from or refrain from joining a legitimate labor organization.

f. Work requirements are beyond the mental or physical capabilities as documented by medical evidence or other reliable sources.

g. Discrimination by an employer based on age, race, sex, color, handicap, religion, national origin or political beliefs.

h. Work demands or conditions render continued employment unreasonable, such as working without being paid on schedule.

i. Circumstances beyond the control of the participant, such as disruption of regular mail delivery.

**93.133(3)** Jobs that participants have the choice of refusing or quitting or limiting or reducing.

a. Employment change or termination is part of the FIA.

b. Job does not pay at least the minimum amount customary for the same work in the community.

c. Employment is terminated in order to take a better-paying job, even though hours of employment may be less than current.

d. The employment would result in the family of the participant experiencing a net loss of cash income. Net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the person was receiving at the time the offer of employment is made. Gross income includes, but is not limited to, earnings, unearned income, and cash assistance. Gross income does not include food stamp benefits and in-kind income.

**93.133(4)** Instances when problems of participation could negatively impact the client's achievement of self-sufficiency. There may be instances where staff determine that a participant's problems of participation are not described in 93.133(1) to 93.133(3), but may be circumstances which could negatively impact the participant's achievement of self-sufficiency. When this occurs, the case shall be referred to the administrator of the division of economic assistance for a determination as to whether the problems are acceptable instances for not participating or for refusing or quitting a job.

ITEM 68. Rescind rule 441—93.134(249C) and insert the following new rule in lieu thereof:

**441—93.134(249C) Barriers to participation.** Problems with participation of a permanent or long-term nature shall be considered barriers to participation and shall be identified in the FIA as issues to be resolved so that participation can result. These barriers may be identified during assessment and shall be part of the FIA from the beginning. When barriers are revealed by the participant during the FIA or are identified by problems which develop after the FIA is signed, the FIA shall be renegotiated and amended to provide for removal of the barriers. FIA-responsible persons who choose not to cooperate in removing identified barriers to participation shall be considered to have chosen the LBP.

Barriers to participation shall include, but not be limited to, the following:

1. Child or adult care is needed before a person can participate or take a job, and the care is not available. Participants are not required to do any activity unless suitable child or adult care has been arranged. In limited instances where special-needs care is not available, it may be most practical for the participant to develop the FIA to identify providing the child or adult care as the FIA option.

2. Lack of transportation.

3. Substance addiction.

4. Sexual or domestic abuse history.

5. Overwhelming family stress.

ITEM 69. Amend rule 441—93.135(249C) as follows:

Amend the introductory paragraph as follows:

**441—93.135(249C) Required client documentation.** Documentation necessary to verify that the PROMISE JOBS participant is carrying out the terms of the FIA shall be provided by the participant.

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

Amend subrule 93.135(2), paragraphs "d" and "e," as follows:

d. In those instances where the participant is involved in an activity, ~~such as other than~~ job search, which is not directly monitored by the PROMISE JOBS worker or an outside training provider, the participant shall record the hours of participation on the PROMISE JOBS Time and Attendance Report, Form 470-2617, and shall sign and date the form. The PROMISE JOBS worker shall review the form. The participant's hours shall be accepted unless the PROMISE JOBS worker has justifiable cause to doubt the accuracy of the hours. If the PROMISE JOBS worker accepts the hours, the PROMISE JOBS worker shall also sign and date the form. The form shall be returned within ten calendar days following the end of each month. If the hours reported are questioned, the PROMISE JOBS worker shall meet with the participant to resolve the discrepancy. The participant shall provide further verification, if required.

e. When a participant is involved in postsecondary classroom training, or when a mandatory participant is voluntarily involved in high school completion activities, failure to verify hours of attendance as described above shall result in termination of the training plan, and ~~a non-financial sanction loss of right to priority service~~ for a voluntary participant. When a participant involved in another PROMISE JOBS component fails to verify the participant's hours of attendance, the participant shall be subject to ~~a sanction of loss of lose the right to~~ priority service if a volunteer participant, or ~~a FIP financial sanction enter the limited benefit plan~~ if a mandatory participant.

Add the following new subrules 93.135(3) and 93.135(4).

**93.135(3) Job search documentation.** Documentation of any job search activities which cannot be documented by the PROMISE JOBS worker shall be provided by the participant using Form 470-3099, Job Search Record. The Job Search Record shall include the name and address of the employer, the name and telephone number of the contact person, the date on which contact was made, and the outcome of the contact. It shall also contain authorization for PROMISE JOBS staff to telephone any listed employer to verify the contact.

The Job Search Record shall be provided within five working days after the last working day of any week during which the participant has made a job search.

**93.135(4) Employment verification.** When the information is not available from any other source, participants shall verify scheduled and actual hours of employment at the time that employment begins and on a monthly basis thereafter. Participants may use employer statements, copies of pay stubs, or may sign Form MH-2201-0, Consent to Release or Obtain Information, so that the employer may provide information directly to the PROMISE JOBS worker.

Participants shall provide verification of scheduled and actual hours of employment within ten calendar days following the end of each month for ongoing employment.

ITEM 70. Rescind and reserve rule 441—93.136 (249C).

ITEM 71. Amend rule 441—93.137(249C) as follows:

**441—93.137(249C) Written notification.** Clients shall be notified in writing of all scheduled meetings, compo-

nent assignments, work site assignments, and ~~probationary periods participation issues as described at rule 441—93.132(249C)~~. Written notice to the participant shall also be provided when a physical examination, doctor's statement, *employment verification*, or other verification is required. Participants shall be allowed 45 calendar days from the date notice is mailed to provide a physical examination report. Five working days shall be allowed from the date notice is mailed for a participant to appear for scheduled meetings, component or work site assignments, provide a doctor's statement, *employment verification*, or provide other verification. Additional time shall be allowed when it is verified that a participant is making every effort but is unable to fulfill requirements within the established time frames.

ITEM 72. Rescind rule 441—93.138(249C) and insert the following new rule in lieu thereof:

**441—93.138(249C) Resolution of disputes around the FIA and PROMISE JOBS participation.**

**93.138(1) Informal resolution process.** When there is a disagreement between the participant and the immediate PROMISE JOBS worker regarding the participant's FIA or participation in PROMISE JOBS components, the participant can request to talk to the supervisor and request a decision on the dispute. The supervisor shall schedule a face-to-face interview with the participant within 7 days and issue a decision in writing within 14 days of the participant's request.

**93.138(2) Resolution process for FIP participants who choose the limited benefit plan before signing the FIA.**

a. The Notice of Decision which establishes the limited benefit plan shall inform the FIP participant that there is a 45-day period, beginning with the first day of the limited benefit plan, in which to reconsider the choice of the limited benefit plan without loss of benefits.

(1) When the participant contacts either the income maintenance worker or the PROMISE JOBS office within the 45 days, the participant shall be scheduled for orientation and assessment I.

(2) When the FIA is signed, the PROMISE JOBS worker shall notify the department and the limited benefit plan shall be terminated as of the month that the participant contacted the income maintenance worker or the PROMISE JOBS office. If the participant experiences reduced benefits due to, for example, administrative delay in scheduling appointments, the benefits shall be restored.

b. The Notice of Decision which establishes the limited benefit plan shall also inform the FIP participant that there is a second period, during the last two months of the three-month reduced benefit period, during which a participant who does not reconsider during the 45-day initial reconsideration period, may enter the FIA process.

(1) When the participant contacts either the income maintenance worker or the PROMISE JOBS office within the last two months of the three-month period of reduced benefits, the participant shall be scheduled for orientation and assessment I.

(2) During the last two months of the three-month period of reduced benefits, a qualified social services professional shall contact the participant to promote FIA participation and secure the welfare of the children. When the participant indicates, at this time, a desire to participate in the FIA process, the qualified professional shall initiate an appointment with the PROMISE JOBS office and the participant shall be scheduled for orientation and assessment I.

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

(3) When the FIA is signed the PROMISE JOBS worker shall notify the department and the limited benefit plan shall be terminated as of the month that the participant contacted the income maintenance worker or the PROMISE JOBS office. If the participant experiences further reduced benefits due to, for example, an administrative delay in scheduling appointments, the benefits shall be restored.

c. For a participant who does not enter the FIA process during either of the reconsideration periods, qualified social services professional shall make an inquiry as to the well-being of the children after the period of reduced benefits ends.

**93.138(3)** Resolution process for FIP participants who choose the limited benefit plan after completing the FIA. When the PROMISE JOBS worker finds participation issues and other circumstances which seem to indicate the participant has chosen the limited benefit plan as described in these rules, the worker shall make every effort to negotiate for a solution, clearing misunderstanding of expectations, or identifying barriers to participation which should be addressed in the FIA. Only when the participant and the PROMISE JOBS worker cannot find the grounds to show that the FIA is being fulfilled shall the limited benefit plan be initiated.

a. Before a Notice of Decision establishing the limited benefit plan is issued, the following resolution steps shall occur:

(1) The PROMISE JOBS supervisor shall be involved to provide further advocacy, counseling, or negotiation support. The resolution actions of the supervisor shall be documented in the participant case file.

(2) Local PROMISE JOBS management shall have the option to involve an impartial third party to assist in a resolution process. Arrangements shall be indicated in the local services plan of the local service delivery area.

(3) If the above steps do not lead to fulfillment of the FIA, the case shall be referred to the administrator of the division of economic assistance for review before a Notice of Decision establishing the limited benefit plan is issued.

b. If the above steps do not lead to fulfillment of the FIA, the FIP participant is considered to have chosen the limited benefit plan and the Notice of Decision establishing the limited benefit plan shall be initiated.

c. Appeal rights under the limited benefit plan are described at rule 441—93.140(249C) and judicial review upon petition of the participant is always available.

d. A qualified social services professional shall make an inquiry as to the well-being of the children after the three-month reduced benefit period ends.

**93.138(4)** Check on the well-being of children in LBP households. For FIP households who have chosen the LBP, the department shall provide for qualified social services professionals to provide home visits to make inquiry into the well-being of the children in circumstances as described at 441—41.24(8)"a"(5) and (6). A qualified social services professional is a person meeting the qualifications for education and experience set forth at 441—subrule 185.10(1) for the type of service provided. The department may contract out for these services.

All visits to the FIP household shall be made in the spirit of supporting families which have chosen the LBP. The instructions for the visits shall be written to make it clear that these visits are an extension of the FIP and FIA philosophy of supporting families as they move toward

self-sufficiency. If at any of the visits, initial or follow-up, the family denies entry to the qualified social services professional, this fact shall be reported to the department and no further action shall be taken.

a. The qualified social services professional shall visit the family in the last two months of the reduced benefit period, for participants who choose the LBP before signing the FIA. The qualified social services professional shall visit the FIP participant in a spirit of supporting the family to move toward self-sufficiency, which could mean engagement into the FIA process, or exploring with the family their alternative plan, identifying areas where the qualified social services professional can help.

The qualified social services professional's home visit shall include, but is not limited to, discussing reasons for not participating in the FIA; offering to problem solve with perceived problems of FIA participation; being a liaison with PROMISE JOBS and IM; recommending to IM when conditions seem to warrant exemption; assessing family ability to assess their situation and plan for the well-being of the children; discussing specific plans pertaining to, for example, child care, in the future to ensure that the family has realistic plans for the future; using the minimum sufficient level of care concept as the standard for evaluating the family plan for the future; planning appropriate follow-up visits or referrals for services if the minimum sufficient level of care standard is not met.

b. The qualified social services professional shall visit the family after the end of the reduced benefit period for all households which enter the six-month period of ineligibility for the entire eligible group.

For families who choose the LBP before signing the FIA, the qualified social services professional shall visit the FIP participant after the end of the reduced benefit period (in month seven of the LBP) in a spirit of follow-up to the assistance offered in month five or six. It may be seen as an extension of other follow-up visits which have already been made as a result of the earlier visit in month five or six.

For families who choose the LBP by abandoning their agreement after signing the FIA, the visit in month seven shall be offered in the same spirit of supporting the families as they move toward self-sufficiency.

For both of these groups, the steps of the visit shall be the same as described in paragraph "a" above, except that engagement in the FIA process is not possible.

c. The qualified social services professional shall report results of the home visits to the department, using the following categories of response:

(1) Qualified social services professional was denied entry to the home.

(2) Why no further involvement is needed.

(3) The qualified social services professional needs to provide follow-up services or referral to other services, identifying services needed.

(4) Referral to child protective investigations is warranted based on allegations of child abuse or neglect.

ITEM 73. Amend rule 441—93.140(249C) by adding the following new subrules 93.140(2) and 93.140(4):

**93.140(2)** Appeal rights under the limited benefit plan. A person only has the right to appeal the establishment of the limited benefit plan once but there shall be three opportunities to appeal. A person may appeal the limited benefit plan at the time of the Notice of Decision, Form PA-3102-0, establishing the beginning date of the limited



HUMAN SERVICES DEPARTMENT[441](cont'd)

benefit plan, at the time of the notice establishing the first month of the period of reduced benefits, or at the time of the notice establishing the six-month period of ineligibility. When the reason for an appeal is based on incorrect grant computation, error in determining the eligible group, or other worker error, a hearing may be granted.

**93.140(4)** Right to appeal the content of the family investment agreement. A participant shall have the right to appeal the content of the FIA when the informal resolution process described at 93.138(1) does not resolve a disagreement between the participant and the PROMISE JOBS worker and the participant wishes to continue in the FIA process.

ITEM 74. Rescind and reserve rules **441—93.141(249C)** and **441—93.142(249C)**.

ITEM 75. Amend rule 441—93.143(249C) as follows:

**441—93.143(249C) Confidentiality.** The departments of education, employment services and economic development, Job Training Partnership Act agencies, and local education agencies shall safeguard client information in conformance with Iowa Code section 217.30.

*The department and PROMISE JOBS provider agencies may disclose client information to other state agencies, or to any other entity or person who is not subject to the Iowa Administrative Procedure Act, when that agency or other entity or person must have that information in order to provide services to PROMISE JOBS participants which have been determined to be necessary for successful participation in PROMISE JOBS.*

[Filed 2/10/94, effective 5/1/94]  
[Published 3/2/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/94.

## ARC 4636A

### NATURAL RESOURCE COMMISSION[571]

#### Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 10, "Forfeited Property," Iowa Administrative Code.

These amendments provide for the sale of forfeited property under rule 571—10.5(809), "Disposition of general property," and delete this same wording as currently listed under rule 571—10.6(809), "Disposition of weapons."

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 22, 1993, as **ARC 4510A**. No comments were received during the comment period and public hearing held January 12, 1994, and there were no changes from the Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 809.13 and 809.21.

These amendments will become effective on April 6, 1994.

The following amendments are adopted.

ITEM 1. Amend 571—10.5(809) as follows:

**571—10.5(809) Disposition of general property.** *Forfeited property may be sold at a department-administered annual public sale.* Forfeited property may be used by the department. The director may give, sell or trade property to any other state agency or to any other agency within the state.

ITEM 2. Amend 571—10.6(809) as follows:

**571—10.6(809) Disposition of weapons.** ~~Forfeited property may be sold at a department-administered annual public sale.~~ All legal weapons will be sold at the department's annual sale or the director may transfer illegal or legal weapons to the department of public safety for disposal in accordance with Iowa Code sections 809.13 and 809.21.

[Filed 2/11/94, effective 4/6/94]  
[Published 3/2/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/94.

## ARC 4639A

### NATURAL RESOURCE COMMISSION[571]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 23, "Wildlife Habitat Promotion With Local Entities Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 27, 1993, as **ARC 4386A**.

These rules give the procedures by which revenues from the sale of wildlife habitat stamps will be used to cost share with local entities.

A public hearing was held on December 22, 1993, and only one comment was received. The only change from the Notice of Intended Action was to add clarification of an example of the exception. This addressed the one comment received.

These amendments are intended to implement Iowa Code section 483A.3.

These amendments will become effective April 6, 1994.

The following amendments are adopted:

ITEM 1. Amend **571—Chapter 23** by striking all references to "110" and inserting "483A" to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend 571—23.5(483A), introductory paragraph, as follows:

**571—23.5(483A) Eligibility for cost-sharing assistance.** No project shall be eligible for cost sharing unless it is specifically approved by the commission, or the applicant



## NATURAL RESOURCE COMMISSION[571](cont'd)

has received a written waiver of retroactivity from the commission, prior to its initiation. *A project shall not be eligible for cost sharing unless public hunting and trapping will be allowed; however, the review and selection committee may recommend for commission approval projects with restrictions on hunting and trapping under exceptional circumstances, like waterfowl refuges.* Only the following types of project expenditures will be eligible for cost-sharing assistance.

[Filed 2/11/94, effective 4/6/94]  
[Published 3/2/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/94.

ARC 4641A

NATURAL RESOURCE  
COMMISSION[571]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 481A.5, 481A.6, 481A.7 and 481A.48, the Natural Resource Commission hereby amends Chapter 53, "Controlled Hunting Areas," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 4, 1993, as **ARC 4143A**. A public hearing was held September 3, 1993, and no comments were received. There are no changes from the Notice of Intended Action.

These amendments regulate controlled waterfowl hunting at certain public wildlife areas and update Iowa Code references to reflect renumbering of the 1993 Iowa Code.

These amendments are intended to implement Iowa Code sections 481A.5, 481A.6, 481A.7 and 481A.48.

These amendments will become effective April 6, 1994.

The following amendments are adopted.

ITEM 1. Amend **571—Chapter 53** by striking all references to "109" and inserting "481A" to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend subrule **53.3(1)**, paragraph "a," as follows:

a. Controlled area "A." Permits for ~~zone~~ area A will be issued at the ~~Schaffer's Point~~ *Schafer Access* check station. A drawing to determine hunting sites will be held 90 minutes before the start of shooting time for waterfowl each day. One person shall fill out a ~~ear~~ *permit* with the names of all persons in the hunting party (maximum of six) and present the ~~ear~~ *permit* to the check station attendant prior to the drawing time. *The nonrefundable daily permit fee to enter the drawing is \$5 per party, unless one member of the party has a \$50 season permit.* If a person's name appears on more than one ~~party-ear~~ *permit*, the person shall be disqualified from hunting on the area for that day. When a person's name is on one ~~party-ear~~ *permit*, the person cannot subsequently hunt with any other party prior to 10 a.m. each day. The person who filled out the ~~ear~~ *permit* shall draw to determine the sequence of site selection. ~~If a person successfully draws a number to hunt at a staked site, the person must pay a fee of two dollars (\$2) for the party, unless at least one member of the party has previously purchased a season permit for twenty-five dollars (\$25).~~ Permits for area A will be issued for each party, giving the hunters' individual names and the stake site number which they selected. The party shall hunt only at that site and must stay within 40 yards of the stake except when retrieving game or when going to and from the area. A party at any one site can use no more than two boats. Decoys must be placed within 60 feet of the stake. Hunting and the location of decoys, at double stake sites, is restricted to one of the stake sites.

ITEM 3. Amend subrule **53.3(1)**, paragraph "b," as follows:

b. Controlled area "B." *Permits for area B are required only on opening weekends of duck season.* Permits for this area will be issued at both the ~~Schaffer's Point~~ *Schafer Access* check station and the Sand Run station. Permits will be issued on a first-come, first-served basis

ARC 4640A

NATURAL RESOURCE  
COMMISSION[571]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 462A.17, 462A.26 and 462A.31, the Natural Resource Commission hereby amends Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 4, 1993, as **ARC 4142A**. A public hearing was held on September 3, 1993, and no comments were received. There are no changes from the Notice of Intended Action.

These amendments regulate boating speed and distance zoning and update Iowa Code references to reflect renumbering of the 1993 Iowa Code.

These amendments are intended to implement Iowa Code sections 462A.17, 462A.26, and 462A.31.

These amendments will become effective April 6, 1994.

The following amendments are adopted.

ITEM 1. Amend **571—Chapter 40** by striking all references to "106" and inserting "462A" to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend subrule 40.9(2) as follows:

**40.9(2)** ~~No motorboat~~ *All motorboats*, except authorized emergency vessels, shall be operated at a ~~no-wake speed greater than ten miles per hour~~ between April 1 and October 1 yearly, ~~except on that portion of Lake Odessa proper lying south of the south line of Section 17 and west and north from the east side of the Sand Run Public Access Area in Section 33, all in Township 74 North, Range 2 West of the 5th P.M. known as the Sand Run Chute, lying south of the main lake to a point 100 yards south of the Sand Run boat ramp.~~

[Filed 2/11/94, effective 4/6/94]  
[Published 3/2/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/94.

## NATURAL RESOURCE COMMISSION[571](cont'd)

from 90 minutes before, until one hour after, the start of legal shooting time for waterfowl each day. Each boat will be issued, without charge, a permit showing the name of each member of the party. Hunting sites will not be designated. Persons may enter zone area B without securing a permit beginning one hour after the start of legal shooting time for waterfowl each day.

[Filed 2/11/94, effective 4/6/94]  
[Published 3/2/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/94.

## ARC 4642A

NATURAL RESOURCE  
COMMISSION[571]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 481B.6, the Natural Resource Commission rescinds Chapter 77, "Endangered and Threatened Plant and Animal Species" and adopts a new Chapter 77, "Endangered and Threatened Plant and Animal Species," Iowa Administrative Code.

The Notice of Intended Action was published in the October 27, 1993, Iowa Administrative Bulletin as ARC 4387A. A public hearing was held on November 19, 1993.

The new Chapter 77 revises the list of endangered, threatened, and special concern plants and animals. It also provides for exemption for the purchase, sale, barter, possession, and transportation of plant and animal species listed as endangered or threatened. The changes as a result of the public hearing and written comments were to add two species to the list of threatened animals, to reclassify one animal species from special concern to threatened, to add one new species to the list of endangered plants, to reclassify four plant species from threatened or special concern to endangered, to delete two plant species completely, and to further explain the exemptions in rule 77.4(481B).

These rules are intended to implement Iowa Code chapter 481B.

These rules will become effective April 6, 1994.

The following rules are adopted.

Rescind Chapter 77 and adopt a new Chapter 77 in lieu thereof:

## CHAPTER 77

ENDANGERED AND THREATENED PLANT  
AND ANIMAL SPECIES

571—77.1(481B) **Definitions.** As used in this rule:

"Endangered species" means any species of fish, plant life, or wildlife which is in danger of extinction throughout all or a significant part of its range.

"Special concern species" means any species about which problems of status or distribution are suspected, but not documented, and for which no special protection is afforded under this rule.

"Threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

571—77.2(481B) **Endangered, threatened, and special concern animals.** The natural resource commission, in consultation with scientists with specialized knowledge and experience, has determined the following animal species to be endangered, threatened or of special concern in Iowa:

## 77.2(1) Endangered animal species:

## Mammals

Indiana Bat	Myotis sodalis
Plains Pocket Mouse	Perognathus flavescens
Red-backed Vole	Clethrionomys gapperi
Bobcat	Felis rufus

## Birds

Red-shouldered Hawk	Buteo lineatus
Northern Harrier	Circus cyaneus
Peregrine Falcon	Falco peregrinus
Piping Plover	Charadrius melodus
Common Barn Owl	Tyto alba
Least Tern	Sterna antillarum
Bald Eagle	Haliaeetus leucocephalus
King Rail	Rallus elegans
Short-eared Owl	Asio flammeus

## Fish

Lake Sturgeon	Acipenser fulvescens
Pallid Sturgeon	Scaphirhynchus albus
Pugnose Shiner	Notropis anogenus
Weed Shiner	Notropis texanus
Pearl Dace	Semotilus margarita
Freckled Madtom	Noturus nocturnus
Bluntnose Darter	Etheostoma chlorosomum
Least Darter	Etheostoma microperca

## Reptiles

Yellow Mud Turtle	Kinosternon flavescens
Wood Turtle	Clemmys insculpta
Great Plains Skink	Eumeces obsoletus
Slender Glass Lizard	Ophisaurus attenuatus
Yellowbelly Water Snake	Nerodia erythrogaster
Western Hognose Snake	Heterodon nasicus
Speckled Kingsnake	Lampropeltis getulus
Copperhead	Agkistrodon contortrix
Prairie Rattlesnake	Crotalus viridis
Massasauga Rattlesnake	Sistrurus catenatus

## Amphibians

Blue-spotted Salamander	Ambystoma laterale
Mudpuppy	Necturus maculosus
Crawfish Frog	Rana areolata

## Butterflies

Dakota Skipper	Hesperia dacotae
Ringlet	Coenonympha tullia

## Land Snails

Iowa Pleistocene Snail	Discus macclintocki
Minnesota Pleistocene Ambersnail	Novisuccinea new species A
Iowa Pleistocene Ambersnail	Novisuccinea new species B

## NATURAL RESOURCE COMMISSION[571](cont'd)

Frigid Ambersnail	Catinella gelida
Briarton Pleistocene Vertigo	Vertigo briarensis
Bluff Vertigo	Vertigo meramecensis
Iowa Pleistocene Vertigo	Vertigo new species

## Fresh Water Mussels

Spectacle Case	Cumberlandia monodonta
Slippershell	Alasmidonta viridis
Buckhorn	Tritogonia verrucosa
Ozark Pigtoe	Fusconaia ozarkensis
Bullhead	Plethobasus cyphus
Ohio River Pigtoe	Pleurobema sintoxia
Slough Sandshell	Lampsilis teres teres
Yellow Sandshell	Lampsilis teres anodontoides
Higgin's-eye Pearly Mussel	Lampsilis higginsii

## 77.2(2) Threatened animal species:

## Mammals

Least Shrew	Cryptotis parva
Grasshopper Mouse	Onychomys leucogaster
Spotted Skunk	Spilogale putorius
River Otter	Lutra canadensis

## Birds

Long-eared Owl	Asio otus
Henslow's Sparrow	Ammodramus henslowii

## Fish

Chestnut Lamprey	Ichthyomyzon castaneus
American Brook Lamprey	Lampetra appendix
Grass Pickerel	Esox americanus
Blacknose Shiner	Notropis heterolepis
Western Sand Darter	Ammocrypta clara
Black Redhorse	Moxostoma duquesnei
Burbot	Lota lota
Orangethroat Darter	Etheostoma spectabile

## Reptiles

Stinkpot	Sternotherus odoratus
Ornate Box Turtle	Terrapene ornata
Diamondback Water Snake	Nerodia rhombifera
Western Worm Snake	Carphophis amoneus
Smooth Green Snake	Opheodrys vernalis

## Amphibians

Central Newt	Notophthalmus viridescens
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## Butterflies

Powesheik Skipperling	Oarisma powesheik
Byssus Skipper	Problema byssus
Mulberry Wing	Poanes massasoit
Silvery Blue	Glaucopsyche lygdamus
Baltimore	Euphydryas phaeton

## Snails

Midwest Pleistocene Vertigo	Vertigo hubrichti
Occult Vertigo	Vertigo occulta

## Fresh Water Mussels

Cylinder	Anodontoides ferussacianus
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Strange Floater	Strophitus undulatus
Creek Heelsplitter	Lasmigona compressa
Purple Pimpleback	Cyclonaias tuberculata
Butterfly	Ellipsaria lineolata
Ellipse	Venustaconcha ellipsiformis

## 77.2(3) Special concern animal species:

## Mammals

Southern Bog Lemming	Synaptomys cooperi
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## Birds

Forester's Tern	Sterna forsteri
Black Tern	Chlidonias niger

## Fish

Pugnose Minnow	Notropis emiliae
Pirate Perch	Aphredoderus sayanus

## Butterflies

Dreamy Duskywing	Erynnis icelus
Sleepy Duskywing	Erynnis brizo
Columbine Duskywing	Erynnis lucilius
Wild Indigo Duskywing	Erynnis baptisiae
Ottoe Skipper	Hesperia ottoe
Leonardus Skipper	Hesperia l. leonardus
Pawnee Skipper	Hesperia leonardus pawnee
Beardgrass Skipper	Atrytone arogos
Zabulon Skipper	Poanes zabulon
Broad-winged Skipper	Poanes viator
Sedge Skipper	Euphyes dion
Two-spotted Skipper	Euphyes bimacula
Dusted Skipper	Atrytonopsis hianna
Salt-and-pepper Skipper	Amblyscirtes hegon
Pipevine Swallowtail	Battus philenor
Zebra Swallowtail	Eurytides marcellus
Olympia White	Euchloe olympia
Purplish Copper	Lycaena helloides
Acadian Hairstreak	Satyrium acidicum
Edward's Hairstreak	Satyrium edwardsii
Hickory Hairstreak	Satyrium caryaevorum
Striped Hairstreak	Satyrium liparops
Swamp Metalmark	Calephelis mutica
Regal Fritillary	Speyeria idalia
Baltimore	Euphydryas phaeton ozarkae

**571—77.3(481B) Endangered, threatened, and special concern plants.** The natural resource commission, in consultation with scientists with special knowledge and experience, determined the following plant species to be endangered, threatened, or of special concern in Iowa.

## 77.3(1) Endangered plant species:

## COMMON NAME

## SCIENTIFIC NAME

Pale false foxglove	Agalinus skinneriana
Blue giant-hyssop	Agastache foeniculum
Bearberry	Arctostaphylos uva-ursi
Black chokeberry	Aronia melanocarpa
Eared milkweed	Asclepias engelmanniana
Mead's milkweed	Asclepias meadii
Narrow-leaved milkweed	Asclepias stenophylla
Ricebutton aster	Aster dumosus
Large-leaved aster	Aster macrophyllus
Schreber's aster	Aster schreberi
Fern-leaved false foxglove	Aureolaria pedicularia

## NATURAL RESOURCE COMMISSION[571](cont'd)

Matricary grape fern	Botrychium matricariifolium	Forked aster	Aster furcatus
Poppy mallow	Callirhoe triangulata	Rush aster	Aster junciformis
Cordroot sedge	Carex chordorrhiza	Flax-leaved aster	Aster linariifolius
Large-bracted corydalis	Corydalis curvisiliqua	Water parsnip	Berula erecta
Silky prairie-clover	Dalea villosa	Kittentails	Besseyia bullii
Swamp-loosestrife	Decodon verticillatus	Bog birch	Betula pumila
Northern panic-grass	Dichanthelium boreale	Pagoda plant	Blephilia ciliata
Roundleaved sundew	Drosera rotundifolia	Leathery grapefern	Botrychium multifidum
False mermaid	Floerkea proserpinacoides	Little grapefern	Botrychium simplex
Bog bedstraw	Galium labradoricum	Sweet Indian-plantain	Cacalia suaveolens
Povertygrass	Hudsonia tomentosa	Poppy mallow	Callirhoe alcaeoides
Northern St. Johnswort	Hypericum boreale	Pipsissewa	Chimaphila umbellata
Pineweed	Hypericum gentianoides	Golden saxifrage	Chrysosplenium iowense
Winterberry	Ilex verticillata	Dayflower	Commelina erecta
Black-based quillwort	Isoetes melanopoda	Spotted coralroot	Corallorhiza maculata
Water-willow	Justicia americana	Bunchberry	Cornus canadensis
Dwarf dandelion	Krigia virginica	Golden corydalis	Corydalis aurea
Cleft conohea	Leucospora multifida	Pink corydalis	Corydalis sempervirens
Whiskbroom parsley	Lomatium foeniculaceum	Showy lady's-slipper	Cypripedium reginae
Running clubmoss	Lycopodium clavatum	Slim-leaved panic-grass	Dichanthelium linearifolium
Bog clubmoss	Lycopodium inundatum	Jeweled shooting star	Dodecatheon amethystinum
Annual skeletonweed	Lygodesmia rostrata	Glandular wood fern	Dryopteris intermedia
Water marigold	Megalodonta beckii	Marginal shield fern	Dryopteris marginalis
Northern lungwort	Mertensia paniculata	Woodland horsetail	Equisetum sylvaticum
Bigroot pricklypear	Opuntia macrorhiza	Slender cottongrass	Eriophorum gracile
Clustered broomrape	Orobanche fasciculata	Yellow trout lily	Erythronium americanum
Ricegrass	Oryzopsis pungens	Queen of the prairie	Filipendula rubra
Cinnamon fern	Osmunda cinnamomea	Blue ash	Fraxinus quadrangulata
Purple cliffbrake	Pellaea atropurpurea	Black huckleberry	Gaylussacia baccata
Arrow arum	Peltandra virginica	Oak fern	Gymnocarpium dryopteris
Pale green orchid	Platanthera flava	Green violet	Hybanthus concolor
Eastern prairie fringed orchid	Platanthera leucophaea	Twinleaf	Jeffersonia diphylla
Clammyweed	Polansia jamesii	Creeping juniper	Juniperus horizontalis
Crossleaf milkwort	Polygala cruciata	Intermediate pinweed	Lechea intermedia
Purple milkwort	Polygala polygama	Hairy pinweed	Lechea villosa
Jointweed	Polygonella articulata	Prairie bush clover	Lespedeza leptostachya
Douglas' knotweed	Polygonum douglasii	Twinflower	Linnaea borealis
Three-toothed cinquefoil	Potentilla tridentata	Western parsley	Lomatium orientale
Canada plum	Prunus nigra	Wild lupine	Lupinus perennis
Frenchgrass	Psoralea onobrychis	Tree clubmoss	Lycopodium dendroideum
Pink shinleaf	Pyrola asarifolia	Rock clubmoss	Lycopodium porophyllum
Prickly rose	Rosa acicularis	Hairy waterclover	Marsilea vestita
Meadow spikemoss	Selaginella eclipses	Bog buckbean	Menyanthes trifoliata
Rough-leaved goldenrod	Solidago patula	Winged monkeyflower	Mimulus alatus
Bog goldenrod	Solidago uliginosa	Yellow monkeyflower	Mimulus glaberratus
Yellow-lipped ladies-tresses	Spiranthes lucida	Partridge berry	Mitchella repens
Pickering morning-glory	Stylisma pickeringii	Pinesap	Monotropa hypopithys
Rough-seeded fameflower	Talinum rugospermum	Small sundrops	Oenothera perennis
Waxy meadowrue	Thalictrum revolutum	Little pricklypear	Opuntia fragilis
Long beechfern	Thelypteris phegopteris	Royal fern	Osmunda regalis
Large-leaved violet	Viola incognita	Philadelphia panic-grass	Panicum philadelphicum
Rusty woodsia	Woodsia ilvensis	Slender beardtongue	Penstemon gracilis
Yellow-eyed grass	Xyris torta	Hooker's orchid	Platanthera hookeri
		Northern bog orchid	Platanthera hyperborea
		Western prairie fringed orchid	Platanthera praeclara
		Purple fringed orchid	Platanthera psycodes
		Pink milkwort	Polygala incarnata
		Silverweed	Potentilla anserina
		Shrubby cinquefoil	Potentilla fruticosa
		Pennsylvania cinquefoil	Potentilla pennsylvanica
		One-sided shinleaf	Pyrola secunda
		Meadow beauty	Rhexia virginica
		Beaked rush	Rhynchospora capillacea
		Northern currant	Ribes hudsonianum
		Shining willow	Salix lucida
77.3(2) Threatened plant species:			
Northern wild monkshood	Aconitum noveboracense		
Round-stemmed false foxglove	Agalinus gattingerii		
Nodding wild onion	Allium cernuum		
Fragrant false indigo	Amorpha nana		
Virginia snakeroot	Aristolochia serpentaria		
Woolly milkweed	Asclepias lanuginosa		
Showy milkweed	Asclepias speciosa		

## NATURAL RESOURCE COMMISSION[571](cont'd)

Bog willow	<i>Salix pedicellaris</i>	Dry sedge	<i>Carex foena</i>
Low nutrush	<i>Scleria verticillata</i>	Thin sedge	<i>Carex gracilescens</i>
Buffaloberry	<i>Shepherdia argentea</i>	Delicate sedge	<i>Carex leptalea</i>
Scarlet globemallow	<i>Sphaeralcea coccinea</i>	Mud sedge	<i>Carex limosa</i>
Slender ladies-tresses	<i>Spiranthes lacera</i>	Hoplike sedge	<i>Carex lupuliformis</i>
Oval ladies-tresses	<i>Spiranthes ovalis</i>	Yellow sedge	<i>Carex lurida</i>
Hooded ladies-tresses	<i>Spiranthes romanzoffiana</i>	Intermediate sedge	<i>Carex media</i>
Spring ladies-tresses	<i>Spiranthes vernalis</i>	Backward sedge	<i>Carex retroflexa</i>
Rosey twisted-stalk	<i>Streptopus roseus</i>	Richardson's sedge	<i>Carex richardsonii</i>
Fameflower	<i>Talinum parviflorum</i>	Rocky Mountain sedge	<i>Carex saximontana</i>
Large arrowgrass	<i>Triglochin maritimum</i>	Sterile sedge	<i>Carex sterilis</i>
Small arrowgrass	<i>Triglochin palustre</i>	Soft sedge	<i>Carex tenera</i>
Low sweet blueberry	<i>Vaccinium angustifolium</i>	Deep green sedge	<i>Carex tonsa</i>
Velvetleaf blueberry	<i>Vaccinium myrtilloides</i>	Tuckerman's sedge	<i>Carex tuckermanii</i>
False hellebore	<i>Veratrum woodii</i>	Umbrella sedge	<i>Carex umbellata</i>
Kidney-leaved violet	<i>Viola renifolia</i>	Wild oats	<i>Chasmanthium latifolium</i>
Oregon woodsia	<i>Woodsia oregana</i>	Pink turtlehead	<i>Chelone obliqua</i>
<b>77.3(3) Special concern plant species:</b>		Fogg's goosefoot	<i>Chenopodium foggii</i>
Balsam fir	<i>Abies balsamea</i>	Missouri goosefoot	<i>Chenopodium missouriensis</i>
Three-seeded mercury	<i>Acalypha gracilens</i>	Coast blite	<i>Chenopodium rubrum</i>
Three-seeded mercury	<i>Acalypha ostryifolia</i>	Bugbane	<i>Cimicifuga racemosa</i>
Mountain maple	<i>Acer spicatum</i>	Hill's thistle	<i>Cirsium hillii</i>
Moschatel	<i>Adoxa moschatellina</i>	Swamp thistle	<i>Cirsium muticum</i>
Water plantain	<i>Alisma gramineum</i>	Wavy-leaved thistle	<i>Cirsium undulatum</i>
Wild onion	<i>Allium mutabile</i>	Western clematis	<i>Clematis occidentalis</i>
Amaranth	<i>Amaranthus arenicola</i>	Blue-eyed Mary	<i>Collinsia verna</i>
Lanceleaf ragweed	<i>Ambrosia bidentata</i>	Cancer-root	<i>Conopholis americana</i>
Saskatoon serviceberry	<i>Amelanchier alnifolia</i>	Fireberry hawthorn	<i>Crataegus chrysoarpa</i>
Low serviceberry	<i>Amelanchier sanguinea</i>	Red hawthorn	<i>Crataegus coccinea</i>
Raccoon grape	<i>Ampelopsis cordata</i>	Two-fruited hawthorn	<i>Crataegus disperma</i>
Pearly everlasting	<i>Anaphalis margaritacea</i>	Hawthorn	<i>Crataegus pruinosa</i>
Sand bluestem	<i>Andropogon hallii</i>	Hawksbeard	<i>Crepis runcinata</i>
Broomsedge	<i>Andropogon virginicus</i>	Prairie tea	<i>Croton monanthogynus</i>
Purple angelica	<i>Angelica atropurpurea</i>	Crotonopsis	<i>Crotonopsis elliptica</i>
Purple rockcress	<i>Arabis divaricarpa</i>	Waxweed	<i>Cuphea viscosissima</i>
Green rockcress	<i>Arabis missouriensis</i>	Dodder	<i>Cuscuta indecora</i>
Lakecress	<i>Armoracia lacustris</i>	Small white lady's-slipper	<i>Cypripedium candidum</i>
Fringed sagewort	<i>Artemisia frigida</i>	Carolina larkspur	<i>Delphinium carolinianum</i>
Common mugwort	<i>Artemisia vulgaris</i>	Sessile-leaved tick trefoil	<i>Desmodium sessilifolium</i>
Pawpaw	<i>Asimina triloba</i>	Fingergrass	<i>Digitaria filiformis</i>
Curved aster	<i>Aster falcatus</i>	Buttonweed	<i>Diodia teres</i>
Hairy aster	<i>Aster pubentior</i>	Purple coneflower	<i>Echinacea purpurea</i>
Prairie aster	<i>Aster turbinellus</i>	Waterwort	<i>Elatine triandra</i>
Standing milkvetch	<i>Astragalus adsurgens</i>	Purple spikerush	<i>Eleocharis atropurpurea</i>
Bent milkvetch	<i>Astragalus distortus</i>	Green spikerush	<i>Eleocharis olivacea</i>
Missouri milkvetch	<i>Astragalus missouriensis</i>	Oval spikerush	<i>Eleocharis ovata</i>
Blue wild indigo	<i>Baptisia australis</i>	Dwarf spikerush	<i>Eleocharis parvula</i>
Yellow wild indigo	<i>Baptisia tinctoria</i>	Few-flowered spikerush	<i>Eleocharis pauciflora</i>
Prairie moonwort	<i>Botrychium campestre</i>	Wolf's spikerush	<i>Eleocharis wolfii</i>
Watershield	<i>Brasenia schreberi</i>	Interrupted wildrye	<i>Elymus interruptus</i>
Buffalograss	<i>Buchloe dactyloides</i>	Dwarf scouring rush	<i>Equisetum scirpoides</i>
Poppy mallow	<i>Callirhoe papaver</i>	Ponygrass	<i>Eragrostis reptans</i>
Water-starwort	<i>Callitriche heterophylla</i>	Tall cottongrass	<i>Eriophorum angustifolium</i>
Grass pink	<i>Calopogon tuberosus</i>	Tawny cottongrass	<i>Eriophorum virginicum</i>
Low bindweed	<i>Calystegia spithamea</i>	Upland bonaset	<i>Eupatorium sessilifolium</i>
Clustered sedge	<i>Carex aggregata</i>	Spurge	<i>Euphorbia commutata</i>
Back's sedge	<i>Carex backii</i>	Missouri spurge	<i>Euphorbia missurica</i>
Bush's sedge	<i>Carex bushii</i>	Slender fimbriatylis	<i>Fimbristylis autumnalis</i>
Carey's sedge	<i>Carex careyana</i>	Umbrella grass	<i>Fuirena simplex</i>
Flowerhead sedge	<i>Carex cephalantha</i>	Rough bedstraw	<i>Galium asprellum</i>
Field sedge	<i>Carex conoidea</i>	Small fringed gentian	<i>Gentianopsis procera</i>
Crawe's sedge	<i>Carex crawei</i>	Northern cranesbill	<i>Geranium bicknellii</i>
Fringed sedge	<i>Carex crinita</i>	Spring avens	<i>Geum vernum</i>
Double sedge	<i>Carex diandra</i>	Early cudweed	<i>Gnaphalium purpureum</i>
Douglas' sedge	<i>Carex douglasii</i>	Limestone oak fern	<i>Gymnocarpium robertianum</i>
		Bitterweed	<i>Helenium amarum</i>

## NATURAL RESOURCE COMMISSION[571](cont'd)

Mud plantain	<i>Heteranthera limosa</i>	Hortulan plum	<i>Prunus hortulana</i>
Water stargrass	<i>Heteranthera reniformis</i>	Sand cherry	<i>Prunus pumila</i>
Hairy goldenaster	<i>Heterotheca villosa</i>	Lemon scurfpea	<i>Psoralea lanceolata</i>
Common mare's-tail	<i>Hippuris vulgaris</i>	Crowfoot	<i>Ranunculus circinatus</i>
Canadian St. Johnswort	<i>Hypericum canadense</i>	Gmelin's crowfoot	<i>Ranunculus gmelinii</i>
Drummond St. Johnswort	<i>Hypericum drummondii</i>	Buckthorn	<i>Rhamnus alnifolia</i>
White morning glory	<i>Ipomoea lacunosa</i>	Dwarf sumac	<i>Rhus copallina</i>
Sumpweed	<i>Iva annua</i>	Northern gooseberry	<i>Ribes hirtellum</i>
Alpine rush	<i>Juncus alpinus</i>	Yellow cress	<i>Rorippa sinuata</i>
Toad rush	<i>Juncus bufonius</i>	Swamp rose	<i>Rosa palustris</i>
Soft rush	<i>Juncus effusus</i>	Tooth-cup	<i>Rotala ramosior</i>
Green rush	<i>Juncus greenii</i>	Dewberry	<i>Rubus hispidus</i>
Edged rush	<i>Juncus marginatus</i>	Western dock	<i>Rumex occidentalis</i>
Vasey's rush	<i>Juncus vaseyi</i>	Widgeon grass	<i>Ruppia maritima</i>
Potato dandelion	<i>Krigia dandelion</i>	Prairie rose gentian	<i>Sabatia campestris</i>
Pinweed	<i>Lechea racemulosa</i>	Sage willow	<i>Salix candida</i>
Duckweed	<i>Lemna perpusilla</i>	Sassafras	<i>Sassafras albidum</i>
Creeping bush clover	<i>Lespedeza repens</i>	Tumblegrass	<i>Schedonnardus paniculatus</i>
Silvery bladder-pod	<i>Lesquerella ludoviciana</i>	Scheuchzeria	<i>Scheuchzeria palustris</i>
Wild flax	<i>Linum medium</i>	Sensitive briar	<i>Schrankia nuttallii</i>
Brook lobelia	<i>Lobelia kalmii</i>	Hall's bulrush	<i>Scirpus hallii</i>
False loosestrife	<i>Ludwigia peploides</i>	Prairie bulrush	<i>Scirpus maritimus</i>
Crowfoot clubmoss	<i>Lycopodium digitatum</i>	Pedicelled bulrush	<i>Scirpus pedicellatus</i>
Adder's-mouth orchid	<i>Malaxis unifolia</i>	Smith's bulrush	<i>Scirpus smithii</i>
Globe mallow	<i>Malvastrum hispidum</i>	Torrey's bulrush	<i>Scirpus torreyi</i>
Two-flowered melic-grass	<i>Melica mutica</i>	Veiny skullcap	<i>Scutellaria nervosa</i>
Ten-petaled blazingstar	<i>Mentzelia decapetala</i>	Wild stonecrop	<i>Sedum ternatum</i>
Millet grass	<i>Milium effusum</i>	Rock spikemoss	<i>Selaginella rupestris</i>
Rock sandwort	<i>Minuartia michauxii</i>	Butterweed	<i>Senecio glabellus</i>
Naked mitrewort	<i>Mitella nuda</i>	False golden ragwort	<i>Senecio pseud aureus</i>
Scratchgrass	<i>Muhlenbergia asperifolia</i>	Knotweed bristlegrass	<i>Setaria geniculata</i>
Water milfoil	<i>Myriophyllum heterophyllum</i>	Virginia rockcress	<i>Sibara virginica</i>
		Prairie dock	<i>Silphium terebinthinaceum</i>
Rough water milfoil	<i>Myriophyllum pinnatum</i>	Burreed	<i>Sparanium androcladum</i>
Water milfoil	<i>Myriophyllum verticillatum</i>	Great plains ladies-tresses	<i>Spiranthes magnicamporum</i>
Glade mallow	<i>Napaea dioica</i>	Clandestine dropseed	<i>Sporobolus clandestinus</i>
Showy evening primrose	<i>Oenothera speciosa</i>	Rough hedge-nettle	<i>Stachys aspera</i>
Northern adders-tongue fern	<i>Ophioglossum vulgatum</i>	Needle-and-thread	<i>Stipa comata</i>
Louisiana broomrape	<i>Orobanche ludoviciana</i>	White coralberry	<i>Symphoricarpos albus</i>
Mountain ricegrass	<i>Oryzopsis asperifolia</i>	Eared false foxglove	<i>Tomanthera auriculata</i>
Gattinger's panic-grass	<i>Panicum gattingeri</i>	Spiderwort	<i>Tradescantia virginiana</i>
White beardtongue	<i>Penstemon albidus</i>	Humped bladderwort	<i>Utricularia gibba</i>
Cobaea penstemon	<i>Penstemon cobaea</i>	Flat-leaved bladderwort	<i>Utricularia intermedia</i>
Tube penstemon	<i>Penstemon tubiflorus</i>	Small bladderwort	<i>Utricularia minor</i>
Cleft phlox	<i>Phlox bifida</i>	Valerian	<i>Valeriana edulis</i>
Annual ground cherry	<i>Physalis pubescens</i>	American brookline	<i>Veronica americana</i>
Heart-leaved plantain	<i>Plantago cordata</i>	Marsh speedwell	<i>Veronica scutellata</i>
Wood orchid	<i>Platanthera clavellata</i>	Maple-leaved arrowwood	<i>Viburnum acerifolium</i>
Green fringed orchid	<i>Platanthera lacera</i>	Black arrowwood	<i>Viburnum molle</i>
Plains bluegrass	<i>Poa arida</i>	Black haw	<i>Viburnum prunifolium</i>
Chapman's bluegrass	<i>Poa chapmaniana</i>	Spurred violet	<i>Viola adunca</i>
Weak bluegrass	<i>Poa languida</i>	Lance-leaved violet	<i>Viola lanceolata</i>
Bog bluegrass	<i>Poa paludigena</i>	Macloskey's violet	<i>Viola macloskeyi</i>
Meadow bluegrass	<i>Poa wolfii</i>	Pale violet	<i>Viola striata</i>
Hairy Solomon's-seal	<i>Polygonatum pubescens</i>	Summer grape	<i>Vitis aestivalis</i>
Large-leaved pondweed	<i>Potamogeton amplifolius</i>	Frost grape	<i>Vitis vulpina</i>
Ribbonleaf pondweed	<i>Potamogeton epihydrus</i>		
White-stemmed pondweed	<i>Potamogeton praelongus</i>		
Spiralled pondweed	<i>Potamogeton spirillus</i>		
Tussock pondweed	<i>Potamogeton strictifolius</i>		
Vasey's pondweed	<i>Potamogeton vaseyi</i>		
Bird's-eye primrose	<i>Primula mistassinica</i>		
Prionopsis	<i>Prionopsis ciliata</i>		
Mermaid weed	<i>Proserpinaca palustris</i>		
Dwarf cherry	<i>Prunus besseyi</i>		

**571—77.4(481B) Exemptions.** Notwithstanding the foregoing list and the prohibitions in Iowa Code chapter 481B, a person may import, export, possess, transport, purchase, barter, buy, sell, offer to sell, hold for processing or process a species of animal or plant which is listed as endangered or threatened on the state list or as listed in the Code of Federal Regulations, Title 50, part 17, as amended to December 30, 1991, according to the following rules:

NATURAL RESOURCE COMMISSION[571](cont'd)

**77.4(1)** Trophies lawfully taken by persons licensed to hunt or fish (not including trapping or commercial harvest licenses) in another state, country or territory may be brought into this state and possessed, held for processing and processed but may not be sold or offered for sale.

**77.4(2)** Furs or skins of wildlife species appearing on the state list of endangered and threatened species which were lawfully taken or purchased in another state, country or territory may be imported, exported, purchased, possessed, bartered, offered for sale, sold, held for processing, or processed in this state if they are tagged or permanently marked by the state, country, or territory of origin.

**77.4(3)** Species of live animals appearing on the state list of endangered and threatened species may be imported, exported, possessed, purchased, bartered, offered for sale, or sold under the terms of a scientific collecting permit or educational project permit issued pursuant to Iowa Code section 481A.6 and administrative rules adopted by the department.

**77.4(4)** Plants, seeds, roots, and other parts of plants which appear on the state list of endangered and threatened plants which were lawfully taken or purchased in another state, country or territory may be imported, exported, purchased, possessed, offered for sale or sold in this state.

**77.4(5)** A part or product of a species of fish or wildlife appearing on the state list of endangered or threatened species which enters the state from another state or from a point outside the territorial limits of the United States may enter, be transported, exported, possessed, sold, offered for sale, held for processing or processed in accordance with the terms of a permit issued by the agency of jurisdiction in the state of origin or, if entering from outside the United States, a federal permit issued by the United States government. If proper documentation is available, a person may buy or offer to buy a part or product of a species of fish or wildlife appearing on the state or federal lists as long as it is imported from a legal source outside this state and proper documentation is provided.

**77.4(6)** If a person possesses a species of fish or wildlife or a part, product or offspring of such a species, proper documentation such as receipt of purchase and the permit from the state of origin or the U.S. government must be presented upon request of any conservation officer. Failure to produce such documentation is a violation of this chapter and will constitute grounds for forfeiture to the Iowa DNR.

**77.4(7)** A species of plant, fish or wildlife appearing on the state list of endangered and threatened species may be collected, held, salvaged and possessed under the terms of a scientific collecting permit issued pursuant to Iowa Code section 481A.6 and administrative rules adopted by the department.

[Filed 2/11/94, effective 4/6/94]

[Published 3/2/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/94.

**ARC 4652A**

## PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF BEHAVIORAL SCIENCE EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 154D.3, the Board of Behavioral Science Examiners hereby adopts Chapter 31, "Continuing Education and Disciplinary Process," Chapter 32, "Hearing Procedures," Chapter 36, "Petitions for Rule Making," Chapter 37, "Declaratory Rulings," Chapter 38, "Agency Procedure for Rule Making," and Chapter 39, "Public Records and Fair Information Practices," Iowa Administrative Code.

Item 1 adopts Chapter 31. It incorporates the codes of conduct for the two professions licensed by the Board, marital and family therapists and mental health counselors. Violations of these codes are among the grounds for discipline for a licensee. At this time 645-31.1 (147,154D,272C) to 31.6(147,154D,272C) are being reserved for continuing education.

Item 2 adopts Chapter 32, "Hearing Procedures," with modifications to the Uniform Rules for Contested Cases. Item 3 reserves Chapters 33 to 35. Item 4 adopts Chapters 36 to 39, also Uniform Rules.

Notice of Intended Action was published in the October 13, 1993, Iowa Administrative Bulletin as **ARC 4354A**, and the rules were simultaneously Adopted and Filed Emergency as **ARC 4355A**.

These rules were adopted by the Board of Behavioral Science Examiners on January 20, 1994.

These rules will become effective April 7, 1994, at which time the Adopted and Filed Emergency rules are hereby rescinded.

No changes were made to the Notice of Intended Action.

These rules are intended to implement Iowa Code sections 154D.3 and 272C.10 and Iowa Code chapters 17A, 147, 154D, and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Chs 31, 32, and 36 to 39] is being omitted. These rules are identical to those published under Notice as **ARC 4354A**, IAB 10/13/93.

[Filed 2/11/94, effective 4/7/94]

[Published 3/2/94]

[For replacement pages for IAC, see IAC Supplement 3/2/94.]



## ARC 4654A

PROFESSIONAL LICENSURE  
DIVISION[645]BOARD OF COSMETOLOGY ARTS  
AND SCIENCES EXAMINERS

## Adopted and Filed

Pursuant to the authority of Iowa Code section 157.14, the Board of Cosmetology Arts and Sciences Examiners hereby adopts amendments to Chapter 60, "Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors of Cosmetology Arts and Sciences," Chapter 63, "Requirements for Salons and Schools of Cosmetology Arts and Sciences," and Chapter 64, "Cosmetology Arts and Sciences Continuing Education," and Chapter 65, "Disciplinary Procedures for Cosmetology Arts and Sciences Licensees," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 27, 1993, as ARC 4389A. Written comments were received objecting to posting the rules of sanitation in the salon as listed in Item 5. The Board adopted the amendments on February 8, 1994.

The amendments add language requiring a high school diploma to be submitted with all applications, correct Iowa Administrative Code references, reinstate language requiring the posting of sanitation rules in salons for public view, and require applicants for examination working on a trainee permit to be under the supervision of a licensee of cosmetology arts and sciences.

There are no changes to the amendments from the Notice of Intended Action.

These amendments shall become effective April 6, 1994.

These amendments are intended to implement Iowa Code chapters 157 and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 60.2(2) by inserting a new paragraph "c" as follows:

c. Present to the department a high school diploma or its equivalent.

ITEM 2. Amend rule 645—60.3(157), catchwords, as follows:

**645—60.3(157) Licensure of applicants licensed as cosmetologists in cosmetology arts and sciences in other states and countries.**

ITEM 3. Amend subrule 60.11(1) as follows:

**60.11(1)** Trainee permit. A person who completes the requirements for licensure listed in Iowa Code section 157.3, except for the examination, shall be known as a trainee and, upon request, the department shall issue a temporary permit which allows the applicant to practice in the cosmetology arts and sciences, *under the supervision of a licensee of cosmetology arts and sciences, barber, or person holding the same license in cosmetology arts and sciences*, from the date of application until passage of the examination subject to that practice. An applicant shall take the first available examination administered by the board and may retain the temporary permit if the applicant does not pass the first examination. An applicant who does not pass the first examination shall take the next

available examination administered by the board. The temporary permit of an applicant who does not pass the second examination shall be revoked.

ITEM 4. Amend rule 645—60.12(157), introductory paragraph, as follows:

**645—60.12(157) Reinstatement of inactive (exempt) practitioners of cosmetology arts and sciences.** Inactive practitioners who have requested and been granted a waiver of compliance with the renewal requirements as outlined in ~~this chapter in 645—64.6(272C)~~ or Iowa Code chapter 157 or ~~258A~~ 272C and who have obtained a certificate of exemption shall, prior to engaging in the practice of the profession in ~~the state of~~ Iowa, satisfy the following requirements for reinstatement:

ITEM 5. Amend rule 645—63.1(157) as follows:

**645—63.1(157) Rules and inspection reports.** The owner or manager of every salon or school of cosmetology arts and sciences shall keep a copy of the *rules of sanitation adopted by the Iowa department of public health and of the most recent inspection report* posted in a conspicuous place for the information and guidance of all persons employed or studying therein and the public generally.

ITEM 6. Amend subrule 64.1(6) as follows:

**64.1(6)** Licensees currently licensed in Iowa but practicing in another state may comply with Iowa continuing education requirements for license renewal ~~and reinstatement~~ by meeting the continuing education requirements of the licensee's place of practice. Those licensees living *and practicing* in a state which has no continuing education requirement for renewal of license shall not be required to meet Iowa's continuing education requirement but shall pay all renewal fees when due.

ITEM 7. Amend 645—Chapters 60, 64, and 65 by striking all references to "258A" and inserting "272C" to reflect renumbering of the 1993 Iowa Code.

[Filed 2/11/94, effective 4/6/94]

[Published 3/2/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/94.

## ARC 4621A

RACING AND GAMING  
COMMISSION[491]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 99F.4, the Iowa Racing and Gaming Commission hereby amends Chapter 20, "Application Process for Excursion Gambling Boats," and Chapter 25, "Riverboat Operation," Iowa Administrative Code.

These amendments allow for the issuance of an initial riverboat license for a period of time not to exceed three years.

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

These adopted amendments are identical to those published under Notice of Intended Action in the November 10, 1993, Iowa Administrative Bulletin as **ARC 4423A**.

A public hearing was held on November 30, 1993. No oral or written comments were received.

These amendments will become effective April 6, 1994.

These amendments are intended to implement Iowa Code chapter 99F.

The following amendments are adopted.

ITEM 1. Amend subrule **20.10(5)**, paragraph "1," as follows:

1. Licenses will be issued for *not more than* an original three-year period and subject to annual renewals thereafter.

ITEM 2. Amend subrule 25.10(2) as follows:

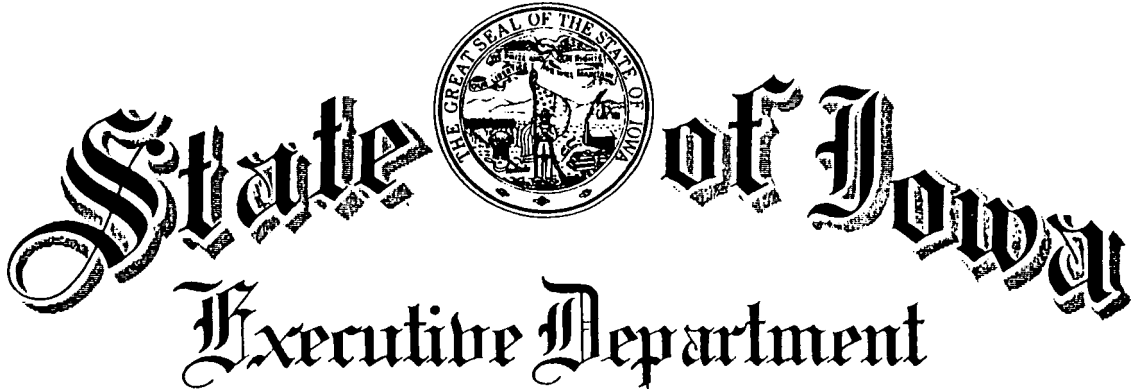
**25.10(2)** License period. Licenses will be issued for *not more than* an original three-year period and subject to annual renewals thereafter.

[Filed 2/1/94, effective 4/6/94]

[Published 3/2/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/94.

AGENCY	RULE	DELAY
Environmental Protection Commission[567]	Amendments to 72.50(2), 72.52 [IAB 1/19/94, ARC 4559A]	Effective date of February 23, 1994, delayed 70 days by the Administrative Rules Review Committee at its meeting held February 14, 1994. [Pursuant to §17A.4(5)]



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

P R O C L A M A T I O N

**WHEREAS,** the Office of State Representative from the 49th Representative District, consisting of the following areas:

- a. The cities of Coralville and North Liberty.
- b. Those portions of the city of Iowa City, East Lucas township, and West Lucas township, which are not contained in the forty-fifth or forty-sixth representative district.
- c. Newport and Penn townships.

has become vacant by the reason of the resignation of Representative Robert Dvorsky.

**NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa,** by virtue of the authority vested in me by law do hereby proclaim and direct that a special election to fill said vacancy shall be held within said District on

**TUESDAY, THE 22ND DAY OF FEBRUARY, 1994, A.D.**


**WHEREFORE,** all electors within said 49th Representative District, will take due notice and the County Commissioner of Elections of said counties will take official notice as provided in Chapter 39, Code of Iowa, 1993.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 2nd day of February in the year of our Lord one thousand nine hundred ninety-four.

*Tom E. Branstad*  
GOVERNOR

AT  
*Elaine Baxter*  
Secretary of State



State of Iowa  
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

P R O C L A M A T I O N

- WHEREAS,** the Office of State Senator from the 25th Senate District, consisting of the following areas (49th & 50th Representative Districts):
- a. The cities of Coralville and North Liberty.
  - b. Those portions of the city of Iowa City, East Lucas township, and West Lucas township, which are not contained in the forty-fifth or forty-sixth representative district.
  - c. Newport and Penn townships.
  - d. That portion of Johnson County not contained in the forty-fifth, forty-sixth, forty-seventh, or forty-ninth representative district.
  - e. In Linn County, that portion of Linn County not contained in the fifty-first, fifty-second, fifty-third, fifty-fourth, fifty-fifth, or fifty-sixth representative district.

has become vacant by the reason of the resignation of Senator Richard J. Varn.

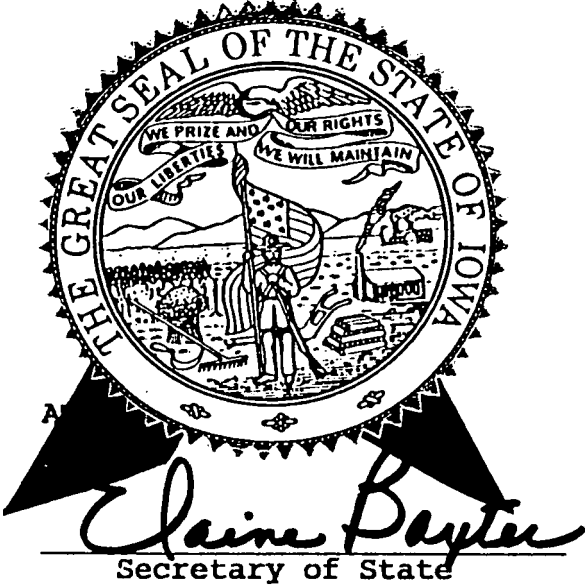
**NOW, THEREFORE,** I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by law do hereby proclaim and direct that a special election to fill said vacancy shall be held within said District on

**TUESDAY, THE 22ND DAY OF FEBRUARY, 1994, A.D.**


WHEREFORE, all electors within said 25th Senate District, will take due notice and the County Commissioner of Elections of said counties will take official notice as provided in Chapter 39, Code of Iowa, 1993.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 2nd day of February in the year of our Lord one thousand nine hundred ninety-four.

*Terry E. Branstad*  
GOVERNOR







State of Iowa  
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

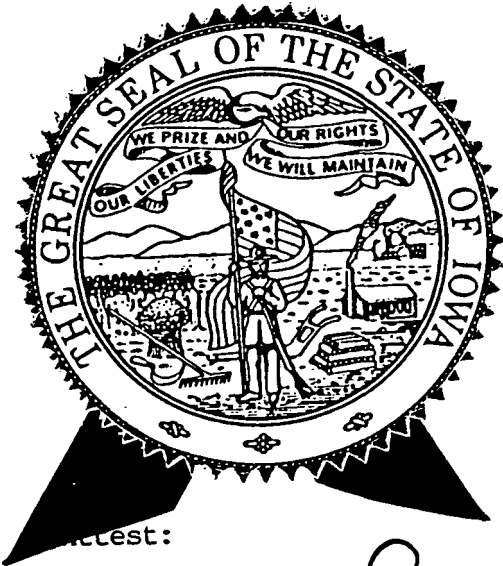
PROCLAMATION OF DISASTER EMERGENCY

- WHEREAS, Many sections of Iowa have been plagued by an unusually long period of wet conditions adversely affecting agriculture and resulting in an extreme reduction in crop yields and pasture growth: and
- WHEREAS, these conditions necessitate the purchase and transport of livestock feed from outside areas, inflicting a financial burden upon already economically strained farmers; and
- WHEREAS, inspections, reports, and surveys provided by Emergency Management Division have confirmed the potential shortage of usable livestock feed within the wet areas and revealed the availability of livestock feed, in particular, hay and other forage material, in the areas less impacted, but in a legally non-transportable form; and
- WHEREAS, a temporary waiver of applicable highway transport regulations could result in the prevention of premature livestock sales and subsequently lessen the economic consequences of the wet conditions.
- NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, acting under the authority granted me under 29C.6, do hereby proclaim, for the aforementioned reasons, a State of Disaster Emergency, and exercising my powers and duties accompanying this proclaimed disaster emergency, hereby authorize for a period of one day, Feb. 19, 1994, 12:01 AM to 11:59 PM, the State Department of Transportation and other special permit issuing authorities the power to waive permits, fees and registration, for the movement of hay, pursuant to Iowa Code Chapter 321E, 321, 321E.14, 327, 327B in addition to 49 CFR 390-399. These exemptions apply to transportation of hay for the purpose of mitigating the problem of distribution within Iowa. In addition, these waivers/exemptions apply until the hauler arrives back home. I hereby direct the Department of Transportation to monitor this

operation for safety and ease of movement for the truckers involved. I hereby call upon the citizens and agencies of local, State and Federal governments to render good and sufficient aid to assist the stricken areas in its time of need.


IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 18th day of February, in the year of our Lord one thousand nine hundred ninety-four.

*Terry E. Branstad*  
GOVERNOR



Attest:

*Elaine Baxter*  
Secretary of State



State of Iowa  
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 48

ESTABLISHING THE IOWA COMMISSION FOR  
NATIONAL AND COMMUNITY SERVICE

WHEREAS, there is a compelling need for more civic participation to solve community and state problems, and address many of the country's unmet social, environmental, educational and public safety needs; and

WHEREAS, promoting the capability of Iowa's people, communities, and enterprises to work collaboratively is vital to the long-term prosperity of this state; and

WHEREAS, building and encouraging community services and volunteerism is an integral part of the state's future well-being, and requires cooperative efforts by the public and private sectors; and

WHEREAS, the development of a National Service Program in Iowa requires an administrative vehicle which conforms with federal guidelines detailed in the recently enacted National and Community Service Trust Act of 1993.

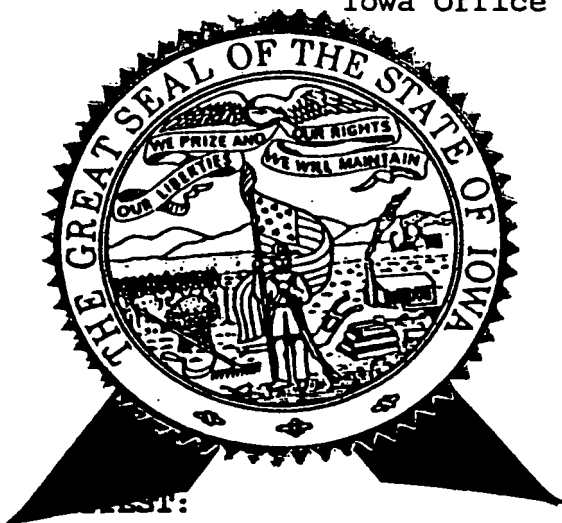
NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the power and authority vested in me by the Constitution and the Laws of Iowa, do hereby order as follows:

1. The Iowa Commission for National and Community Services is hereby established to advise and assist in the development and implementation of a comprehensive, statewide plan for promoting volunteer involvement and citizen participation in Iowa, as well as to serve as the state's liaison to national and state organizations which support the Commission's mission.
2. The Commission will be composed of no fewer than 15 and no more than 25 voting members to be appointed by the Governor in compliance with federal

guidelines as described in the National Community Service Trust Act of 1993 and as detailed below:

- a. The Commission's membership will include an individual with expertise in the educational training and developmental needs of youth; an individual with experience in promoting the involvement of older adults in service and volunteerism; a representative of community-based agencies within the state; the Director of the Department of Education or his/her designee; the Executive Secretary of the Board of Regents or his/her designee; a representative of local government; a representative of a local labor organization; a representative of a for-profit business; an individual between the ages of 16 and 25 who is, or has been, a participant or supervisor in a volunteer or service program; a representative of the Corporation for National and Community Service who shall serve as a non-voting, ex officio member.
  - b. Not more than 25 percent of the Commission members may be employees of state government, though additional state agency representatives may sit on the Commission as non-voting ex officio members. Members may not vote on issues affecting organizations for which they have served as a staff person or as a volunteer at any time during the preceding twelve months.
  - c. Not more than 50 percent of the Commission plus one member may be from the same political party. To the extent possible, the composition of the Commission will reflect the diversity of the state's population. Members will serve no more than two three-year terms, however, one-third shall serve for one year, one-third for two years, until such time as all members are on a three-year term.
  - d. The Commission chair will be selected by the Governor and serve at his discretion.
3. The Iowa Commission for National and Community Service and designated staff will have the following duties and responsibilities:
- a. Prepare a three-year national service plan as called for under the National and Community Service Trust Act of 1993.
  - b. Fulfill federal program administration requirements, including provision of health care and child care for program participants.
  - c. Submit annual state applications for federal funding of Commission selected AmeriCorps programs.

- d. Integrate AmeriCorps programs and existing ACTION and Older American Volunteer Programs into the state strategic service plan.
  - e. Conduct local outreach to develop a comprehensive and inclusive state service plan; and coordinate with existing programs in order to prevent unnecessary competition for private sources of funding.
  - f. Provide technical assistance to service programs, including the development of training methods and curriculum materials.
  - g. Develop a statewide recruitment and placement system for individuals interested in community service opportunities.
  - h. Prepare quarterly reports on progress for submission to the Governor.
4. The Governor's Office shall serve as the lead agency for administration of the Commission, and as is deemed appropriate and necessary to fulfill the objectives of this order, additional support will be provided by the Department of Education; the Board of Regents; the Department of Employment Services; and the Department of Economic Development. Furthermore, all state agencies will provide assistance to the Commission in order to ensure a fully coordinated state effort for promoting National and Community Service. The Commission is authorized to accept funds and in-kind services from other state, federal and private entities.
5. This Executive Order rescinds Executive Order Number 33 under Governor Robert D. Ray, that created the Iowa Office for Volunteerism.



IN TESTIMONY WHEREOF, I have hereunto subscribed by name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 14th day of February in the year of Lord, one thousand nine hundred ninety-four.

  
GOVERNOR

  
SECRETARY OF STATE









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