IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME XXII October 6, 1999 NUMBER 7 Pages 473 to 652

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PUBLISHED UNDER AUTHORITY OF IOWA CODE SECTIONS 2B.5 AND 17A.6

PREFACE

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

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

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

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

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SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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Department of General Services
Hoover State Office Building, Level A
Des Moines, IA 50319
Telephone: (515)242-5120

Schedule for Rule Making
1999

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 25 '98	Jan. 13 '99	Feb. 2 '99	Feb. 17 '99	Feb. 19 '99	Mar. 10 '99	Apr. 14 '99	July 12 '99
Jan. 8	Jan. 27	Feb. 16	Mar. 3	Mar. 5	Mar. 24	Apr. 28	July 26
Jan. 22	Feb. 10	Mar. 2	Mar. 17	Mar. 19	Apr. 7	May 12	Aug. 9
Feb. 5	Feb. 24	Mar. 16	Mar. 31	Apr. 2	Apr. 21	May 26	Aug. 23
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Mar. 19	Apr. 7	Apr. 27	May 12	May 14	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	May 28	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	June 25	July 14	Aug. 18	Nov. 15
May 14	June 2	June 22	July 7	July 9	July 28	Sept. 1	Nov. 29
May 28	June 16	July 6	July 21	July 23	Aug. 11	Sept. 15	Dec. 13
June 11	June 30	July 20	Aug. 4	Aug. 6	Aug. 25	Sept. 29	Dec. 27
June 25	July 14	Aug. 3	Aug. 18	Aug. 20	Sept. 8	Oct. 13	Jan. 10 '00
July 9	July 28	Aug. 17	Sept. 1	Sept. 3	Sept. 22	Oct. 27	Jan. 24 '00
July 23	Aug. 11	Aug. 31	Sept. 15	Sept. 17	Oct. 6	Nov. 10	Feb. 7 '00
Aug. 6	Aug. 25	Sept. 14	Sept. 29	Oct. 1	Oct. 20	Nov. 24	Feb. 21 '00
Aug. 20	Sept. 8	Sept. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 6 '00
Sept. 3	Sept. 22	Oct. 12	Oct. 27	Oct. 29	Nov. 17	Dec. 22	Mar. 20 '00
Sept. 17	Oct. 6	Oct. 26	Nov. 10	Nov. 12	Dec. 1	Jan. 5 '00	Apr. 3 '00
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Oct. 15	Nov. 3	Nov. 23	Dec. 8	Dec. 10	Dec. 29	Feb. 2 '00	May 1 '00
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Nov. 12	Dec. 1	Dec. 21	Jan. 5 '00	Jan. 7 '00	Jan. 26 '00	Mar. 1 '00	May 29 '00
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Dec. 10	Dec. 29	Jan. 18 '00	Feb. 2 '00	Feb. 4 '00	Feb. 23 '00	Mar. 29 '00	June 26 '00
Dec. 24	Jan. 12 '00	Feb. 1 '00	Feb. 16 '00	Feb. 18 '00	Mar. 8 '00	Apr. 12 '00	July 10 '00
Jan. 7 '00	Jan. 26 '00	Feb. 15 '00	Mar. 1 '00	Mar. 3 '00	Mar. 22 '00	Apr. 26 '00	July 24 '00

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
9	**Friday, October 15, 1999**	**November 3, 1999**
10	**Friday, October 29, 1999**	**November 17, 1999**
11	**Friday, November 12, 1999**	**December 1, 1999**

PLEASE NOTE:

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

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

PUBLICATION PROCEDURES

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

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

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

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

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

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

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

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

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
New jobs and income program, 58.4, 58.7(4) IAB 10/6/99 **ARC 9397A**	Marketing Conference Room 200 E. Grand Ave. Des Moines, Iowa	October 26, 1999 1 p.m.
Enterprise zones, 59.3(3), 59.6(3) IAB 10/6/99 **ARC 9398A**	Marketing Conference Room 200 E. Grand Ave. Des Moines, Iowa	October 26, 1999 2 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Declaratory orders, ch 3 IAB 10/6/99 **ARC 9403A**	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	November 12, 1999 10 a.m.
Agency procedure for rule making, ch 4 IAB 10/6/99 **ARC 9404A**	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	November 12, 1999 10:30 a.m.
Complaints, investigations, contested case hearings, ch 11 IAB 10/6/99 **ARC 9405A**	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	October 28, 1999 10 a.m.
Renewal of licenses, 17.5, 17.7, 17.9, 17.11 IAB 10/6/99 **ARC 9406A**	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	November 16, 1999 10 a.m.
EDUCATION DEPARTMENT[281]		
Driver education, 26.2(2)"k" IAB 10/6/99 **ARC 9376A**	State Board Room Grimes State Office Bldg. Des Moines, Iowa	October 26, 1999 1 p.m.
Special education, 41.1 to 41.144 IAB 10/6/99 **ARC 9375A (ICN Network)**	Lakeland AEA 3 Hwy. 18 and 2nd St. Cylinder, Iowa	October 20, 1999* 6 to 8 p.m.
	Room 106 Unity Christian High School 16 Michigan SW Orange City, Iowa	October 20, 1999* 6 to 8 p.m.
	Room 19 Webster City High School 10001 Lynx Ave. Webster City, Iowa	October 20, 1999* 6 to 8 p.m.
	East High School 5011 Mayhew Ave. Sioux City, Iowa	October 20, 1999* 6 to 8 p.m.

*Not scheduled pursuant to Iowa Code section 17A.4(1)"b"

EDUCATION DEPARTMENT[281]
(ICN Network) (Cont'd)

	Kanesville High School 807 Ave. G Council Bluffs, Iowa	October 21, 1999* 6 to 8 p.m.
	East Union Junior/Senior High School 1916 High School Dr. Afton, Iowa	October 21, 1999* 6 to 8 p.m.
	Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 21, 1999* 6 to 8 p.m.
	Wahlert High School 2005 Kane St. Dubuque, Iowa	October 26, 1999 6 to 8 p.m.
	Room 24 Ventura Junior/Senior High School 110 Main St. Ventura, Iowa	October 26, 1999 6 to 8 p.m.
	AEA 6 909 S. 12th St. Marshalltown, Iowa	October 26, 1999 6 to 8 p.m.
	Notre Dame High School 702 S. Roosevelt Ave. Burlington, Iowa	October 26, 1999 6 to 8 p.m.
	ICN Classroom Mississippi Bend AEA 9 729 21st St. Bettendorf, Iowa	October 28, 1999 6 to 8 p.m.
	Prairie High School 401 76th Ave. SW Cedar Rapids, Iowa	October 28, 1999 6 to 8 p.m.
	AEA 7 3712 Cedar Heights Dr. Cedar Falls, Iowa	October 28, 1999 6 to 8 p.m.
	ICN Classroom Southern Prairie AEA 15 2814 N. Court St. Ottumwa, Iowa	October 28, 1999 6 to 8 p.m.

HUMAN SERVICES DEPARTMENT[441]

Medicaid—working persons with disabilities, 75.1(39) IAB 10/6/99 **ARC 9381A**	Conference Room—6th Floor Iowa Bldg., Suite 600 411 3rd St. S.E. Cedar Rapids, Iowa	October 29, 1999 10 a.m.
	Administrative Conference Room 417 E. Kanesville Blvd. Council Bluffs, Iowa	October 27, 1999 9 a.m.

*Not scheduled pursuant to Iowa Code section 17A.4(1)"b"

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

	Large Conference Room—5th Floor Bicentennial Bldg. 428 Western Davenport, Iowa	October 28, 1999 10 a.m.
	Conference Room 102 City View Plaza 1200 University Des Moines, Iowa	October 27, 1999 1 p.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	October 29, 1999 11 a.m.
	Conference Room 3 120 E. Main Ottumwa, Iowa	October 27, 1999 10 a.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	October 27, 1999 1:30 p.m.
	Conference Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	October 27, 1999 10 a.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Intermediate care facilities, 58.1, 58.24; rescind ch 59 IAB 10/6/99 **ARC 9387A**	Director's Conference Room Second Floor Lucas State Office Bldg. Des Moines, Iowa	October 26, 1999 1:30 p.m.

INSURANCE DIVISION[191]

Replacement of life insurance and annuities, 16.21 to 16.31 IAB 10/6/99 **ARC 9392A**	330 Maple St. Des Moines, Iowa	October 26, 1999 2 p.m.
External review, ch 76 IAB 9/22/99 **ARC 9356A**	330 E. Maple St. Des Moines, Iowa	October 12, 1999 10 a.m.

IOWA FINANCE AUTHORITY[265]

Mortgage release certificate, 9.20 IAB 9/22/99 **ARC 9362A**	Conference Room 100 E. Grand Ave. Des Moines, Iowa	October 26, 1999 1 p.m.

LIBRARIES AND INFORMATION SERVICES DIVISION[286]

Iowa regional library system, ch 8 IAB 9/22/99 **ARC 9350A**	Conference Room State Library E. 12th St. and Grand Ave. Des Moines, Iowa	October 12, 1999 10 a.m.

NATURAL RESOURCE COMMISSION[571]

Sport fishing, 81.1, 81.2 IAB 9/8/99 **ARC 9326A**	Basement Room Frontier Bank Bldg. Rock Rapids, Iowa	October 19, 1999 7 p.m.
Wild turkey spring hunting, 98.1(1), 98.2, 98.3, 98.5, 98.10, 98.13(2), 98.14, 98.16 IAB 9/8/99 **ARC 9322A**	Conference Room—4th Floor West Wallace State Office Bldg. Des Moines, Iowa	October 12, 1999 10 a.m.
Deer hunting—depredation permits, 106.11(4) IAB 10/6/88 **ARC 9380A** (See also **ARC 9378A** herein)	Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	October 29, 1999 10 a.m.
Trapping—colony traps, 110.7 IAB 10/6/99 **ARC 9379A**	Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	October 26, 1999 10 a.m.

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Health flexible spending account, 15.13 IAB 9/22/99 **ARC 9364A**	North Conference Room—1st Floor Grimes State Office Bldg. Des Moines, Iowa	October 14, 1999 1 p.m.

PHARMACY EXAMINERS BOARD[657]

Self-assessment of pharmacy, 6.2(1), 7.6(7), 8.16, 8.17, 15.9, 36.1(4) IAB 10/6/99 **ARC 9374A**	Board Room Suite E 400 S.W. 8th St. Des Moines, Iowa	November 19, 1999 1 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Dietetic examiners, 80.5, 80.100(4), 80.101, 80.102(1), 80.104 IAB 10/6/99 **ARC 9408A**	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	October 26, 1999 10 a.m. to 12 noon

PUBLIC HEALTH DEPARTMENT[641]

Lead professional certification, 70.1 to 70.6, 70.10 IAB 10/6/99 **ARC 9416A** (See also **ARC 9415A** herein) **(ICN Network)**	National Guard Armory 201 Poplar Atlantic, Iowa	October 26, 1999 10 a.m.
	ICN Classroom A169 Carroll High School Carroll, Iowa	October 26, 1999 10 a.m.
	Suite 500 411 3rd St. SE Cedar Rapids, Iowa	October 26, 1999 10 a.m.
	ICN Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	October 26, 1999 10 a.m.

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	ICN Classroom—2nd Floor 2300 Chaney Dubuque, Iowa	October 26, 1999 10 a.m.
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	ICN Room National Guard Armory 2858 N. Court Rd. Ottumwa, Iowa	October 26, 1999 10 a.m.
Lead inspector/risk assessor; EBL inspector/risk assessor, 70.2 to 70.6 IAB 10/6/99 **ARC 9417A** **(ICN Network)**	National Guard Armory 201 Poplar Atlantic, Iowa	October 26, 1999 10 a.m.
	ICN Classroom A169 Carroll High School Carroll, Iowa	October 26, 1999 10 a.m.
	Suite 500 411 3rd St. SE Cedar Rapids, Iowa	October 26, 1999 10 a.m.
	ICN Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	October 26, 1999 10 a.m.
	ICN Classroom—2nd Floor 2300 Chaney Dubuque, Iowa	October 26, 1999 10 a.m.
	Classroom 2, Careers Bldg. 128 North Iowa Area Community College 500 College Dr. Mason City, Iowa	October 26, 1999 10 a.m.
	ICN Room National Guard Armory 2858 N. Court Rd. Ottumwa, Iowa	October 26, 1999 10 a.m.
Organized delivery systems, 201.2, 201.6, 201.18 IAB 10/6/99 **ARC 9418A** **(ICN Network)**	ICN Conference Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	October 26, 1999 11 a.m. to 12 noon
	Classroom 2, Careers Bldg. 128 North Iowa Area Community College 500 College Dr. Mason City, Iowa	October 26, 1999 11 a.m. to 12 noon
	ICN Classroom Burlington High School 421 Terrace Dr. Burlington, Iowa	October 26, 1999 11 a.m. to 12 noon

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	Education Tech. Center Keokuk High School 727 Washington St. Keokuk, Iowa	October 26, 1999 11 a.m. to 12 noon
	Trospar-Hoyt Bldg.—4th Floor 822 Douglas St. Sioux City, Iowa	October 26, 1999 11 a.m. to 12 noon

SECRETARY OF STATE[721]

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Unauthorized changes of telecommunications service, 6.8, 22.23 IAB 8/11/99 **ARC 9267A**	Board Hearing Room 350 Maple St. Des Moines, Iowa	October 21, 1999 10 a.m.
Restoration of agricultural lands during and after pipeline construction, ch 9 IAB 10/6/99 **ARC 9400A**	Board Hearing Room 350 Maple St. Des Moines, Iowa	November 17, 1999 10 a.m.
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CITATION of Administrative Rules

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

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

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

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

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].

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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 58, "New Jobs and Income Program," Iowa Administrative Code.

The proposed amendments implement legislative revisions. Item 1 amends the rules to include legislative revisions that authorize eligible insurance businesses to claim an insurance premium tax credit. The amendment also clarifies that for businesses claiming an investment tax credit under Iowa Code section 15.333 as amended by 1999 Iowa Acts, House File 733, section 1, real property and any buildings and structures located on the real property will be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the business sells, disposes of, razes, or otherwise renders the land, buildings or existing structures unusable, its income tax credit liability will be increased as detailed in the statute and reflected in the amendment.

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

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

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 26, 1999. Interested persons may submit written or oral comments by contacting Allen Williams, Business Development Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515) 242-4771.

A public hearing to receive comments about the proposed amendments will be held on October 26, 1999, at 1 p.m. at the above address in the Business Development Marketing Conference Room. Individuals interested in providing comments at the hearing should contact Allen Williams by 4 p.m. on October 25, 1999, to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code section 15.333 as amended by 1999 Iowa Acts, House File 733, section 1, and Iowa Code sections 15.331B and 15.333A.

The following amendments are proposed.

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

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

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

(2) Insurance premium tax credit. If the business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15.333A. An Iowa insurance premium tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

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

(4) Real property. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333 as amended by 1999 Iowa Acts, House File 733, section 1, the purchase price of real property and any buildings and structures located on the real property will also be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells or disposes of, razes, or otherwise renders unusable the land, buildings, or other existing structures for which tax credit was claimed under Iowa Code section 15.333 as amended by 1999 Iowa Acts, House File 733, section 1, the income tax liability of the eligible business for the year in which the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

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

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

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

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

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

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

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

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

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

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

These rules are intended to implement Iowa Code chapter 15 as amended by ~~1996 Iowa Acts, chapters 1185 and 1199~~ *1999 Iowa Acts, House File 733, section 1.*

ARC 9398A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 59, "Enterprise Zones," Iowa Administrative Code.

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

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

Item 3 amends the paragraph to include legislative revisions (Iowa Code section 15.333 as amended by 1999 Iowa Acts, House File 733, section 1) that authorize eligible insurance businesses to claim an insurance premium tax credit. The amendment also clarifies that real property and any buildings and structures located on the real property will be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the business sells, disposes of, razes, or otherwise renders the land, buildings or existing structures unusable, its income tax credit liability will be increased as detailed in the statute and reflected in the amendment.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 26, 1999. Interested persons may submit written or oral comments by contacting Allen Williams, Business Development Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515) 242-4771.

A public hearing to receive comments about the proposed amendments will be held on October 26, 1999, at 2 p.m. at the above address in the Business Development Marketing Conference Room. Individuals interested in providing comments at the hearing should contact Allen Williams by 4 p.m. on October 25, 1999, to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code section 15.333 as amended by 1999 Iowa Acts, House File 733, section 1, and Iowa Code section 15E.196 as amended by 1999 Iowa Acts, House File 733, section 2.

The following amendments are proposed.

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

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

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

b. Value-added property tax exemption.

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

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

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

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

c. Investment tax credit *and insurance premium tax credit.*

(1) Investment tax credit. A business may claim an investment tax credit as provided in Iowa Code section 15.333. A corporate tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.12(15E). An eligible business may instead seek to amend the contract, allowing the

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business to receive an investment tax credit for additional capital expenditures, or may elect to submit a new application within the enterprise zone. ~~For purposes of this rule, the capital expenditures eligible for the investment tax credit under the enterprise zone program are the costs of machinery and equipment used in the operation of the eligible business and the cost of improvements to real property which is used in the operation of the business and which receives a partial property tax exemption for the value added as described in Iowa Code section 15.332.~~

(2) Insurance premium tax credit. The insurance premium tax credit benefit is available for a business that submits an application for enterprise zone participation on or after July 1, 1999. If the business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15E.196 as amended by 1999 Iowa Acts, House File 733, section 2. An Iowa insurance premium tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.12(15E). An eligible business may instead seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures, or may elect to submit a new application within the enterprise zone.

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

(4) Real property. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333 as amended by 1999 Iowa Acts, House File 733, section 1, the purchase price of real property and any buildings and structures located on the real property will also be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells or disposes of, razes, or otherwise renders unusable the land, buildings, or other existing structures for which tax credit was claimed under Iowa Code section 15.333 as amended by 1999 Iowa Acts, House File 733, section 1, the income tax liability of the eligible business for the year in which the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

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

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

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

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

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

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

These rules are intended to implement Iowa Code ~~Supplement~~ sections 15E.191 through ~~15E.196~~ *15E.195*, ~~as amended by 1998 Iowa Acts, House files 2164, 2395, section 17, and 2538~~ *section 15E.196 as amended by 1999 Iowa Acts, House File 733, section 2, and section 15.333 as amended by 1999 Iowa Acts, House File 733, section 1.*

ARC 9403A

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to rescind Chapter 3, "Declaratory Rulings," and adopt a new Chapter 3, "Declaratory Orders," Iowa Administrative Code.

This amendment is necessary to bring the Board's rules into compliance with Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.

There will be a public hearing on the proposed amendment at 10 a.m., November 12, 1999, Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendment before 4:30 p.m. on November 12, 1999. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners at the above address.

The following **new** chapter is proposed.

CHAPTER 3
DECLARATORY ORDERS

The board of educational examiners hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

282—3.1(17A) Petition for declaratory order. Throughout the rule, in lieu of the words "(designate agency)", insert "the Board of Educational Examiners, Grimes State Office Building". In lieu of the words "(AGENCY NAME)", in the

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heading on the petition insert "BEFORE THE BOARD OF EDUCATIONAL EXAMINERS".

282—3.2(17A) Notice of petition. In lieu of the words "___ days (15 or less)", insert "15 days".

282—3.3(17A) Intervention.

3.3(1) In lieu of the words "___ days", insert "15 days".

282—3.5(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "Executive Director, Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147".

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.

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EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to rescind Chapter 4, "Agency Procedure for Rule Making," Iowa Administrative Code, and adopt a new Chapter 4 with the same title.

This amendment is necessary to bring the Board's rules into compliance with Iowa Code chapter 17A as amended by 1999 Iowa Acts, chapter 1202.

There will be a public hearing on the proposed amendment at 10:30 a.m., November 12, 1999, Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendment before 4:30 p.m. on November 12, 1999. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners at the above address.

The following new chapter is proposed.

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

The board of educational examiners hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

282—4.3(17A) Public rule-making docket.

4.3(2) Anticipated rule making. In lieu of the words "(commission, board, council, director)", insert "board of educational examiners".

282—4.4(17A) Notice of proposed rule making.

4.4(3) Copies of notices. In lieu of the words "(specify time period)", insert "one year".

282—4.5(17A) Public participation.

4.5(1) Written comments. In lieu of the words "(identify office and address)", insert "Executive Director, Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147".

4.5(5) Accessibility. In lieu of the words "(designate office and phone number)", insert "the executive director at (515)281-5849".

282—4.6(17A) Regulatory analysis.

4.6(2) Mailing list. In lieu of the words "(designate office)", insert "Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147".

282—4.11(17A) Concise statement of reasons.

4.11(1) General. In lieu of the words "(specify the office and address)", insert "Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147".

282—4.13(17A) Agency rule-making record.

4.13(2) Contents. In lieu of the words "(agency head)", insert "executive director".

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

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EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to rescind Chapter 11, "Complaints—Rules of Practice and Procedure Before the Board," and adopt in lieu thereof the following new Chapter 11, "Complaints, Investigations, Contested Case Hearings," Iowa Administrative Code.

Adoption of the new chapter is necessary to bring the Board's rules into compliance with Iowa Code section 17A as amended by 1998 Iowa Acts, chapter 1202.

There will be a public hearing on the proposed chapter at 10 a.m., October 28, 1999, in Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendments before 4:30 p.m. on October 29, 1999. Written comments and suggestions

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

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and chapter 272.

The following new chapter is proposed.

CHAPTER 11
COMPLAINTS, INVESTIGATIONS, CONTESTED CASE HEARINGS

282—11.1(17A,272) Scope and applicability. This chapter applies to contested case proceedings conducted by the board of educational examiners.

282—11.2(17A) Definitions. Except where otherwise specifically defined by law:

"Board" means the board of educational examiners.

"Complainant" means any qualified party who files a complaint with the board.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means an administrative law judge from the Iowa department of inspections and appeals or the full board or a three-member panel of the board.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the full board did not preside.

"Respondent" means any individual who is charged in a complaint with violating the criteria of professional practices or the criteria of competent performance.

282—11.3(17A,272) Jurisdictional requirements.

11.3(1) The case must relate to alleged violation of the criteria of professional practices or the criteria of competent performance.

11.3(2) The magnitude of the alleged violation must be adequate to warrant a hearing by the board.

11.3(3) There must be sufficient evidence to support the complaint.

11.3(4) As an additional factor, it should appear that a reasonable effort has been made to resolve the problem on the local level. However, the absence of such an effort shall not preclude investigation by the board.

282—11.4(17A,272) Complaint.

11.4(1) Who may initiate.

a. Licensed practitioners employed by a school district or their educational entity or their recognized local or state professional organization.

b. Local boards of education.

c. Parents or guardians of students involved in the alleged complaint.

11.4(2) Form and content of the complaint.

a. The complaint shall be in writing and signed by at least one complainant or an authorized representative if the complainant is an organization. (An official form may be used. This form may be obtained from the board upon request.)

b. The complaint shall show venue as "BEFORE THE BOARD OF EDUCATIONAL EXAMINERS," and shall be captioned "COMPLAINT".

c. The complaint shall contain the following information:

(1) The full name, address and telephone number of the complainant.

(2) The full name, address and telephone number, if known, of the respondent.

(3) A concise statement of the facts which clearly and accurately apprises the respondent of the alleged violation of the criteria of professional practices or the criteria of competent performance and shall state relief sought by the complainant.

11.4(3) Required copies—place and time of filing.

a. In addition to the original, a sufficient number of copies of the complaint must be filed to enable service of one copy to each of the respondents and retention of 12 copies for use by the board.

b. The complaint must be delivered personally or by mail to the office of the board. The current office address is the Grimes State Office Building, Third Floor, Des Moines, Iowa 50319.

c. Timely filing is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

11.4(4) Service of complaint. The board or a designee of the board shall serve a copy of the complaint upon the respondent by one of the following means:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

11.4(5) Amendment or withdrawal of complaint. A complaint or any specification thereof may be amended or withdrawn by the complainant at any time prior to notification of the respondent, and thereafter at sole discretion of the board.

11.4(6) Voluntary surrender of license. When a formal complaint has been filed under Iowa Code chapter 272 and rule 11.4(17A,272), the respondent may voluntarily surrender the license by admitting the truth of the allegations of the complaint and completing a waiver of hearing form provided by the board. The surrender shall result in the permanent revocation of the respondent's license.

11.4(7) Investigation of license reports.

a. Reports received by the board from another state, territory or other jurisdiction concerning licenses or certificate revocation or suspension shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of written complaints.

b. Failure to report a license revocation, suspension or other disciplinary action taken by licensing authority of another state, territory or jurisdiction within 30 days of the final action by such licensing authority shall constitute cause for initiation of an investigation.

282—11.5(272) Investigation of complaints. The chairperson of the board or the chairperson's designee may assign an investigation of a complaint to a member of the board or may request an investigator to investigate the complaint or report. The investigating board member or investigator may consult an assistant attorney general concerning the investigation or evidence produced from the investigation. Upon completion of the investigation, the investigating board

member or investigator shall prepare a report of the investigation for consideration by the board in determining whether probable cause exists. A board member who has personally investigated a complaint is disqualified from participating in any contested case proceeding resulting from the investigation.

282—11.6(272) Ruling on the initial inquiry. Upon review of the investigator's report, the board may take any of the following actions:

11.6(1) Reject the case. If a determination is made by the board to reject the case, the complaint shall be returned to the complainant along with a statement specifying the reasons for rejection. A letter of explanation concerning the decision of the board shall be sent to the respondent.

11.6(2) Require further inquiry. If determination is made by the board to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with a statement specifying the information deemed necessary.

11.6(3) Accept the case. If a determination is made by the board that probable cause exists to conclude that the criteria of professional practices or the criteria of competent performance have been violated, notice shall be issued, pursuant to rule 11.7(17A,272), and a formal hearing shall be conducted in accordance with rules 11.7(17A,272) to 11.21(17A,272), unless a voluntary informal waiver of hearing has been filed by the respondent pursuant to the provisions of subrule 11.4(6).

282—11.7(17A,272) Notice of hearing.

11.7(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

11.7(2) Contents. The notice of hearing shall contain the following information:

a. A statement of the time, date, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

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

d. A short and plain statement of the matter asserted;

e. Identification of all parties including the name, address and telephone number of the parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer; and

i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 11.8(17A,272), that the presiding officer be an administrative law judge.

282—11.8(17A,272) Presiding officer.

11.8(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the board.

11.8(2) The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. An administrative law judge with the qualifications identified in subrule 11.8(4) is unavailable to hear the case within a reasonable time.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

11.8(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 11.8(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

11.8(4) An administrative law judge assigned to act as presiding officer in a contested case shall have the following technical expertness unless waived by the board:

a. A J.D. degree.

b. Additional criteria may be added by the Board.

11.8(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

11.8(6) Unless otherwise provided by law, the board, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

282—11.9(17A,272) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

282—11.10(17A,272) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

282—11.11(17A,272) Disqualification.

11.11(1) A presiding officer or board member shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

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a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

11.11(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 11.11(3) and 11.24(9).

11.11(3) In a situation where a presiding officer or board member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

11.11(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 11.11(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If the presiding officer determines that disqualification is appropriate, the presiding officer or board member shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 11.26(17A,272) and seek a stay under rule 11.30(17A,272).

282—11.12(17A,272) Consolidation—severance.

11.12(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

11.12(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

282—11.13(17A,272) Pleadings.

11.13(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

11.13(2) Answer. An answer shall be filed within 20 days of service of the notice of hearing unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the notice of hearing to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the notice of hearing not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

11.13(3) Amendment. Notices of hearing and answers may be amended with the consent of the parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

282—11.14(17A,272) Service and filing of pleadings and other papers.

11.14(1) Service—when required. Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

11.14(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

11.14(3) Filing—when required. After the notice of hearing, all documents in a contested case proceeding shall be filed with the Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147. All documents that are required to be served upon a party shall be filed simultaneously with the board.

11.14(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

11.14(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the

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envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

282—11.15(17A,272) Discovery.

11.15(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

11.15(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 11.15(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

11.15(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible under rule 11.22(17A,272). In discovery matters, the parties shall honor the rules of privilege imposed by law.

282—11.16(17A,272) Subpoenas.

11.16(1) Subpoenas. In connection with the investigation set forth in rule 11.5(272), the board is authorized by law to subpoena books, papers, records and any other evidence to help it determine whether it should institute a contested case proceeding (hearing). After service of the hearing notification contemplated by rule 11.7(17A,272), the following procedures are available to the parties in order to obtain relevant and material evidence:

a. Board subpoenas for books, papers, records, and other evidence will be issued to a party upon request. Such a request must be in writing. Application should be made to the board office specifying the evidence sought. Subpoenas for witnesses may also be obtained.

b. Evidence obtained by subpoena shall be admissible at the hearing if it is otherwise admissible under rule 11.22(17A,272). In subpoena matters the parties shall honor the rules of privilege imposed by law.

c. The evidence outlined in Iowa Code section 17A.13(2) where applicable and relevant shall be made available to a party upon request.

d. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

11.16(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

282—11.17(17A,272) Motions.

11.17(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

11.17(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer.

11.17(3) The presiding officer may schedule oral arguments on any motion.

11.17(4) Motions pertaining to the hearing, including motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

282—11.18(17A,272) Prehearing conference.

11.18(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be conducted not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

11.18(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

11.18(3) In addition to the requirements of subrule 11.18(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

11.18(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

282—11.19(17A,272) Continuances. A party has no automatic right to a continuance or delay of the board's hearing procedure or schedule. However, a party may request a continuance of the presiding officer no later than seven days prior to the date set for hearing. The presiding officer shall have the power to grant continuances. Within seven days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating or emergency circumstances. In these situations, the presiding officer shall grant continuances after consultation, if needed, with the chairperson of the board, the executive director, or the attorney representing the board. A board member shall not be contacted in person, by mail or telephone by a party seeking a continuance.

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282—11.20(17A,272) Intervention.

11.20(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

11.20(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

11.20(3) Grounds for intervention. The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

11.20(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

282—11.21(17A,272) Hearing procedures.

11.21(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings. If the presiding officer is the board or a panel thereof, an administrative law judge from the Iowa department of inspections and appeals may be designated to assist the board in conducting proceedings under this chapter. An administrative law judge so designated may rule upon motions and other procedural matters and assist the board in conducting the hearing.

11.21(2) All objections shall be timely made and stated on the record.

11.21(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney or another person authorized by law.

11.21(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

11.21(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

11.21(6) Witnesses may be sequestered during the hearing.

11.21(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

282—11.22(17A,272) Evidence.

11.22(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

11.22(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

11.22(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

11.22(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

11.22(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

11.22(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

282—11.23(17A,272) Default.

11.23(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

11.23(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

11.23(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a

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contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 11.28(17A,272). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

11.23(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

11.23(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

11.23(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

11.23(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 11.26(17A,272).

11.23(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

11.23(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

11.23(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 11.30(17A,272).

282—11.24(17A,272) Ex parte communication.

11.24(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 11.11(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

11.24(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

11.24(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

11.24(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 11.13(17A,272) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

11.24(5) Board members acting as presiding officers may communicate with each other without notice or opportunity for parties to participate.

11.24(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 11.24(1).

11.24(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 11.19(17A,272).

11.24(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

11.24(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

11.24(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations

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of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the department. Violation of ex parte communication prohibitions by department personnel shall be reported to (agency to designate person to whom violations should be reported) for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

282—11.25(17A,272) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

282—11.26(17A,272) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

282—11.27(17A,272) Final decision.

11.27(1) When the board presides over the reception of evidence at the hearing, its decision is a final decision.

11.27(2) When the board does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the board without further proceedings unless there is an appeal to, or review on motion of, the board within the time provided in rule 11.28(17A,272).

282—11.28(17A,272) Appeals and review.

11.28(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

11.28(2) Review. The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

11.28(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

11.28(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

11.28(5) Scheduling. The board shall issue a schedule for consideration of the appeal.

11.28(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

282—11.29(17A,272) Applications for rehearing.

11.29(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

11.29(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 11.28(4), the applicant requests an opportunity to submit additional evidence.

11.29(3) Time of filing. The application shall be filed with the board within 20 days after issuance of the final decision.

11.29(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

11.29(5) Disposition. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

282—11.30(17A,272) Stays of board actions.

11.30(1) When available.

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The executive director may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

11.30(2) When granted. In determining whether to grant a stay, the executive director or presiding officer shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

11.30(3) Vacation. A stay may be vacated by the issuing authority upon application of the board or any other party.

282—11.31(17A,272) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly

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submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

282—11.32(17A,272) Emergency adjudicative proceedings.

11.32(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order the board shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

11.32(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the board;

(3) Certified mail to the last address on file with the board;

(4) First-class mail to the last address on file with the board; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

11.32(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

11.32(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and chapter 272.

ARC 9406A

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 17, "Renewal of Licenses," Iowa Administrative Code.

The amendments change the wording of the description of the staff development officer responsible for licensure from "staff development" to "licensure renewal" to clarify the specific nature of this position and to alleviate the confusion between this position and other staff development positions. These amendments also eliminate the need for one college credit in order to renew a practitioner's license.

There will be a public hearing on the amendments at 10 a.m., November 16, 1999, in Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendments before 4:30 p.m. on November 17, 1999. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

If approved, these amendments would become effective on September 1, 2000.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

ITEM 1. Amend rule 282—17.5(272) as follows:

282—17.5(272) Renewal requirements for an educational license. Six units are needed for renewal. These units may be earned in any combination listed below.

1. One unit may be earned for each semester hour of credit completed which leads toward the completion of a planned master's, specialist's, or doctor's degree program.

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2. One unit may be earned for each semester hour of credit completed which may not lead to a degree but which adds greater depth/breadth to present endorsements held.

3. One unit may be earned for each semester hour of credit completed which may not lead to a degree but which leads to completion of requirements for an endorsement not currently held.

4. One unit may be earned upon completion of each ~~staff development~~ *licensure renewal* course or activity approved through guidelines established by the board of educational examiners. ~~A maximum of five units may be earned from this section.~~

5. Four units may be earned for successful completion of the National Board for Professional Teaching Standards certification. This may be used one time for either the educational or the professional teacher's license.

ITEM 2. Amend rule 282—17.7(272) as follows:

282—17.7(272) Renewal requirements for a professional administrator's and area education agency administrator's license. Four units are needed for renewal. These units may be earned in any combination listed below.

1. to 3. No change.

4. One unit may be earned upon completion of each ~~staff development~~ *licensure renewal* course or activity approved through guidelines established by the board of educational examiners.

ITEM 3. Amend rule 282—17.9(272) as follows:

282—17.9(272) Renewal requirements for a substitute license. Meet one of the requirements listed below:

1. Verification of at least 30 days of substitute teaching during the term of the license.

2. Completion of a local education agency or area education agency course approved through ~~staff development~~ *licensure renewal* guidelines established by the board of educational examiners.

3. Completion of a community college, college, or university course.

ITEM 4. Amend rule 282—17.11(272) as follows:

282—17.11(272) ~~Staff development programs for license renewal~~ *Licensure renewal programs.*

17.11(1) Application process. These rules are to be followed in the preparation and submission of proposals for ~~staff development~~ *licensure renewal* programs ~~for renewal of licenses~~. The application materials must be returned to the board of educational examiners for review and approval.

Once the application has been submitted, it will be reviewed, and the applicant agency will be notified of approval or nonapproval and any deficiencies.

17.11(2) No change.

17.11(3) Authority. The acceptance of ~~staff development~~ *licensure renewal* credit ~~for license renewal~~ is provided in 17.5"~~5~~ *4*," 17.6"~~5~~ *4*" and 17.7"~~5~~ *4*."

17.11(4) ~~Staff development~~ *Licensure renewal* courses.

a. ~~Staff development~~ *Licensure renewal* courses ~~for license renewal~~ are planned experiences, activities, and studies designed to ~~increase professional educators' knowledge and improve their skills.~~ *develop skills, techniques, knowledge, and understanding of educational research and best practice, and model best practices in professional and organizational development. These courses support school improvement processes and practices and provide for the development of leadership in education.* Approved courses and programs must be designed to follow the terms of the renewal requirements set forth for teacher and administrator renewal in 17.5"~~3~~ *4*," 17.6"~~3~~ *4*" and 17.7"~~3~~ *4*."

~~The courses must be based on documented need, clearly developed program objectives, and the means to evaluate the attainment of these objectives.~~

The following indicators of quality will be used in evaluating the AEA's license renewal courses.

(1) The courses address specific student, teacher, and school needs evidenced in local school improvement plans.

(2) The courses assist teachers in improving student learning evidenced through student performance.

(3) The courses assist teachers in improving teaching evidenced through the adoption or application of practices, strategies, and information.

b. Approved teacher ~~staff development~~ *licensure renewal* programs must offer and conduct a minimum of ten different courses for teachers during the calendar year, and approved administrative ~~staff development~~ *licensure renewal* programs must conduct a minimum of five different courses for administrators during the calendar year.

c. Clock hours. Fifteen scheduled clock hours of contact with the instructor equal one renewal unit. Only whole units may be submitted to the board of educational examiners for license renewal.

d. Only renewal units offered through board of educational examiners approved ~~staff development~~ *licensure renewal* programs will be accepted for license renewal.

17.11(5) ~~Staff development~~ *Licensure renewal* advisory committee. ~~Staff development~~ *Licensure renewal* programs ~~for license renewal~~ must be developed with the assistance of a ~~staff development~~ *licensure renewal* advisory committee.

a. Membership of the advisory committee. Once the advisory committee is established, matters pertaining to the term of membership shall be spelled out through established procedures. The advisory committee shall consist of no fewer than five members. The ~~staff development~~ *licensure renewal* coordinator shall forward the current updated list of ~~staff development~~ *licensure renewal* advisory committee members to the board of educational examiners no later than ~~January 15~~ *December 1* of each year.

(1) The ~~staff development~~ *licensure renewal* advisory committee shall include the following persons for teacher/administrator renewal programs:

1. Elementary and secondary classroom teachers.

2. Local administrators: elementary or secondary principals, curriculum director or superintendent.

3. Higher education representative from a college or university offering an approved teacher education program.

4. Other categories may be appointed: community college teaching faculty, students, area education agency staff members, school board members, members of educational professional organizations, business/industry representatives, community representatives, representatives of substitute teachers.

(2) The make-up of the membership should reflect the ratio of teachers to administrators within an agency or organization offering an approved ~~staff development~~ *licensure renewal* program. The membership should reflect the general population by a balance of gender and race and shall be balanced between urban and rural districts.

(3) The ~~staff development~~ *licensure renewal* coordinator shall be a nonvoting advisory committee member.

(4) Disputes about the appropriate composition of the membership of the ~~staff development~~ *licensure renewal* advisory committee shall be resolved through local committee action.

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b. Responsibilities of ~~staff development~~ *licensure renewal* advisory committee.

(1) ~~Staff development~~ *Licensure renewal* advisory committee shall be involved in:

1. The ongoing area education agency, local district, or other agency staff development needs assessment.

2. The design and development of an original application for a license renewal program.

3. The development of criteria for the selection of course instructors, and these criteria shall include, but not be limited to, academic preparation, experience and certification status.

4. The annual evaluation of ~~staff development~~ *licensure renewal* programs.

(2) The advisory committee shall meet at least twice annually and shall maintain records of each meeting. These records shall be available for review by board staff and kept on file in the ~~staff development~~ *licensure renewal* coordinator's office.

17.11(6) ~~Staff development coordinator.~~ *Licensure renewal coordinator.*

a. Each agency or organization offering an approved ~~staff development~~ *licensure renewal* program shall identify a *PK-12 licensed* professional staff member who shall be designated as coordinator for the program and who shall serve in this capacity at least 50 percent of the time. This function must be assigned; no application will be approved unless this responsibility has been assigned.

b. Responsibility of ~~staff development~~ *licensure renewal* coordinators.

(1) File all reports as requested by the board of educational examiners.

(2) Submit an annual report on program offerings, participants and related information annually on or before December 1.

(3) Serve as a contact person for the board of educational examiners.

(4) Be responsible for the development of ~~staff development~~ *licensure renewal* programs which address the professional growth concerns of the clientele.

(5) Be responsible for the approval of all courses or units offered for ~~staff development license renewal~~ *licensure renewal.*

(6) Maintain records of approved courses as conducted and of the names of the qualifying participants.

(7) Maintain a list of all course offerings and approved instructors and forward the list to the board of educational examiners.

(8) Provide a record of credit for each participant and maintain a cumulative record of credits earned for each participant for a minimum of ~~ten~~ *five* years.

(9) Be responsible for informing participants of the reporting procedures for renewal credits/units earned.

17.11(7) Organization and administration.

a. Local school districts are encouraged to work cooperatively with their respective area education agency in assessing needs and designing and conducting courses.

b. The board of educational examiners reserves the right to evaluate any course, to require submission of evaluation data and to conduct sufficient on-site evaluation to ensure high quality of ~~license renewal staff development~~ *licensure renewal* programs.

c. Agencies or institutions developing new programs shall submit a letter of intent prior to the submission of an application. The application must be filed at least three months prior to the initiation of any planned ~~staff development license~~ *licensure* renewal program.

d. Once a program is approved, the coordinator shall approve all course offerings for ~~staff development license~~ *licensure* renewal units.

e. Initial approval may be for one to three years. Continuing approval may be granted for five-year terms. Continuing approval may involve board of educational examiners sponsored team visits.

f. Records retention. Each approved staff development agency/institution shall retain program descriptions, course activities, documentation of the qualifications of delivery personnel, evaluation reports, and completed renewal units for a period of ~~ten~~ *five* years. This information shall be kept on file in the offices of the area education agency ~~staff development~~ *licensure renewal* coordinators and shall be made available to the board of educational examiners upon request.

g. Monitoring and evaluation. Each approved ~~staff development~~ *licensure renewal* program will be monitored by the board of educational examiners to determine the extent to which the program meets/continues to meet program standards and is moving toward the attainment of program objectives. This will include an annual report *which shall include an annotated description of the courses provided, evidence of the collaborative efforts used in developing the courses, evidence of the intended results of the courses, and the data for demonstrating progress toward the intended results.*

17.11(8) Application for license renewal program.

a. Application approval. The application shall contain evidence that the local board of directors (the board of directors in consortium-based applications) has given formal approval to the development and implementation of the program and the allocation of program resources.

b. The application shall identify the criteria used in selecting faculty/instructors for the ~~staff development~~ *licensure renewal* programs. These criteria shall include qualifications, experiences (relevant to the nature of the program), preparation and licensure status.

c. There must be evidence of a current survey of staff needs and an explanation of procedures used to derive such needs; this documentation must be furnished as a part of the application for a ~~license renewal staff development~~ *licensure renewal* program.

d. Programs developed by eligible agencies shall be based on evidence gathered from a survey of staff needs of the personnel to be served by the ~~staff development~~ *licensure renewal* program.

e. Program objectives must be derived from identified staff needs in the district or districts or special groups to be served; these objectives shall be developed by the eligible agency seeking approval under ~~license renewal staff development~~ *licensure renewal* programs.

f. Each application must include procedures for program evaluation; this evaluation must include faculty/instructor as well as course/activity evaluation. Program and course/activity evaluation shall include, but not be limited to, participant perceptions.

g. Evaluation. The evaluation shall include participant perception and, whenever possible, observation data collection techniques and analyses are required for each approved ~~staff development~~ *licensure renewal* program.

ARC 9376A

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the Department of Education proposes to amend Chapter 26, "Driver Education," Iowa Administrative Code.

This amendment is intended to implement Iowa Code section 321.178 as amended by 1999 Iowa Acts, Senate File 203, section 11, which establishes the need for a final field test for driver education students to be given by a qualified instructor prior to completion of the approved course.

A public hearing will be held on October 26, 1999, at 1 p.m. in the State Board Room, Grimes State Office Building, Des Moines, Iowa. Interested persons may make oral or written comments on the proposed amendment on or before October 26, 1999. Comments should be mailed to Morris Smith, Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146.

This amendment is intended to implement Iowa Code section 321.178 as amended by 1999 Iowa Acts, Senate File 203, section 11.

The following amendment is proposed.

Amend subrule **26.2(2)** by adopting **new** paragraph **"k"** as follows:

k. Each student shall complete a final field test prior to the student's completion of an approved course. The final field test shall be administered by a person qualified as a classroom driver education instructor.

ARC 9375A

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 256.7(5) and 256B.3(15) the State Board of Education hereby gives Notice of Intended Action to amend Chapter 41, "Special Education," Iowa Administrative Code.

The proposed amendments implement 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 amendments bring these rules in alignment with new federal regulations at 34 CFR Part 300 that implement the Individuals with Disabilities Education Act of 1997. To the maximum extent possible, these amendments incorporate the language of the new federal regulations.

The rules conform to federal special education regulations; therefore, waivers cannot be granted by state rulemaking authority.

Any interested party may make written suggestions or comments on the proposed amendments on or before October 29, 1999, to Brenda Oas, Chief, Bureau of Children, Family and Community Services, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, or by fax (515)242-6019. The proposed amendments are available for public review on the Department of Education's Web site at http://www.state.ia.us/educate. Any interested party may make suggestions or comments on or before October 29, 1999, by E-mail to SpecialEducationRules@ed.state.ia.us. Four public hearings will be held over the Iowa Communications Network (ICN). The public hearings are scheduled as follows:

*October 20, 1999 6 to 8 p.m.	Lakeland AEA 3 Highway 18 and 2nd Street Cylinder, Iowa
	Unity Christian High School 16 Michigan SW, Room 106, Orange City, Iowa
	Webster City High School, 10001 Lynx Avenue, Room 19 Webster City, Iowa
	East High School 5011 Mayhew Avenue Sioux City, Iowa
*October 21, 1999 6 to 8 p.m.	Kanesville High School 807 Avenue G Council Bluffs, Iowa
	East Union Jr./Sr. High School 1916 High School Drive Afton, Iowa
	Department of Education Grimes State Office Building 2nd floor, E. 14th and Grand Ave. Des Moines, Iowa
October 26, 1999 6 to 8 p.m.	Dubuque Wahlert High School 2005 Kane Street Dubuque, Iowa
	Ventura Junior/Senior High School 110 Main Street, Room 24 Ventura, Iowa
	AEA 6 909 South 12th Street Marshalltown, Iowa
	Notre Dame High School 702 South Roosevelt Avenue Burlington, Iowa
October 28, 1999 6 to 8 p.m.	Mississippi Bend AEA 9 729 21st Street, ICN Classroom Bettendorf, Iowa

*Not scheduled pursuant to Iowa Code section 17A.4(1)"b"

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Prairie High School
401 76th Avenue SW
Cedar Rapids, Iowa

AEA 7
3712 Cedar Heights Drive
Cedar Falls, Iowa

Southern Prairie AEA 15
ICN Classroom, 2814 N. Court St.
Ottumwa, Iowa

If a sign language interpreter or other special accommodations are needed at any of these meetings, requests should be made to the Bureau of Children, Family and Community Services, (515)281-3176, no later than October 12, 1999. All ICN sites are accessible to persons with disabilities.

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

The following amendments to Chapter 41 are proposed.

Amend rules 281—41.1(256B,34CFR300) to 281—41.144(256B,273,282) as follows:

DIVISION I
SCOPE AND GENERAL PRINCIPLES

281—41.1(256B,34CFR300,*303*) 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 because they are~~ receiving early childhood special education home instruction or are receiving special education home service as described in subrule 41.88(2), in hospitals or in facilities other than schools. The requirement to provide special education is mandated under 20 U.S.C. Chapter 33, Individuals with Disabilities Education Act; 34 CFR Part 300, Assistance to States for the Education of Children with Disabilities, July 1, ~~1994~~ *1999*; and Iowa Code chapter 256B, "Special Education." Under the provisions of 34 CFR §§300.2, 300.~~134~~*141* and 300.600, July 1, ~~1994~~ *1999*, 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 rule 41.1(256B,34CFR300,*303*), required services include early identification; the development and implementation of an individualized education program (IEP), *or an individualized family service plan (IFSP) for children under the age of three*; 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 and related services 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 and related services; or by any combination of these. The AEA shall support and assist LEAs in meeting their responsibilities in providing appropriate special education and related services. The requirements of 34 CFR Part 300, July 1, ~~1994~~ *1999*, are binding on each public agency that has direct or delegated authority to provide special education and related services regardless of whether that agency is receiving funds under Part B.

41.3(3) Free appropriate public education *(FAPE)*. LEAs and AEAs shall provide special education and related services at public expense, under public supervision and direction, and at no cost to the parents. The special education and related services 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. *The provision of a free appropriate public education also applies to children requiring special education who have been suspended or expelled from school in accordance with rules 41.71(256B,34CFR300) through 41.73(256B, 34CFR300).*

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.

a. Each public agency shall take steps to ensure that eligible individuals have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

b. Each public agency shall take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. Nonacademic and extracurricular activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

41.3(5) Least restrictive environment *(LRE)*. 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~~ *if* the nature or severity of the individual's disability is such that education in regular classes with the use of ~~special education and related~~ *supplementary aids and* services 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 educa-

tion 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 parent 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 and related services 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) Shared responsibility. General education and special education personnel share responsibility in providing appropriate educational programs for eligible individuals and in providing intervention and prevention services to individuals who are experiencing learning or adjustment problems.

41.3(8) Family involvement. LEAs and AEAs share responsibility in promoting partnerships to increase family involvement and participation in the social, emotional, and academic development of students receiving special education.

41.3(9) Maintenance of effort. These rules implement Iowa Code chapters 256B and 273 and 34 CFR Part 300, July 1, ~~1994~~ *1999*, and are designed to ensure the continued provision of appropriate special education and related services to students with disabilities consistent with the mandate described in Iowa Code chapter 256B and the scope defined in rule 41.1(256B,34CFR300,*303*). Consistent with this intent, no provision of these rules should be construed as reducing the commitment to individuals requiring special education.

~~**281—41.4 Reserved.**~~

281—41.4(34CFR300) Exceptions for certain individuals.

41.4(1) Exception to FAPE. The obligation to make FAPE available as described in subrule 41.3(3) does not apply to individuals aged 18 through 21 who, in the last educational placement prior to their incarceration in an adult correctional facility, were not identified as an eligible individual as defined in division II and did not have an IEP as described in division VIII.

41.4(2) Requirements that do not apply. The following requirements do not apply to eligible individuals who are convicted as adults and incarcerated in adult prisons:

a. The requirement relating to participation in districtwide assessment described in paragraph 41.67(1)"e."

b. The requirement relating to transition planning and transition services described in subrule 41.67(2) for individuals whose eligibility will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

41.4(3) Modifications to IEP or services. The IEP team of an eligible individual, who is convicted as an adult and incarcerated in an adult prison, may modify the individual's IEP or location of services if it has been demonstrated that a bona fide security or compelling penological interest cannot otherwise be accommodated. In such a circumstance, the IEP team can modify the requirements of subrules 41.67(1) relating to the contents of the IEP and 41.3(5) relating to LRE.

41.4(4) Exceptions for students who have graduated. Exceptions to FAPE apply to individuals with disabilities who have graduated from high school with a regular high school diploma. This exception does not apply to individuals who have graduated but have not been awarded a regular high school diploma.

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.

"Appropriate activities" means those activities that are consistent with age-relevant abilities or milestones that typically developing children of the same age would be performing or would have achieved.

"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 and related services are 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. *An AEA or LEA may ask, but not require, parents of children with disabilities to use public or private insurance proceeds to pay for services if they would not incur a financial cost as described in subrules 41.132(10) and 41.132(11).*

"Autism" is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before the age of three, that adversely affects an eligible individual's educational performance. If a child manifests characteristics of the disability category "autism" after the age of three, that child still could be diagnosed as having "autism" if the criteria in this definition are satisfied. 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 be-

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havior 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 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 who are unable to receive educational benefit from 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" means a disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects an individual's educational performance.

"Day" means calendar day unless otherwise indicated as business day or school day:

1. "Business day" means Monday through Friday, except for federal and state holidays (unless holidays are specifically included in the designation of business day, as in subparagraph 41.74(2)"d"(1)); and

2. "School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.

"Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational ~~problems~~ *needs* 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 with a disability who is handicapped in obtaining an education and who is entitled to receive special education and related services. The term includes an individual 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 and related services. In federal usage, this refers to infants, toddlers, children and young adults.

"General curriculum" means the curriculum adopted by an LEA or schools within the LEA for all children from preschool through secondary school.

"General education interventions" means attempts to resolve presenting problems or behaviors of concern in the general education environment prior to conducting a full and individual evaluation as described in subrule 41.48(2).

"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.

"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.

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"IEP team" is the group of individuals specified in division VIII ~~which develops the~~ *that is responsible for developing, reviewing or revising an* IEP for an eligible individual.

"Include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

"Individualized education program" or "IEP" is the written record of an eligible individual's special education and related services developed in accord with division VIII. *The IEP document records the decisions reached at the IEP meeting and 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 is one IEP which specifies all the special education and related services for an eligible individual.*

"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 ~~§303.340~~ *303*, July 1, ~~1994~~ *1999*, and the individual's family.

"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, *including conditions such 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, including at least one teacher or other specialist with knowledge in the area of suspected disability. 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. "Qualified" means that a person has met the licensure requirements identified in rule 41.8(256B,34CFR300).~~

"Multiple disabilities" means concomitant impairments (such as mental disabilities-blindness, mental disabilities-orthopedic impairments), 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.

"Native language," when used with reference to an individual of limited English proficiency, means the language normally used by that individual or, in the case of a child, the language normally used by the parents of the child. In using the term, these rules do not prevent the following means of communication:

1. In all direct contact with a child, including evaluation of the child, communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

2. For individuals with deafness or blindness, or for individuals with no written language, the mode of communication would be that normally used by the individual, such as sign language, braille, or oral communication.

"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., clubfoot, absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), 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, *including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is* 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, *attention deficit disorder or attention deficit hyperactivity disorder,* or diabetes, that adversely affects an individual's educational performance.

"Parent" means a *natural or adoptive* 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~~ *grandparent* or stepparent with whom an individual lives, as well as persons who are legally responsible for an individual's welfare. *A foster parent may act as a parent under these rules if the natural parents' authority to make educational decisions on the individual's behalf has been extinguished under state law and the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the educational decisions required of parents under these rules; and has no interest that would conflict with the interests of the individual.*

"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.

"Related services" mean such developmental, corrective and other services as are required to assist an individual with a disability to benefit from special education.

"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 an eligible individual 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 individual is the district in which the individual and those who have accepted full and complete control of the individual reside, and that district becomes responsible for providing and funding the special education and related services.

2. If full and complete control of an eligible individual 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 parent; therefore, the parent 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

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child foster care facility as defined in Iowa Code section 237.1 or in a facility providing residential treatment as defined in Iowa Code section 125.2. District of residence of an individual living in a foster care facility and financial responsibility for special education and related services is determined in accord with the provisions of subrule 41.132(5).

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. Financial responsibility for special education and related services of individuals placed by the district court is determined in accord with subrule 41.132(6).

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

"Special education" means specially designed instruction, 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 it consists of specially designed instruction. The term includes the services described in division IX if the services consist of specially designed instruction, at no cost to the parents, to meet the unique needs of an eligible individual, or are required to assist eligible individuals in taking advantage of, or responding to, educational programs and opportunities. Special education provides a continuum of 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.

"Specially designed instruction" means adapting content, methodology or delivery of instruction to address the unique needs of an eligible individual that result from the individual's disability and to ensure access of the eligible individual to the general curriculum, so that the educational standards of the LEA or schools within the LEA that apply to all children can be met.

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

"Transition services" means a coordinated set of activities for an eligible individual, designed in an outcome oriented process, that promotes movement from school to post-school education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation. The coordinated set of activities is based on the needs of the eligible individual, taking into account the individual's preferences and interests. The set of activities includes instruction, related services, community experiences, development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational education.

"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 and related services 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 and related services 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~~ *department* 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 and related services 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 education 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.

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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 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, but not limited to, motor or sensorimotor functions to determine the educational significance of identified problem areas including fine motor manipulation, self-help, adaptive work skills, and play or leisure skills in order to provide planning, coordination, and 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 and board of educational examiners.

281—41.10(256B) Paraprofessionals.

41.10(1) Responsibilities. Special education ~~assistants~~ *personnel* may be employed to ~~provide assistance to professionals in special education~~ *assist in the provision of special education and related services to children with disabilities* and shall:

a. Complete appropriate preservice and ~~continuing education~~ *ongoing staff development* 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~~ *paraprofessionals.* Authorized special education paraprofessional ~~personnel~~ *roles* 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 sign language commensurate with the receiver's language comprehension and interprets or translates sign language into spoken language.

~~c. "Instructional assistants" are educational aides for special education as described in 281—subrule 12.4(9).~~

c. "Licensed practical nurse" shall be permitted to provide supportive and restorative care to an eligible individual in the school setting in accordance with the student's health plan when under the supervision of and as delegated by the registered nurse employed by the school district.

d. "Occupational therapy assistant" is licensed to perform occupational therapy procedures and related tasks that

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have been selected and delegated by the supervising occupational therapist.

e. "Para-educator" is a licensed educational assistant as defined in Iowa Code section 272.12.

~~e~~ *f.* "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~~ *g.* "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.

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

~~h~~ *i.* "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~~ *j.* "Others" as approved by the department, *such as instructional assistants described in Iowa Administrative Code 281—subrule 12.4(9).*

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 and related services.

41.12(1) Provision of special education. It is the responsibility of each agency to provide each resident individual appropriate special education and related services except in those cases where it is ~~not~~ expressly otherwise provided by state statute. This responsibility may be fulfilled by using the 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 to assess and ensure the effectiveness of efforts to educate all children with disabilities.

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.

c. Data required for federal and state reporting.

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

a. Policy to ensure the provision of a free appropriate public education as defined in subrule 41.3(3).

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

c. Policies to ensure the provision of special education and related services in the least restrictive environment in accord with rule 41.38(256B,34CFR300) and division IX of these rules.

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

~~c~~ *e.* The graduation requirements for eligible individuals.

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

~~e~~ *g.* Special health services.

~~f. Transition from Part H to Part B, 41.75(256B,34CFR300,303) of these rules.~~

h. Policy to ensure the establishment of performance goals and indicators for eligible individuals.

i. Policy to ensure the participation of eligible individuals in districtwide assessment programs.

j. Policy to ensure that the participation and performance results of eligible individuals in districtwide assessments are reported to the public.

41.12(7) Procedures. Each agency shall develop written procedures pertinent to the provision of special education and related services and shall make such procedures available to the department upon request. ~~At~~ *and shall, at* a minimum, ~~such procedures shall~~ include:

a. Procedures to ensure the provision of special education and related services 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 *f.* Procedures for providing continuing education opportunities.

~~h~~ *g.* 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(256B,34CFR300,303) of these rules.~~

h. Procedures for ensuring procedural safeguards for children with disabilities and their parents in accordance with divisions X and XI of these rules.

i. Procedures for the establishment of performance goals and indicators for eligible individuals.

j. Procedures to ensure the participation of eligible individuals in districtwide assessment programs.

k. Procedures to ensure that the participation and performance results of eligible individuals in districtwide assessments are reported to the public.

41.12(8) Contracts. Each agency contracting with other agencies to provide special education and related services for individuals or groups of individuals shall maintain responsi-

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bility for individuals receiving such special education and related services 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 and related services provided by requiring and reviewing periodic progress reports.

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

41.12(9) Out-of-state placements. When special education and related services appropriate to an eligible individual's needs are not available within the state, or when appropriate special education and related services in an adjoining state are nearer than the appropriate special education and related services in Iowa, the director may certify an eligible individual for appropriate special education and related services outside the state in accord with Iowa Code section 273.3 when it has been determined by the department that the special education and related services meet 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.

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. In addition to the requirements of rule 41.12(256B,273, 34CFR300), the following provisions are applicable to each LEA which provides special education and related services.

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

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

41.15(3) Plans. Districtwide plans required by the department or federal programs and regulations shall address eligible individuals and describe the relationship to or involvement of special education services.

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 rule 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. In addition to the requirements of rule 41.12(256B,273, 34CFR300), the following provisions are applicable to each AEA which provides special education and related services.

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

a. Appointment of surrogate parents, rule 41.110(256B, 34CFR300).

b. Provision of and payment for independent educational evaluation, rule 41.109(256B,34CFR300).

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c. Policy to ensure the provision of a free appropriate public education as defined in subrule 41.3(3).

d. Policy to ensure the goal of providing a full educational opportunity to all eligible individuals as defined in subrule 41.3(4).

e. Policy addressing the methods of ensuring services to eligible individuals.

f. Child find policy that ensures that individuals with disabilities who are in need of special education and related services are identified, located and evaluated.

g. Evaluation and determination of eligibility policy for identifying students who require special education that meet the requirements of division VII of these rules, including a description of the extent to which the AEA system uses categorical designations. While AEAs may identify students as eligible for special education without designating a specific disability category, it is recognized that in certain circumstances the educational diagnosis of a specific disability, such as autism or sensory impairment, may enhance the development and ongoing provision of an appropriate educational program.

h. Policy for the development, review and revision of IEPs.

i. Policy for transition from Part C to Part B as specified in rule 41.75(256B,34CFR300,303).

j. Policy for provision of special education and related services to students in nonpublic schools.

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

a. Appointment of surrogate parents, rule 41.110(256B, 34CFR300).

b. Provision of and payment for independent educational evaluation, rule 41.109(256B,34CFR300).

c. Procedures 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. The description shall include the procedures for timely and effective resolution of concerns about caseloads and paraprofessional assistance which have not been resolved satisfactorily pursuant to subparagraph 41.84(2)"b"(3).

d. Procedures for evaluating the effectiveness of services in meeting the needs of eligible individuals in order to receive federal assistance under 34 CFR §300.240, July 1, 1999.

e. Child find procedures that ensure that individuals with disabilities who are in need of special education and related services are identified, located and evaluated.

f. Evaluation and determination of eligibility procedures for identifying students who require special education that meet the requirements of division VII of these rules, including a description of the extent to which the AEA system uses categorical designations.

g. Procedures for the development, review and revision of IEPs.

h. Procedures to ensure the provision of special education and related services in the least restrictive environment in accord with rule 41.38(256B,34CFR300) and division IX of these rules.

i. Procedures for transition from Part C to Part B as specified in rule 41.75(256B,34CFR300,303).

j. Procedures for provision of special education and related services to students in nonpublic schools.

k. Procedures describing the methods of ensuring services to eligible individuals.

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

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

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

c. Conditioning payments on the delivery of special education and related services 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~~ *five* 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.

41.18(6) Educate and inform. The AEA shall provide the department with a description of proactive steps to inform and educate parents, AEA and LEA staff regarding eligibility, identification criteria and process, and due process steps to be followed when parents disagree regarding eligibility.

41.18(7) Coordination of services. The AEA shall provide the department with a description of how the AEA identification process and LEA delivery systems for instructional services will be coordinated.

281—41.19 Reserved.

281—41.20(256B,34CFR300) ~~Comprehensive system of personnel~~ *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 AEAs 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.~~

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~~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 that 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 services 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.~~ *ensure that personnel necessary to carry out the requirements of these rules are appropriately and adequately prepared and trained consistent with the state's comprehensive system of personnel development, and to the extent the AEA determines appropriate, shall contribute to and use the comprehensive system of personnel development of the state.*

281—41.21 Reserved.

281—41.22(256B,273,34CFR300) AEA ~~plan and application~~ *eligibility for federal funds.*

~~41.22(1) AEA plan. Each AEA shall submit to the department a plan for the provision of comprehensive special education and related services for eligible individuals within the AEA. The plan shall be developed with input from parents, teachers, LEA administrators, AEA support personnel, and the general public. The plan shall be reviewed annually with necessary amendments submitted to the department for approval. Prior to submitting the plan to the department, the AEA shall provide an opportunity for comment on the plan by the general public. The AEA shall provide notice to the general public of the opportunity for public comment allowing sufficient time for the public to comment. The AEA plan shall describe the process used to make the plan available for public comment and how the comment was considered. The plan shall include:~~ *Required descriptions, policies and procedures. Each AEA shall submit to the department the policies and procedures identified in subrules 41.18(1) and 41.18(2) and other descriptions that may be required by the department for approval. These descriptions, policies and procedures shall remain in effect until modifications are made in response to changes in federal code or regulations, changes in state code, a new interpretation of federal code or regulation or state code or administrative rule by a federal court or the state's highest court. Any modifications to an AEA's descriptions, policies or procedures shall be submitted to the department for approval.*

~~a. A description of procedures 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. The description shall include the procedures for timely and effective resolution of concerns about caseloads and paraprofessional assistance which have not been resolved satisfactorily pursuant to subparagraph 41.84(2)"b"(3).~~

~~b. A description of procedures for evaluating the effectiveness of services in meeting the needs of eligible individuals in order to receive federal assistance under 34 CFR §300.240, July 1, 1994.~~

~~c. A description of proactive steps to inform and educate parents, AEA and LEA staff regarding eligibility, identification criteria and process, and due process steps to be followed when parents disagree regarding eligibility.~~

~~d. A description concerning the following:~~

~~(1) Child find policy, including a description of the identification process as required in division VII of these rules and the manner in which the AEA system uses categorical designations. While AEAs may identify students as eligible for special education without designating a specific disability category, it is recognized that in certain circumstances the educational diagnosis of a specific disability, such as autism or sensory impairment, may enhance the development and ongoing provision of an appropriate educational program.~~

~~(2) Policy on confidentiality of personally identifiable information.~~

~~(3) Full educational opportunity goal with a detailed timetable.~~

~~(4) Kind and number of facilities, personnel and services to meet the goal of full educational opportunity.~~

~~(5) Implementation and use of the comprehensive system of personnel development.~~

~~(6) Priorities for services to eligible individuals as established by the department on an annual basis.~~

~~(7) Efforts to ensure that the agency makes provision for participation of and consultation with parents or guardians of children with disabilities.~~

~~(8) How children with disabilities are involved with nondisabled children in educational programs including a description of alternative placements.~~

~~(9) Efforts to ensure compliance with the procedures and content requirements of IEPs.~~

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~~(10) Information related to students enrolled in nonpublic schools as required by 34 CFR §76.656, July 1, 1994.~~

~~e. A description of how the AEA identification process and LEA delivery systems for instructional services will be coordinated.~~

~~41.22(2) Plan cycle. In order to provide a three-year approval cycle, within 12 months after the effective date of these rules, each AEA will submit a plan for the period July 1 through June 30, according to monitoring of compliance and this schedule:~~

~~a. Five AEAs, identified by the department, will submit a plan for a one-year period and for a three-year period every three years thereafter.~~

~~b. Five AEAs, identified by the department, will submit a plan for a two-year period and for a three-year period every three years thereafter.~~

~~c. Five AEAs, identified by the department, will submit a plan for a three-year period and for a three-year period every three years thereafter.~~

41.22(32) AEA application. Each AEA shall submit to the department, 45 *calendar* days prior to the start of the project year, an application for federal funds under 20 U.S.C. Chapter 33, and 34 CFR Part 300, July 1, ~~1994~~ *1999*. An AEA application shall only receive department approval when there is an approved AEA *comprehensive* plan *as described in rule 281—72.9(273)* on file at the department *and the requirements of subrule 41.22(1) have been met.*

The application, on forms provided by the department, shall include the following:

a. General information.

b. Utilization of funds.

c. Assurances.

~~41.22(4) Approval of AEA plan or application. Final approval of an AEA plan or application will be granted by the department in accordance with 34 CFR §§300.193 and 300.194, July 1, 1994. The department will notify the AEA in writing of the recommendation to the board for approval or disapproval of the AEA plan or 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. A plan or application may be approved in part or subject to the remedying of deficiencies or omissions.~~

~~41.22(5) Disapproval of an AEA plan or application—opportunity for a hearing. The following are the procedures of the department in providing for a hearing in the event a plan or 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~~ *environment* 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 and related services shall be of two types:

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

b. Approval for the nonpublic agency to provide special education and related services, and to receive special education funds for the special education and related services 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 and related services 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 and deafness.~~

~~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.~~

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~~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 and related services, 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 and related services, 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 and related services 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 provision of special education and related services 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.

281—41.27(256B) Rules exceptions.

41.27(1) Department approval. In unique circumstances, the director or, in a state-operated program, the superintendent or designee may request a rule exception from the department.

a. 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.

b. The department will use the following criteria in the review and approval of all requests for a rule exception. The request:

(1) Does not ask for a waiver of any of the requirements of 20 U.S.C. Chapter 33, 34 CFR Part 300, July 1, ~~1994~~ *1999*, or divisions I, V, VI, VIII, X, and XI of these rules.

(2) Is necessary to provide an appropriate education to an eligible individual or group of eligible individuals, or is designed to improve the requesting agency's delivery of services.

(3) Is supported by substantive evidence indicating the need and rationale for the request.

41.27(2) Adjusted program reports. The director or, in a state-operated program, the superintendent or designee, may grant an adjusted program status when an LEA or state-operated program uses the program models described in subrule 41.84(1). An adjusted program report~~, on forms provided by the department,~~ shall document such action and shall be maintained by the director or superintendent. The adjusted program status shall be approved by the director or superintendent within 30 *calendar* days of the action, shall be valid for that academic year, and shall be used for the following circumstances:

a. Program model: An individual is appropriately served in a program other than that typically provided for individuals with similar educational needs.

b. Disability: An individual is appropriately served in a categorical program that does not typically serve the individual's disability.

c. Age span: The chronological age span of the individuals within the program exceeds six years in a self-contained special class or four years in a multicategorical special class with integration.

d. Maximum class size: When class size, including the size of a class served by a teacher employed less than full-time, exceeds those limits specified in subrules 41.84(1) and 41.84(2).

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, ~~1994~~ *1999*.

"Personally identifiable information" means that information includes:

1. The name of the child, the child's parent, or other family member;
2. The address of the child;
3. A personal identifier, such as the child's social security number or student number; or
4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

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, ~~1994~~ *1999*. Each agency shall maintain records and reports in a current status. The parents of an eligible individual and the eligible individual shall be afforded, in accordance with rules 41.31(256B,34CFR99,300) and 41.33(256B,34CFR99,300), an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the individual; and the provision of FAPE to the individual.

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

41.31(1) Reviewing records. Each agency shall permit the parents of an eligible individual and the eligible individual to inspect and review any education records relating to the individual 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 *calendar* days. An agency may presume that the parent of an eligible individual has authority to inspect and review records relating to the individual unless the agency has been advised that the parent does not have the authority under Iowa

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Code chapters 597, 598, and 598A governing such matters as guardianship, separation, and divorce. *When parental rights are transferred to an eligible individual as specified in rule 41.111(34CFR300) educational records shall be made available to parents if the eligible individual is determined to be a dependent student as defined in Section 152 of Title 26, the Internal Revenue Code of 1954.* 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, *officers, and agents* 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 subrule, 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, ~~1994~~ *1999*, may not release information from education records to agencies without parental consent unless authorized to do so under 34 CFR Part 99, July 1, ~~1994~~ *1999*.

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, ~~1994~~ *1999*.

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, ~~1994~~ *1999*.

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 ~~or 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~~ *three* years *after an individual is determined to be no longer eligible for special education.* Personally identifiable information can be removed from those records less than ~~five~~ *three* 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

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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~~ *environment* where *appropriate* 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~~ *if* 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 services. Each agency shall ensure that a continuum of services is available to meet the needs of eligible individuals for special education and related services. The continuum of services shall include 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) Location. 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. IEP teams are required to consider the questions on LRE presented in subrule ~~41.70(2)~~ *41.67(6)*.

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.

41.39(5) Removal from general education environment. An eligible individual is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

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 services available. What is the continuum of services available for the eligible individual?

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. The department shall take action consistent with rule 41.135(256B,273,282) if an agency fails to implement corrective actions.

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 two purposes: (1) to identify those individuals who require special education and (2) to identify individuals who need general education interventions as described in subrule 41.48(2).

41.47(2) Procedures. Each AEA, in conjunction with each constituent LEA, shall establish and ~~maintain~~ *implement* ongoing identification and evaluation procedures to ensure early identification of and appropriate special education for eligible individuals of all ages, including individuals in all public and private agencies and institutions within that jurisdiction, as specified in rule 41.1(256B,34CFR300,*303*) of these rules. Each AEA shall have written procedures for the identification process.

41.47(3) Systematic problem solving process. When used by an AEA in its identification process, systematic problem solving 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 re-

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lated to developing effective educationally related interventions. Active parent participation is an integral aspect of the process and is solicited throughout. At a minimum, the process includes:

a. Description of problem. The presenting problem or behavior of concern is described in objective, measurable terms that focus on alterable characteristics of the individual and the environment. The individual and environment are examined through systematic data collection. The presenting problem or behaviors of concern are defined in a problem statement that describes the degree of discrepancy between the demands of the educational setting and the individual's performance.

b. Data collection and problem analysis. A systematic, data-based process for examining all that is known about the presenting problem or behaviors of concern is used to identify interventions that have a high likelihood of success. Data collected on the presenting problem or behaviors of concern are used to plan and monitor interventions. Data collected are relevant to the presenting problem or behaviors of concern and are collected in multiple settings using multiple sources of information and multiple data collection methods. Data collection procedures are individually tailored, valid, and reliable, and allow for frequent and repeated measurement of intervention effectiveness.

c. Intervention design and implementation. Interventions are designed based on the preceding analysis, the defined problem, parent input, and professional judgments about the potential effectiveness of interventions. The interventions are described in an intervention plan that includes goals and strategies, a progress monitoring plan, a decision-making plan for summarizing and analyzing progress monitoring data, and responsible parties. Interventions are implemented as developed and modified on the basis of objective data and with the agreement of the responsible parties.

d. Progress monitoring. Systematic progress monitoring is conducted which includes regular and frequent data collection, analysis of individual performance across time, and modification of interventions as frequently as necessary based on systematic progress monitoring data.

e. Evaluation of intervention effects. The effectiveness of interventions ~~are~~ *is* evaluated through a systematic procedure in which patterns of individual performance are analyzed and summarized. Decisions regarding the effectiveness of interventions focus on comparisons with initial levels of performance.

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. Active parent participation is solicited throughout the process. Parents are communicated with directly and are encouraged to participate at all decision points.

41.48(2) General education interventions. Each LEA, in conjunction with the AEA, shall attempt to resolve the presenting problem or behaviors of concern in the general education environment prior to conducting 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~~ *IEP* team *as described in subrule 41.62(1) and, as appropriate, other qualified professionals,* may determine that a full and individual *initial* evaluation shall be conducted. Documentation of the rationale for such action shall be included in the individual's educational record. The parent of a child receiving general education interventions may request that the agency conduct a full and individual *initial* evaluation at any time during the implementation of such interventions.

a. Each LEA shall provide general notice to parents on an annual basis about the provision of general education interventions that occur as a part of the agency's general program and that may occur at any time throughout the school year.

b. General education interventions shall include teacher consultation with special education support and instructional personnel working collaboratively to improve an individual's educational performance. The activities shall be documented and shall include measurable and goal-directed attempts to resolve the presenting problem or behaviors of concern, communication with parents, collection of data related to the presenting problem or behaviors of concern, intervention design and implementation, and systematic progress monitoring to measure the effects of interventions.

c. 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 and related services, the agency shall then conduct a full and individual *initial* evaluation.

41.48(3) Full and individual *initial* evaluation. ~~A full and individual~~ *An initial* 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~~ *the* evaluation. The purpose of the ~~full and individual~~ evaluation is to determine the educational interventions that are required to resolve the presenting problem, behaviors of concern, or suspected disability, including whether the educational interventions are special education. *An evaluation shall include:*

~~a. A full and individual evaluation shall include:~~

~~(1)~~ *a.* An objective definition of the presenting problem, behaviors of concern, or suspected disability.

~~(2)~~ *b.* Analysis of existing information about the individual, ~~including the results of general education interventions.~~ *as described in paragraph 41.48(4)"a."*

~~(3)~~ *c.* Identification of the individual's strengths or areas of competence relevant to the presenting problem, behaviors of concern, or suspected disability.

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

~~b. The evaluation is made by a multidisciplinary team.~~

~~41.48(4) Communication disability. Individuals who have a communication disability 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 communication disability using procedures that are appropriate for the diagnosis and appraisal of a communication disability and, if necessary, make~~

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~~referrals for additional assessments needed to make an appropriate service decision.~~

41.48(4) Determination of needed evaluation data. As part of a full and individual initial evaluation and as part of any reevaluation described in rule 41.77(256B,34CFR300), the IEP team as described in subrule 41.62(1) and, as appropriate, other qualified professionals, shall:

a. Review existing evaluation data on the individual including evaluations and information provided by the parents of the individual, current classroom-based assessments and observations, observations by teachers and related services providers and the results of general education interventions.

b. On the basis of the review and input from the individual's parents, identify what additional data, if any, are needed to determine:

(1) Whether the individual has a disability or, in case of a reevaluation, whether the individual continues to have a disability.

(2) The present levels of performance and educational needs of the individual.

(3) Whether the individual needs special education and related services or, in the case of a reevaluation, whether the individual continues to need special education and related services.

(4) Whether any additions or modifications to the special education and related services are needed to enable the individual to meet the measurable annual goals set out in the IEP of the individual and to participate, as appropriate, in the general curriculum or, in the case of preschool children, appropriate activities.

41.48(5) Conduct of review. The group of individuals described in subrule 41.48(4) may conduct its review without a meeting.

41.48(6) Need for additional data. The group as described in subrule 41.62(1) shall administer the tests and other evaluation materials, and use assessment tools and strategies as may be needed to produce the data identified under subrules 41.48(3) and 41.48(4).

41.48(7) Additional data not needed. If the group as described in subrule 41.62(1) determines that no additional data are needed to determine whether the individual continues to have a disability, the agency shall notify the individual's parents of the team's determination and the reasons for it, and of the right of the parents to request an assessment to determine whether, for purposes of services described in these rules, the individual continues to have a disability. The agency is not required to conduct this assessment unless requested to do so by the individual's parents.

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. *Materials and procedures used to assess an individual with limited English proficiency are selected and administered to ensure that they measure the extent to which the individual has a disability and needs special education, rather than measuring the individual's English language skills.*

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

c. Are administered by trained *and knowledgeable* personnel in ~~conformance~~ *accordance* with ~~the~~ *any* instructions provided by ~~their~~ *the* producer *of the tests.*

d. Are technically sound and assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

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~~ *if* a procedure or 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~~ *unless* 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.

41.49(5) Tools and strategies. The assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of the individual. A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the individual, including information provided by the parent, and information related to enabling the individual to be involved in and progress in the general curriculum (or, for a preschool child, to participate in appropriate activities), that may assist in determining whether the individual is an eligible individual and in determining the content of the IEP.

41.49(6) No single procedure. No single procedure is used as the sole criterion for determining whether the individual is an eligible individual and for determining an appropriate educational program for the individual.

~~**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—41.50(256B,34CFR300) Determining eligibility and need for service. *Upon completing the full and individual initial evaluation, the IEP team and other qualified professionals as appropriate shall determine whether the individual is an individual with a disability as defined in division II and whether the educational interventions that the individual requires constitute the provision of special education and re-*

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lated services as defined in division II and described in division IX.

41.50(1) Considerations. In making this determination, the IEP team shall:

a. Draw upon information from a variety of sources including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.

b. Ensure that information obtained from all evaluation procedures and sources is documented and carefully considered.

c. Ensure that the decision considers least restrictive environment and is made in conformity with division VI.

41.50(2) Factors. An individual shall not be determined to be an eligible individual if the determinant factor for the decision is a lack of instruction in reading or math, or limited English proficiency.

41.50(3) Reports and documentation. A copy of the evaluation report and the documentation of determination of eligibility shall be provided to the parent.

41.50(4) IEP requirement. If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with division VIII.

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 and related services 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. Parents who do not agree with the team's conclusions or with the recommended special education and related services for an individual may file concerns through the procedures described in rules 41.105(256B,34CFR300), 41.106(256B,34CFR300), 41.107(256B,34CFR300), and division XI.

281—41.52(256B) ~~Entitlement~~ *Director's certification.* Based upon the decision of the ~~multidisciplinary~~ *IEP* 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 and related services. A confidential record, subject to audit by the department, registering the name and required special education and related service of each individual requiring special education, shall be maintained by the AEA and provision made for its periodic revision.

281—41.53(256B) ~~Programming~~ *Eligibility* beyond the age of 21. An agency may continue the special education and related services 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 rule 41.109(256B, 34CFR300). If a parent obtains an independent educational evaluation at public or private expense *and the evaluation meets agency criteria*, 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) 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:~~ *The determination of whether an individual suspected of having a learning disability is eligible for special education shall be made by the individual's parents and a team of qualified professionals which shall 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 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 general education 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.

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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 and related services.

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 rule 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 and related services are provided to an eligible individual and be implemented as soon as possible following the meetings under rule 41.61(256B,34CFR300). It is expected that the IEP of an eligible individual will be implemented immediately following the meetings under rule 41.61(256B,34CFR300). *Each public agency shall ensure that the eligible individual's IEP is accessible to each general education teacher, special education teacher, support service provider, and other service provider who is responsible for its implementation; and each teacher and provider is informed of the teacher or provider's specific responsibilities related to implementing the eligible individual's IEP and the specific accommodations, modifications, and supports that must be provided for the eligible individual in accordance with the IEP.* ~~An exception~~ *Exceptions* to this would be when the meetings occur during the summer or a vacation period, *unless the child requires services during that period,* or where there are circumstances that require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the eligible individual.

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. *Each agency shall ensure that within a reasonable period of time following the agency's receipt of parent consent to an initial evaluation of an eligible individual the eligible individual is evaluated and, if determined eligible under these rules, special education and support services are made available to the eligible individual in accordance with an IEP.* 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 and related services.

41.61(3) Review *and revision of IEP.* ~~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.~~ *Each agency shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved and revises the IEP as appropriate to address:*

a. Any lack of expected progress toward the annual goals described in rule 41.67(256B,34CFR300), and in the general curriculum, if appropriate;

b. The results of any reevaluation conducted;

c. Information about the child provided to, or by, the parents;

d. The child's anticipated needs; or

e. Other matters.

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

41.62(1) General. The agency shall ensure that each *IEP* 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. If the eligible individual is receiving only speech-language services, the representative of the agency may be the speech-language pathologist.~~

~~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 is receiving only speech-language services, 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 representative or special education personnel will participate in the meeting.~~

~~(4) For an individual who is receiving only special education support services other than speech-language services, the teacher would be the general education teacher.~~

~~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 rule 41.64(256B,34CFR300).~~

~~e. The individual, if appropriate.~~

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

a. The parents of the eligible individual.

b. At least one general education teacher of the eligible individual (if the eligible individual is, or may be, participating in the general education environment). As a member of the IEP team, the general education teacher of an eligible individual shall, to the extent appropriate, participate in the development, review, and revision of the eligible individual's IEP, including assisting in the determination of appropriate positive behavioral interventions and strategies for the eligible individual and determination of supplementary aids and services, program modifications, or supports for school personnel that will be provided for the eligible individual consistent with paragraph 41.67(1)"c."

c. At least one special education teacher or, if appropriate, at least one special education provider of the eligible individual.

d. A representative of the LEA who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of an eligible individual and is knowledgeable about the general curriculum and the availability of resources of the LEA. The LEA may designate another public agency member of the IEP team to also serve as the agency representative, if the criteria in this paragraph are satisfied.

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e. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs "a" through "f" of this subrule.

f. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the eligible individual, including related services personnel as appropriate. The determination of the knowledge or special expertise of any individual described in this paragraph shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

g. If appropriate, the eligible individual.

~~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)~~ *(2)* Transition ~~planning~~ *services* participants.

a. If a purpose of the *IEP* meeting is the consideration of transition ~~planning~~ *services* 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 (name and position) will be in attendance *and informing the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the eligible individual.*

d. For an eligible individual beginning at the age of 14, or younger if appropriate, the notice shall indicate that a purpose of the meeting is the development of a statement of the transition service needs of the eligible individual required in subparagraph 41.67(2)"a"(1) and indicate that the agency will invite the eligible individual.

~~d~~ *e.* ~~If a purpose of the meeting is the consideration of transition planning for a student, the notice must also:~~ *For an eligible individual beginning at the age of 16, or younger if appropriate, the notice must indicate*:

(1) ~~Indicate this purpose~~ *A purpose of the meeting is the consideration of needed transition services.*

(2) ~~Indicate that~~ *That* the agency will invite the ~~student~~ *eligible individual.*

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

~~e. The notice shall also inform parents that they may bring other people to the meeting.~~

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.

d. The procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency shall keep a record of its efforts to contact parents.

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~~, who are hard of hearing,~~ or whose native language is other than English.

41.64(4) Copy of IEP to parents. The *public* agency shall give the parent~~, on request,~~ a copy of the *child's* IEP *at no cost to the parent.*

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—41.66 Reserved.

~~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.~~

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~~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 provided special education and related services.~~

~~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 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. The parents shall be notified whenever this occurs.~~

~~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. Physical education services, specially designed if necessary, must be made available to every eligible individual receiving FAPE. If modifications to the general physical education program are necessary in order for the individual to participate in that program, those modifications must be described in the IEP. If the IEP team determines that the individual's physical education needs cannot be met through participation in the general physical education program with peers who are nondisabled, a specially designed physical education program must be provided. This specially designed physical education program must be addressed in all applicable parts of the IEP. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services.~~

~~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. Progress monitoring procedures shall be used in evaluating progress toward accomplishment of short-term instructional objectives.~~

~~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 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—41.67(256B,34CFR300) Content of IEP.

41.67(1) General. The IEP for each eligible individual shall include:

a. A statement of the eligible individual's present levels of educational performance, including:

(1) How the eligible individual's disability affects the individual's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled individuals) or

(2) For preschool children, as appropriate, how the disability affects the eligible individual's participation in appropriate activities;

b. A statement of measurable annual goals, including milestones or short-term objectives, related to:

(1) Meeting the eligible individual's needs that result from the individual's disability to enable the individual to be involved in and progress in the general curriculum; and

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(2) Meeting each of the eligible individual's other educational needs that result from the individual's disability;

c. A statement of the special education and related services and supplementary aids and services to be provided to the eligible individual, or on behalf of the eligible individual, and a statement of the program modifications or supports for school personnel that will be provided for the individual:

(1) To advance appropriately toward attaining the annual goals;

(2) To be involved and progress in the general curriculum in accordance with paragraph "a" of this subrule and to participate in extracurricular and other nonacademic activities; and

(3) To be educated and participate with other individuals with disabilities and nondisabled individuals in the activities described in this paragraph;

d. An explanation of the extent, if any, to which the eligible individual will not participate with nondisabled individuals in the general class and in the activities described in paragraph "c" of this subrule;

e. A statement of any individual modifications in the administration of districtwide assessments of student achievement that are needed in order for the eligible individual to participate in the assessment. If the IEP team determines that the eligible individual will not participate in a particular districtwide assessment of student achievement (or part of an assessment), a statement of:

(1) Why that assessment is not appropriate for the eligible individual; and

(2) How the eligible individual will be assessed;

f. The projected date for the beginning of the services and modifications described in paragraph "c" of this subrule, and the anticipated frequency, location, and duration of those services and modifications; and

g. A statement of:

(1) How the eligible individual's progress toward the annual goals described in paragraph "b" of this subrule will be measured; and

(2) How the eligible individual's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of

1. Their child's progress toward the annual goals; and

2. The extent to which that progress is sufficient to enable the eligible individual to achieve the goals by the end of the year.

***41.67(2)** Transition services.*

a. The IEP shall include:

(1) For each eligible individual beginning at the age of 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the eligible individual under the applicable components of the individual's IEP that focuses on the eligible individual's course of study (such as participation in advanced-placement courses or a vocational education program); and

(2) For each eligible individual beginning at the age of 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the eligible individual, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

b. If the IEP team determines that services are not needed in one or more of the areas specified in the definition of transition in rule 41.5(256B,34CFR300), the IEP shall include a statement to that effect and the basis upon which the determination was made.

***41.67(3)** Transfer of rights. Beginning at least one year before an eligible individual reaches the age of 18, or upon marriage, the eligible individual's IEP shall include a statement that the eligible individual has been informed of the individual's rights under these rules, if any, that will transfer to the eligible individual on reaching the age of majority consistent with rule 41.111(34CFR300).*

***41.67(4)** Eligible individuals with disabilities convicted as adults and incarcerated in adult prisons. Special rules concerning the content of IEPs for individuals with disabilities convicted as adults and incarcerated in adult prisons are contained in rule 41.4(34CFR300).*

***41.67(5)** Considerations in development of IEP.*

a. General. In developing each eligible individual's IEP, the IEP team shall consider:

(1) The strengths of the eligible individual and the concerns of the parents for enhancing the education of their child;

(2) The results of the initial or most recent evaluation of the eligible individual; and

(3) As appropriate, the results of the eligible individual's performance on any general districtwide assessment programs.

b. Consideration of special factors. The IEP team also shall:

(1) In the case of an eligible individual whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(2) In the case of an eligible individual with limited English proficiency, consider the language needs of the eligible individual as those needs relate to the individual's IEP;

(3) In the case of an eligible individual who is blind or visually impaired, include in the initial IEP and each annual review of the IEP 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.

1. An eligible individual for whom braille services are appropriate, as defined in rule 41.5(256B,34CFR300), is entitled to instruction in braille reading and writing that is sufficient to enable the eligible individual to communicate with the same level of proficiency as an individual of otherwise comparable ability at the same grade level.

2. An eligible individual, with a visual impairment including blindness, as defined in rule 41.5(256B, 34CFR300), whose primary learning medium is expected to change may begin instruction in the new medium before it is the only medium the eligible individual can effectively use.

3. Braille reading and writing instruction may only be provided by a teacher licensed at the appropriate grade level to teach individuals with visual impairments.

(4) Consider the communication needs of the eligible individual and, in the case of an eligible individual who is deaf or hard of hearing, consider the individual's language and communication needs, opportunities for direct communications with peers and professional personnel in the individual's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the individual's language and communication mode.

(5) Consider whether the eligible individual requires assistive technology devices and services.

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c. Statement in IEP. If, in considering the special factors described in paragraph "b" of this subrule, the IEP team determines that an eligible individual needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the individual to receive FAPE, the IEP team shall include a statement to that effect in the individual's IEP.

41.67(6) LRE considerations. When developing an eligible individual's IEP, the IEP team shall consider the following questions regarding the provision of special education and related services:

a. What accommodations, modifications and adaptations does the individual require to be successful in a general education environment?

b. Why can't these accommodations, modifications and adaptations be provided within the general education environment?

c. What supports are needed to assist the teacher and other personnel in providing these accommodations, modifications and adaptations?

d. How will providing special education services and activities in the general education environment impact this individual?

e. How will providing special education services and activities in the general education environment impact other students?

281—41.68(256B,34CFR300) Support services only. An IEP that satisfies the requirements of rule 41.60(256B, 34CFR300) to rule 41.67(256B,34CFR300) shall be developed for eligible individuals who require only special education support services. The special education support service specialist with knowledge in the area of need 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. The special education support service provider shall attend the IEP meetings for the eligible individual being served.

~~**281—41.69(34CFR300,303) IFSP to IEP.** Eligible individuals younger than the age of two years and three months shall have an IFSP which also meets all the requirements of an IEP as outlined in subrule 41.70(3). 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—41.69(34CFR303) Children birth to the age of three. *A fully developed IFSP shall be considered to have met the requirements of an IEP for an eligible individual younger than the age of three.*

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 *individual* agency personnel to come prepared with evaluation findings, *proposed* statements of present levels of educational performance, and a recommendation regarding annual goals, *milestones or* 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 *individual* ~~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 and related services:~~

~~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)~~ *(2)* 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(3) Accountability. Each agency shall provide special education and related services to an eligible individual in accordance with an IEP and make a good-faith effort to assist the eligible individual to achieve the goals and objectives or milestones listed in the IEP. These rules do not require that any agency, teacher, or other person be held accountable if an individual does not achieve the growth projected in the annual goals and milestones or objectives.

~~**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 goals and 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)~~ *(4)* 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 which meets all the requirements of rule 41.67(256B,34CFR300) when the IEP team determines that it is necessary to temporarily provide special education and related services 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 and related services that are needed. IEP teams cannot use interim IEPs to circumvent the requirements of this division or of division VII. 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:

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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(5) Agency responsible for transition services.

a. If a participating agency, other than the LEA, fails to provide the transition services described in the IEP in accordance with subparagraph 41.67(2)"a"(2), the LEA shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the eligible individual set out in the IEP.

b. Nothing in these rules relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to eligible individuals who meet the eligibility criteria of that agency.

~~41.70(7) Individuals with visual impairment. The initial IEP and each 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.~~

~~a. An eligible individual for whom braille services are appropriate, as defined in division II, rule 41.5(256B,34CFR300), is entitled to instruction in braille reading and writing that is sufficient to enable the eligible individual to communicate with the same level of proficiency as an individual of otherwise comparable ability at the same grade level.~~

~~b. An eligible individual, with a visual impairment including blindness, as defined in division II, rule 41.5(256B,34CFR300), whose primary learning medium is expected to change may begin instruction in the new medium before it is the only medium the eligible individual can effectively use.~~

~~c. Braille reading and writing instruction may only be provided by a teacher licensed at the appropriate grade level to teach individuals with visual impairments.~~

41.70(6) Construction. Nothing in these rules shall be construed to require the IEP team to include information under one component of an eligible individual's IEP that is already contained under another component of the individual's IEP.

~~281—41.71 Reserved.~~

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

~~41.72(1) Transition. Transition means a coordinated set of activities for an eligible individual, 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.~~

~~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—41.71(256B,34CFR300) Discipline procedures.

41.71(1) Change of placement for disciplinary removals. For purposes of removals of an eligible individual from the eligible individual's current educational placement under subrules 41.71(2) to 41.73(5), a change of placement occurs if:

a. The removal is for more than ten consecutive school days, or

b. The eligible individual is subjected to a series of removals that constitute a pattern because they accumulate to more than ten school days in a school year, and because of factors such as the length of each removal, the total amount of time the eligible individual is removed, and the proximity of the removals to one another.

41.71(2) Authority of school personnel.

a. School personnel may order:

(1) To the extent removal would be applied to individuals without disabilities, the removal of an eligible individual from the eligible individual's current placement for not more than ten consecutive school days for any violation of school rules, and additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under subrule 41.71(1)). After an eligible individual has been removed from the individual's current placement for more than ten school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under subrule 41.3(3).

(2) A change in placement of an eligible individual to an appropriate interim alternative educational setting for the same amount of time that an individual without a disability would be subject to discipline, but for not more than 45 calendar days, if:

1. The eligible individual carries a weapon to school or to a school function under the jurisdiction of a state or local educational agency; or

2. The eligible individual knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a state or local educational agency.

b. Either before or not later than ten business days after either first removing the eligible individual for more than ten

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school days in a school year or commencing a removal that constitutes a change of placement under subrule 41.71(1), including the action described in subparagraph 41.71(2)"a"(2).

(1) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the eligible individual before the behavior that resulted in the removal described in paragraph "a" of this subrule, the agency shall convene an IEP meeting to develop an assessment plan; or

(2) If the eligible individual already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation and modify the plan and its implementation as necessary to address the behavior.

c. As soon as practicable after developing the plan described in subparagraph 41.71(2)"b"(1) and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

d. If subsequently, an eligible individual who has a behavioral intervention plan and who has been removed from the eligible individual's current educational placement for more than ten school days in a school year is subjected to a removal that does not constitute a change of placement under subrule 41.71(1), the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

e. For purposes of this subrule the following definitions apply:

"Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

"Illegal drug" means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of federal law.

"Weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of Section 930 of Title 18, United States Code.

***41.71(3)** Authority of administrative law judge. An administrative law judge may order a change in the placement of an eligible individual to an appropriate interim alternative educational setting for not more than 45 calendar days if the administrative law judge, in an expedited due process hearing:*

a. Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the eligible individual is substantially likely to result in injury to the individual or to others;

b. Considers the appropriateness of the eligible individual's current placement;

c. Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the eligible individual's current placement, including the use of supplementary aids and services; and

d. Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the eligible individual's special education teacher meets the requirement of subrule 41.71(4).

e. As used in this subrule the term "substantial evidence" means beyond a preponderance of the evidence.

***41.71(4)** Determination of setting.*

a. General. The interim alternative educational setting referred to in subrules 41.71(2) and 41.71(3) shall be determined by the IEP team.

b. Additional requirements. Any interim alternative educational setting in which an eligible individual is placed under subparagraph 41.71(2)"a"(2) and subrule 41.71(3) shall:

(1) Be selected so as to enable the eligible individual to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the individual's current IEP, that will enable the individual to meet the goals set out in that IEP; and

(2) Include services and modifications to address the behavior described in subparagraph 41.71(2)"a"(2) and subrule 41.71(3), that are designed to prevent the behavior from recurring.

281—41.72(256B,34CFR300) Manifestation determination.

***41.72(1)** Review process.*

a. General. If an action is contemplated regarding behavior described in subparagraph 41.71(2)"a"(2) or subrule 41.71(3), or involving a removal that constitutes a change of placement under subrule 41.71(1) for an eligible individual who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all individuals:

(1) Not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and provided the procedural safeguards notice described in rule 41.104(256B,34CFR300); and

(2) Immediately, if possible, but in no case later than ten school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the eligible individual's disability and the behavior subject to the disciplinary action.

b. Individuals to carry out review. A review described in paragraph "a" of this subrule shall be conducted by the IEP team and other qualified personnel in a meeting.

c. Conduct of review. In carrying out a review described in paragraph "a" of this subrule, the IEP team and other qualified personnel may determine that the behavior of the eligible individual was not a manifestation of the individual's disability only if the IEP team and other qualified personnel:

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including:

1. Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the eligible individual;

2. Observations of the eligible individual; and

3. The eligible individual's IEP and placement; and

(2) Then determines that:

1. In relationship to the behavior subject to disciplinary action, the eligible individual's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the eligible individual's IEP and placement;

2. The eligible individual's disability did not impair the ability of the individual to understand the impact and consequences of the behavior subject to disciplinary action; and

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3. The eligible individual's disability did not impair the ability of the individual to control the behavior subject to disciplinary action.

d. Decision. If the IEP team and other qualified personnel determine that any of the standards in subparagraph "c"(2) of this subrule were not met, the behavior shall be considered a manifestation of the eligible individual's disability.

e. Meeting. The review described in paragraph "a" of this subrule may be conducted at the same IEP meeting that is convened under paragraph 41.71(2)"b."

f. Deficiencies in IEP or placement. If in the review in paragraphs 41.72(1)"b" and 41.72(1)"c," a public agency identifies deficiencies in the eligible individual's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

***41.72(2)** Determination that behavior was not manifestation of disability.*

a. General. If the result of the review described in subrule 41.72(1) is a determination, consistent with paragraph 41.72(1)"d," that the behavior of the eligible individual was not a manifestation of the individual's disability, the relevant disciplinary procedures applicable to individuals without disabilities may be applied to the eligible individual in the same manner in which they would be applied to individuals without disabilities, except as provided in subrule 41.3(3).

b. Additional requirement. If the public agency initiates disciplinary procedures applicable to all individuals, the agency shall ensure that the special education and disciplinary records of the eligible individual are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

c. Child's status during due process proceedings. Subrule 41.125(1) applies if a parent requests a hearing to challenge a determination made through the review described in subrule 41.72(1), that the behavior of the eligible individual was not a manifestation of the individual's disability.

281—41.73(256B,34CFR300) Appeal.

***41.73(1)** Parent appeal.*

a. General.

(1) If the eligible individual's parent disagrees with a determination that the eligible individual's behavior was not a manifestation of the individual's disability or with any decision regarding placement under rules 41.71(256B, 34CFR300) to 41.73(256B,34CFR300), the parent may request a hearing.

(2) The state shall arrange for an expedited hearing in any case described in this subrule if requested by a parent.

b. Review of decision.

(1) In reviewing a decision with respect to the manifestation determination, the administrative law judge shall determine whether the public agency has demonstrated that the eligible individual's behavior was not a manifestation of the individual's disability consistent with the requirement of paragraph 41.72(1)"d."

(2) In reviewing a decision under subparagraph 41.71(2)"a"(2) to place the eligible individual in an interim alternative educational setting, the administrative law judge shall apply the standards in subrule 41.71(3).

***41.73(2)** Placement during appeals.*

a. General. If a parent requests a hearing regarding a disciplinary action described in subparagraph 41.71(2)"a"(2) or subrule 41.71(3) to challenge the interim alternative educational setting or the manifestation determination, the eligible individual shall remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period provided for in subparagraph 41.71(2)"a"(2) or subrule 41.71(3), whichever occurs first, unless the parent and the state or local educational agency agree otherwise.

b. Current placement. If an eligible individual is placed in an interim alternative educational setting pursuant to subparagraph 41.71(2)"a"(2) or subrule 41.71(3) and school personnel propose to change the eligible individual's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the individual shall remain in the current placement (the individual's placement prior to the interim alternative educational setting), except as provided in paragraph "c" of this subrule.

c. Expedited hearing.

(1) If school personnel maintain that it is dangerous for the eligible individual to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.

(2) In determining whether the eligible individual may be placed in the alternative educational setting or in another appropriate placement ordered by the administrative law judge, the administrative law judge shall apply the standards in subrule 41.71(3).

(3) A placement ordered pursuant to subparagraph "c"(2) of this subrule may not be longer than 45 calendar days.

(4) The procedure in paragraph "c" of this subrule may be repeated as necessary.

***41.73(3)** Protections for children not yet eligible for special education and related services.*

a. General. An individual who has not been determined to be eligible for special education under these rules and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in subrule 41.71(2) or subrule 41.71(3), may assert any of the protections provided for in these rules if the LEA had knowledge (as determined in accordance with paragraph "b" of this subrule) that the individual was an eligible individual before the behavior that precipitated the disciplinary action occurred.

b. Basis of knowledge. An LEA shall be deemed to have knowledge that an individual is an eligible individual if:

(1) The parent of the individual has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the individual is in need of special education and related services;

(2) The behavior or performance of the individual demonstrates the need for these services in accordance with division VII;

(3) The parent of the individual has requested an evaluation of the individual pursuant to division VII or;

(4) The teacher of the individual, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the individual to the director or to other personnel in accordance with the agency's established child find or special education referral system of the agency.

c. Exception. A public agency would not be deemed to have knowledge under paragraph "b" of this subrule if, as a result of receiving the information specified in that paragraph, the agency either conducted an evaluation in accordance with division VII, and determined that the individual was not an eligible individual or determined that an evalua-

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tion was not necessary and provided notice to the individual's parents of its determination consistent with rule 41.104(256B,34CFR300).

d. Conditions that apply if no basis of knowledge.

(1) General. If an LEA does not have knowledge that an individual is an eligible individual (in accordance with paragraph "b" and "c" of this subrule) prior to taking disciplinary measures against the individual, the individual may be subjected to the same disciplinary measures as measures applied to individuals without disabilities who engaged in comparable behaviors consistent with subparagraph "d"(2) of this subrule.

(2) Limitations.

1. If a request is made for an evaluation of an individual during the time period in which the individual is subjected to disciplinary measures under subrule 41.71(2) or subrule 41.71(3), the evaluation shall be conducted in an expedited manner.

2. Until the evaluation is completed, the individual remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

3. If the individual is determined to be an eligible individual, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of these rules, including the requirements of rules 41.71(256B, 34CFR300) to 41.73(256B,34CFR300).

***41.73(4)** Expedited due process hearings. Expedited due process hearings under subrules 41.71(3) to 41.73(2) shall be conducted by an administrative law judge as described in rule 41.112(17A,256B,290).*

a. The parent of an individual with a disability, a representative of an LEA or AEA, or the attorney representing any of these parties shall provide notice to the department requesting an expedited hearing. This notice shall be in written form and shall include the name of the individual; the address of the residence of the individual; the name of the school the individual is attending and a description of the nature of the problem of the individual relating to the proposed or refused initiation or change, including facts relating to the problem.

b. The director of education or designee shall, within three business days after the receipt of the appeal, notify the proper school officials and the student's parents of the appeal. This notice may be done telephonically and confirmed in writing. School officials shall, within five business days after receipt of the notice, file with the department all records relevant to the decision appealed.

c. 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 to the original, if available. Any party has the right to object to the introduction of any evidence at the hearing that has not been disclosed to that party at least two business days before the hearing.

d. The presiding administrative law judge may limit the scope of evidence presented at an expedited due process hearing to information directly relevant to resolution of the issue or issues identified in the hearing request. The ultimate test of admissibility is whether the offered evidence is reliable, probative and relevant. Any party dissatisfied by limitations imposed pursuant to this provision shall promptly notify the presiding administrative law judge of its objection and the reasons why the party believes additional evidence should be received.

e. The expedited due process hearing shall be held by telephone conference call unless otherwise specified by the presiding administrative law judge. The administrative law judge will determine the location of the parties and witnesses for telephone hearings. The convenience of the parties or witnesses, as well as the nature of the case, will be considered when location is chosen.

f. The administrative law judge may determine that there is a need to establish a specific time limitation for presentations from each party. Brief memoranda of law may be presented at the time of hearing but, unless ordered otherwise by the administrative law judge, these proceedings do not include the submission of written briefs following the hearing.

g. The parties to the appeal may request that the presiding officer issue an oral decision on the merits of the case at the conclusion of the hearing. Both parties must agree to the request for an oral decision. If the presiding officer agrees with this request the decision will be rendered orally followed by a written confirmation of the presiding officer's determination.

h. The final decision in these proceedings must be mailed to the parties no later than 45 calendar days of the public agency's receipt of the request for the hearing, without exceptions or extensions.

i. Decisions on expedited due process hearings are final as described in rule 41.124(17A,256B).

j. Restrictions on communications by the administrative law judge and parties are in accordance with rule 41.121(17A,256B).

k. The record requirements of rule 41.122(17A,256B) apply to expedited hearings, with the exception of parents being given the right to open the hearing to the public if the hearing is conducted telephonically.

***41.73(5)** Referral to and action by law enforcement and judicial authorities.*

a. Nothing in these rules prohibits an agency from reporting a crime committed by an eligible individual to appropriate authorities or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by an eligible individual.

b. An agency reporting a crime committed by an eligible individual shall ensure that copies of the special education and disciplinary records of the eligible individual are transmitted for consideration by the appropriate authorities to whom it reports the crime.

c. An agency reporting a crime under this subrule may transmit copies of the eligible individual's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

281—41.74(34CFR300) ~~Nonpublic school placements.~~ *Eligible individuals in nonpublic schools.* To the extent consistent with the number and location of students enrolled in nonpublic schools, provision is made for the participation of nonpublic school students with disabilities in programs assisted by or carried out under 34 CFR Part 300, July 1, ~~1994~~ *1999*, by providing them with special education and related services.

41.74(1) ~~Placements by public agencies.~~ *Placed or referred by public agencies.*

a. Before a public agency places an eligible individual in, or refers an eligible individual to, a nonpublic school or

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facility, the agency shall initiate and conduct a meeting to develop an IEP for the individual in accordance with division VIII.

b. The agency shall ensure that a representative of the nonpublic school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the nonpublic school or facility, including individual or conference telephone calls.

c. After an eligible individual enters a nonpublic school or facility, any meetings to review and revise the individual's IEP may be initiated and conducted by the nonpublic school or facility at the discretion of the public agency.

d. If the nonpublic school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative are involved in any decision about the individual's IEP and agree to any proposed changes in the program before those changes are implemented.

e. Even if a nonpublic school or facility implements an individual's IEP, responsibility for compliance with these rules remains with the public agency and the state.

~~**41.74(2) Eligible individuals in nonpublic schools. If an eligible individual is enrolled in a nonpublic school and receives special education or related services from a public agency, the public agency shall:**~~

~~a. Initiate and conduct meetings to develop, review, and revise an IEP for the individual, in accordance with division VIII; and~~

~~b. Ensure that a representative of the nonpublic school attends each meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the nonpublic school, including individual or conference telephone calls.~~

41.74(3) *(2)* Placement of individuals by parents *if FAPE is at issue.*

a. If an eligible individual has FAPE available and the parents choose to place the individual in a nonpublic school or facility, the public agency is not required by 34 CFR Part 300, July 1, ~~1994~~ *1999*, to pay for the individual's education at the nonpublic school or facility. However, the public agency shall make services available to the individual as provided in rule 41.74(256B,34CFR300).

b. Disagreements between a parent and a public agency regarding the availability of a program appropriate for an eligible individual, and the question of financial responsibility, are subject to the due process procedures of division XI.

c. If the parents of an eligible individual, who previously received special education and related services under the authority of a public agency, enroll the child in a nonpublic preschool, elementary or secondary school without the consent of or referral by the public agency, a court or administrative law judge may require the agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and the nonpublic placement is appropriate. A parental placement may be found to be appropriate by an administrative law judge or a court even if it does not meet the state standards that apply to education provided by the department and LEAs.

d. The cost of reimbursement described in paragraph 41.74(3)"c" may be reduced or denied:

(1) If at the most recent IEP meeting that the parents attended prior to removal of the eligible individual from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a nonpublic school at public expense; or at least ten business days (including any holidays that occur on a business day) prior to the removal of the eligible individual from the public school, the parents did not give written notice to the public agency of the information described in this rule.

(2) If, prior to the parents' removal of the individual from the public school, the public agency informed the parents, through the notice requirements described in rule 41.104 (256B,34CFR300) of its intent to evaluate the individual (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the individual available for the evaluation, or upon a judicial finding of unreasonableness with respect to actions taken by the parents.

e. Notwithstanding the notice requirement in subparagraph "d"(1) of this subrule, the cost of reimbursement may not be reduced or denied for failure to provide the notice if:

(1) The parent is illiterate and cannot write in English;

(2) Compliance with subparagraph "d"(1) of this subrule would likely result in physical or serious emotional harm to the individual;

(3) The school prevented the parent from providing the notice; or

(4) The parents had not received notice of the notice requirement in subparagraph "d"(1) of this subrule.

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

41.75(1) Families. A description of how the families will be included in planning for transition *under 20 U.S.C. Chapter 33, Part B.*

41.75(2) AEA ~~role.~~ *personnel.* ~~A description of how~~ The AEA ~~will~~ *shall*:

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

b. Convene, with the approval of the family, a *planning* conference among the family, *the IFSP coordinator,* the LEA ~~or~~, AEA, *and other appropriate providers* at least 90 calendar days, *and at the discretion of the parties, up to 6 months,* 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 plan for transition.~~

(1) Discuss any Part B services the child may need.

(2) Establish a transition plan.

(3) Determine the need for a full and individual initial evaluation or reevaluation as described in division VII of these rules.

(4) Convene the IEP team.

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

***41.75(3)** LEA personnel. The LEA shall:*

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a. Participate in a planning conference among the family, IFSP coordinator, LEA, AEA, and other appropriate providers.

b. Discuss any Part B services the child may need.

c. Review the child's program options for the period from the eligible individual's third birthday through the remainder of the school year.

41.75(4) IEP team. The IEP team as described in 41.62(256B,34CFR300) shall:

a. Determine whether the individual is an eligible individual as described in rules 41.48(256B,34CFR300) and 41.77(256B,34CFR300).

b. Implement an IEP by the child's third birthday for individuals who are eligible or continue to be eligible for early childhood special education.

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~~ *accordance* with subrule 41.61(3) and that an evaluation of each eligible individual, based on procedures that meet the requirements of ~~subrule~~ *subrules* 41.48(3) *and 41.48(4),* is conducted every three years or more frequently if conditions warrant, ~~or~~ if an eligible individual's parent or teacher requests an evaluation, *or before determining that the individual is no longer eligible. A reevaluation of an eligible individual is not required before the termination of eligibility under these rules due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under these rules. The group described in subrule 41.48(4) may conduct its review without a meeting.* ~~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 impractical (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, the denial of EYSE would significantly jeopardize the benefits accrued to the individual through the educational program provided during the regular school year, and 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.~~

281—41.80(256B,34CFR300) Extended school year services. Each public agency shall ensure that extended school year services are made available as necessary to provide FAPE.

41.80(1) Definition. Extended school year services means special education and related services that are provided to an eligible individual beyond the normal school year of the public agency in accordance with the eligible individual's IEP at no cost to the parents of the eligible individual and that meet the standards of the department.

41.80(2) Basis for determining need. Extended school year services must be provided only if an eligible individual's IEP team determines, on an individual basis, in accordance with rules 41.60(256B,34CFR300) to 41.70(256B, 34CFR300) that the services are necessary for the provision of FAPE to the eligible individual. In implementing the requirements of this rule a public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount or duration of those services.

281—41.81 Reserved.

DIVISION IX
SERVICES

281—41.82(256B,34CFR300) General.

41.82(1) Individually designed. The special education and related services 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 and related services 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.

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41.82(3) Based on IEP ~~or IFSP~~. The special education and related services 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 services. Each LEA, in conjunction with the AEA, shall ensure that a continuum of 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 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. An agency may choose to use the program models and related requirements described in subrule 41.84(1) for delivering instructional services, or the development process described in subrule 41.84(2) for creating a delivery system of instructional services.

41.84(1) Program models. An agency may elect to use the following program models and delivery methods in providing instructional services to eligible individuals.

a. The following program models are for school-aged individuals.

(1) "Resource teaching program" is an educational program for individuals ~~who are enrolled in the general education curriculum for a majority of the school day but~~ who require specially designed instruction in specific skill areas on a part-time basis. Individuals enrolled in this type of program require specially designed instruction for a minimal average of 30 minutes per day. This program shall include provisions for ongoing consultation and demonstration with the general education teachers of the individuals served. This program may be operated on a multicategorical basis. The teacher of a resource teaching program shall serve in no more than two attendance centers. The maximum class size for this program is 18 students at both the elementary and secondary levels with the exception of programs for individuals with hearing impairment or visual impairment which shall be 15 students at both levels. (Reference Iowa Code section 256B.9(1)"b")

(2) "Special class with integration" is an educational program for individuals ~~who have similar educational needs and~~ who can benefit from participation in ~~the general education curriculum in~~ one or more academic offerings of the general education ~~curriculum~~ *program, and who require specially designed instruction for a significant portion of the school day.* The program shall include provisions for ongoing consultation and demonstration with the general education teachers. ~~This program may be operated on a multicategorical basis. For approval to be granted,~~ *To be operated on a multicategorical basis,* the following conditions shall be considered: support services provided to the program including appropriately authorized consultant services; the need for and availability of paraprofessionals to assist the teacher; the individuals served have comparable educational needs; *and* the chronological age range does not exceed four years~~; and the program curriculum consists of appropriate content for the disabilities served~~. The maximum class size for this program is 12 students at the elementary level and 15 students at the secondary level with the exception of programs for individuals with hearing impairment or visual impairment which shall be 10 students at both levels. (Reference Iowa Code section 256B.9(1)"b")

(3) "Self-contained special class with little integration" is an educational program for individuals ~~with similar educational needs~~ who require specially designed instruction for most of their educational program ~~but who can benefit from limited participation in the general education curriculum with nondisabled individuals~~. The maximum class size for this program is 8 students at the elementary level and 10 students at the secondary level. The maximum class size of this program at the secondary level may be 15 students if an AEA work experience coordinator coordinates and supervises on- and off-campus work experiences for those individuals requiring specially designed career exploration and vocational preparation. (Reference Iowa Code section 256B.9(1)"c")

(4) "Self-contained special class" is an educational program for individuals ~~with severe disabilities who have similar educational needs and~~ whose total instructional program must be specially designed and provided by a special education teacher. The students served by this program shall be provided opportunities to participate in activities with nondisabled individuals. The staff-to-student ratio for this program shall be one teacher and one ~~educational aide~~ *paraprofessional* for each five students. When students numbering six through nine are added, an additional ~~educational aide~~ *paraprofessional* must be employed. When the tenth student is added, another special education teacher must be employed. The chronological age range of students served in this program shall not exceed six years. (Reference Iowa Code section 256B.9(1)"d")

~~b. The following delivery models are for ECSE.~~

~~(1) Special education instructional services can be provided in a "community-based early childhood program" 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 or a fee-based early childhood community-based program. The agency responsible for providing special education may contract with a fee-based community program.~~

~~(2) "Colocation" refers to the provision of special education instructional services through an arrangement that combines the services of ECSE and publicly funded or fee-based 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.~~

~~(3) "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.~~

~~(4) "Early childhood special education center-based programs" are for children below the age of six. These programs are served by one ECSE teacher and one instructional assistant, and may be operated on a multicategorical basis. The programs serve up to eight children unless the program is for individuals with severe disabilities in which case the maximum class size is five children.~~

~~(5) "Home instruction" refers to the provision of special education instructional services in the home for children below the age of six.~~

~~(6) "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~~

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~~for preschool children without disabilities. Intervention specific to the IEP or IFSP goals must occur in both the special and general education environments.~~

b. Environments for delivery of ECSE instructional services include:

(1) "Early childhood settings" designed primarily for children without disabilities who are below the age of six may be used to provide special education instructional services. In such circumstances the early childhood settings may be publicly funded or fee-based community programs. The AEA or LEA responsible for providing special education may contract with a fee-based community program to provide special education instruction. Instructional services are provided and monitored on site by early childhood special education personnel.

(2) Special education instructional services may be provided through a combination of "part-time early childhood and part-time early childhood special education settings." These settings provide special education instruction in a general education environment designed primarily for children without disabilities who are below the age of six in addition to an ECSE classroom environment designed primarily for children with disabilities. The IEP shall be monitored in both settings by ECSE personnel.

(3) "Reverse integration settings" refer to the provision of special education instruction in an environment designed primarily for children with disabilities who are not age eligible for kindergarten. In such circumstances, at least 50 percent of the children enrolled in the ECSE setting do not have disabilities.

(4) "Early childhood special education settings" are designed primarily for children with disabilities who are below the age of six. These programs are served by one ECSE teacher and one paraprofessional, and may be operated on a multicategorical basis. These settings serve up to eight children unless the setting is designed for individuals with severe disabilities in which case the maximum class size is five children.

(5) "Home instruction" refers to the provision of special education instruction in the home for children aged three to six.

c. In applying the maximum class sizes specified in this subrule, the following conditions shall be considered:

(1) Maximum class size limits are predicated upon one teacher to the specified class size. When a teacher is employed less than full-time for a resource teaching program or ECSE ~~center-based program~~ *setting*, the maximum class size shall be proportionate to the full-time equivalency of the teacher employed.

(2) If, in unique circumstances, it is necessary to exceed the class size maximum for a special class with integration, the chronological age range shall not exceed six years or four years for a class operated on a multicategorical basis.

(3) When circumstances necessitate placing an eligible individual in a less restrictive program for receipt of the recommended program, that individual shall count as two individuals in computing the class size.

41.84(2) LEA-developed delivery system. An agency may elect to use the following development process for creating a system for delivering instructional services.

a. The delivery system shall meet the continuum of services requirements of rules 41.38(256B,34CFR300) and 41.83 (256B,34CFR300) and shall provide for the following:

(1) The provision of accommodations and modifications to the general education environment and program, including modification and adaptation of curriculum, instructional techniques and strategies, and instructional materials.

(2) The provision of specially designed instruction and related activities through cooperative efforts of special education teachers and general education teachers in the general education classroom.

(3) 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, including consultation with general education teachers.

(4) The provision of specially designed instruction to eligible individuals with similar special education instructional needs organized according to the type of curriculum and instruction to be provided, and the severity of the educational needs of the eligible individuals served.

b. The delivery system shall be described in writing and shall include the following components:

(1) A description of how services will be organized and how services will be provided to eligible individuals consistent with the requirements of divisions VI and IX of these rules, and the provisions described in paragraph 41.84(2)"a."

(2) A description of how the caseloads of special education teachers will be determined and regularly monitored to ensure that the IEPs of eligible individuals are able to be fully implemented.

(3) A description of the procedures a special education teacher can use to resolve concerns about caseload. The procedures shall specify timelines for the resolution of a concern and identify the person to whom a teacher reports a concern. The procedures shall also identify the person or persons who are responsible for reviewing a concern and rendering a decision, including the specification of any corrective actions.

(4) A description of the process used to develop the system, including the composition of the group responsible for its development.

(5) A description of the process that will be used to evaluate the effectiveness of the system.

c. The following procedures shall be followed by the agency:

(1) Before initiating the development of the delivery system, the LEA board shall approve such action and the LEA personnel and parents who will participate in the development of the alternative.

(2) The delivery system shall be developed by a group of individuals that includes parents of eligible individuals, special education and general education teachers, administrators, and at least one AEA representative. The AEA representative is selected by the director.

(3) The director shall verify that the delivery system is in compliance with these rules prior to LEA board adoption.

(4) Prior to presenting the delivery system to the LEA board for adoption, the group responsible for its development shall provide an opportunity for comment on the system by the general public. In presenting the delivery system to the LEA board for adoption, the group shall describe the comment received from the general public and how the comment was considered.

(5) The LEA board shall approve the system prior to implementation.

d. The procedure presented in subrule 41.132(9) shall be followed in applying the weighting plan for special education instructional funds described in Iowa Code section 256B.9 to any delivery system developed under these provisions.

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281—41.85 Reserved.

281—41.86(256B,34CFR300) Support services. Support services are the specially designed instruction and activities which augment, supplement or support the educational program of eligible individuals. These services *include special education consultant services, educational strategist services, audiology, occupational therapy, physical therapy, school psychology, school social work services, special education nursing services, speech-language services, and work experience services provided by the support personnel described in subrule 41.9(3). Support services* are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by another qualified agency.

~~41.86(1) Delivery methods. Delivery methods include 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) Services included. Support services include special education consultant services, educational strategist services, audiology, occupational therapy, physical therapy, school psychology, school social work services, special education nursing services, speech-language services, and work experience services provided by the support personnel described in subrule 41.9(3).~~

281—41.87 Reserved.

281—41.88(256B,34CFR300) Itinerant services. Special education may be provided to eligible individuals on an itinerant basis. These services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the *AEA* board, by the LEA or another qualified agency.

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 services in the home continues to be appropriate.~~

~~d~~ *c.* 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. Supplementary aids and services shall be provided in order for an eligible individual to be served in the general education classroom environment *or other education-related settings to enable the individual to be educated with nondisabled individuals to the maximum extent appropriate.* These may include intensive short-term specially designed instruction; educational interpreters; readers for individuals with visual impairments; special education assistants; special education assistants for individuals with physical disabilities for assistance in and about school, and for transportation; materials; and specialized or modified instructionally related equipment for use in the school.

281—41.91 Reserved.

281—41.92(256B,34CFR300) Assistive technology *services.* Agencies shall ensure that assistive technology devices or assistive technology services, or both, as defined in rule 41.5(256B,34CFR300) and described in ~~subrule 41.92(1)~~ *this rule*, are made available to an eligible individual if required as part of the 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, ~~retaining~~ *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 *(including individuals providing education or rehabilitation services)*, 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. ~~Related services mean such developmental, corrective and other services as are required to assist an individual with a disability to benefit from special education. Related services are not synonymous with support services as described in subrule 41.86(2).~~

~~41.94(1) Criteria. In order to establish the responsibility for agencies to provide a specific related service to an eligible individual, the following criteria shall be applied:~~

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~~a. The service can routinely be administered by school personnel.~~

~~b. 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.~~

~~c. The service has to be administered during the school day, as defined in 281—subrules 12.2(2) and 12.2(3), in order to reasonably expect the individual to be able to attend special education.~~

~~**41.94(2)** Services included. Related services include:~~

~~a. Recreation, which means assessment of leisure function, therapeutic recreation services, recreation programs in schools and community agencies, and leisure education.~~

~~b. Counseling services provided by qualified guidance counselors or other qualified personnel.~~

~~c. Rehabilitation counseling provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of an eligible individual. It also includes vocational rehabilitation services provided to eligible individuals by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.~~

~~d. Medical services for diagnostic or evaluation purposes means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education.~~

~~e. Parent counseling and training, which means assisting parents in understanding the special needs of their child and providing parents with information about child development.~~ *Related services means transportation and such developmental, corrective, and other supportive services as are required to assist an eligible individual to benefit from special education. The need for related services shall be individually determined and documented in each eligible individual's IEP. Payment for related services is an appropriate expenditure of special education funds for eligible individuals.*

~~**281—41.95** Reserved.~~

281—41.95(256B,34CFR300) Orientation and mobility services. *Orientation and mobility services are services provided to blind or visually impaired eligible individuals by qualified personnel to enable those individuals to attain systematic orientation to and safe movement within their environments in school, home, and community. The services include teaching the individuals as appropriate: spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street); to use the long cane, to supplement visual travel skills or as a tool for safely negotiating the environment for individuals with no available travel vision; to understand and use remaining vision and distance, low vision aids, and other concepts, techniques, and tools.*

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.

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's special health service. The rationale for the designation is documented. *If the designation decision of the team differs from the licensed health professional, team members may file a dissenting opinion.*

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

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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.

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. *The individual health plan shall designate the role of the school, parents and others in the provision, supply, storage and maintenance of necessary equipment.*

281—41.97 Reserved.

281—41.98(256B,34CFR300) Transportation. Transportation of eligible individuals, *a related service,* 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. *Transportation includes travel to and from school and between schools; travel in and around school buildings; and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.*

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 special 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 by the LEA according to the directions provided with the Annual Transportation Report and adjusted to reflect the proportion that 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—*41.100* and 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 rule 41.64(256B,34CFR300).~~ ***Parent opportunity to examine records and participate in meetings.***

41.102(1) General. In accordance with the provisions of rule 41.31(256B,34CFR99,300), the parents of an eligible individual must be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the eligible individual and the provision of FAPE to the eligible individual; and participate in meetings in respect to identification, evaluation, and educational placement of the eligible individual and the provision of FAPE to the eligible individual.

41.102(2) Parent participation in meetings. Each agency shall provide notice consistent with rule 41.104(256B, 34CFR300) to ensure that parents of eligible individuals have the opportunity to participate in meetings. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the eligible individual's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

41.102(3) Parent involvement in placement decisions. Each public agency shall ensure that the parents of each eligible individual are members of any group that makes decisions on the educational placement of the eligible individual. In implementing the requirements the public agency shall use procedures consistent with subrule 41.64(1). If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of the eligible individual, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a group without the involvement of the parents, if the public agency is unable to obtain the parents' participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of subrule 41.64(2). The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of the eligible individual, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

281—41.103(256B,34CFR300) Consent.

41.103(1) "Consent" means that:

a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

b. The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom; and

c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. *If the parent revokes consent, that revocation is not retroactive, i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked.*

41.103(2) Parental *consent. Informed parental* consent must be obtained before the agency conducts ~~a full and individual~~ *an initial* evaluation *or reevaluation* and before the initial provision of special education and related services *to an eligible individual.* ~~Consent is voluntary and may be revoked up until the time the initial proposed action takes place. If a dispute arises after the individual is placed, the parent may request a hearing to review the placement decision. Any changes in a child's special education program after the initial placement are not subject to the parental consent requirements prior to a preplacement evaluation but are subject to the prior notice requirements as described in division X, rule 41.104(256B,34CFR300) and the IEP requirements of division VIII.~~ *Parental consent is not required before reviewing existing data as part of an evaluation or re-*

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evaluation or administering a test or other evaluation that is administered to all individuals unless, before administration of that test or evaluation, consent is required of parents of all individuals.

41.103(3) Refusal. If the parents of an eligible individual refuse consent for initial evaluation or reevaluation, the agency may continue to pursue those evaluations by using a preappeal conference as described in rule 41.106(256B, 34CFR300), or a mediation or impartial due process hearing as described in division XI.

41.103(4) Failure to respond to request for reevaluation. Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the eligible individual's parent has failed to respond. To meet the reasonable measures requirement, the public agency must use procedures consistent with those in subrule 41.64(2).

281—41.104(256B,34CFR300) ~~Written notice.~~ *Prior notice by the public agency and content of notice.* Written notice must be given to the parents of an *eligible* individual a reasonable time before the *public* 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. The notice is intended to inform parents of an agency's final decision regarding a proposed or refused action. 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 *a preappeal conference or* an impartial due process hearing. *If the notice described in this rule relates to an action proposed by the public agency that also requires parental consent under rule 41.103(256B,34CFR300), the agency may give notice at the same time it requests parental consent.*

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

a. A description of the action proposed or refused by the agency~~,~~.

b. ~~an~~ *An* explanation of why the agency proposes or refuses to take the action~~, and~~.

c. ~~a~~ *A* description of any options the agency considered and the reasons why those options were rejected.

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

~~c~~ *e.* 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 parent 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.~~

~~(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 parent.~~

~~(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.~~

f. A statement that the parents of an eligible individual have protection under the procedural safeguards of these rules and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.

g. Sources for parents to contact to obtain assistance in understanding the provisions of these rules.

41.104(2) Notice requirements. The notice *under subrule 41.104(1)* 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) Procedural safeguards notice. The procedural safeguards notice must include a full explanation of all the procedural safeguards and state complaint procedures relating to:

a. Independent educational evaluation.

b. Prior written notice.

c. Parental consent.

d. Access to educational records.

e. Opportunity to initiate due process hearings.

f. The individual's placement during pendency of due process proceedings.

g. Procedures for eligible individuals who are subject to placement in an interim alternative educational setting.

h. Requirements for unilateral placement by parents of eligible individuals in private schools at public expense.

i. Mediation.

j. Due process hearings, including requirements for disclosure of evaluation results and recommendations.

k. Civil actions.

l. Attorneys' fees.

m. The state complaint procedures, including a description on how to file a complaint and the timelines under those procedures.

~~41.104(3)~~ *41.104(4)* 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 *a preappeal conference or* an impartial due process hearing if they disagree. If the written notice requirements are fulfilled at the IEP meeting, the ten-*calendar*-day waiting period should be documented on the IEP by the starting date of the new IEP exceeding the meeting date by ten *calendar* days. If the parent chooses to waive the ten *calendar* days, the starting date of implementation of the new IEP would be immediate with documentation and rationale for the waiver clearly stated.

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281—41.105(256B,34CFR300) Complaints to the department. An individual or organization may file a signed written complaint that includes a statement that an agency has violated these rules, which include 41.84(2)"b"(3), and the facts on which the statement is based. *The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.* 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. Within 60 calendar days of the receipt of such complaint, the department may carry out an independent on-site investigation, if the department determines that such an investigation is necessary. The individual or organization filing the complaint 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 individual or organization filing the complaint 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 individual or organization filing the complaint 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) Special education preappeal conference.

41.106(1) Procedures. The parent, the LEA or the AEA may request a special education preappeal conference on any decision relating to the identification, evaluation, educational placement, or the provision of ~~a free appropriate education~~ *FAPE*. Participation is voluntary.

a. A request for a special education preappeal conference shall be made in the form of a letter which identifies the student, LEA and AEA, sets forth the facts, the issues of concern, or the reasons for the conference. The letter shall be mailed to the department.

b. Within five ~~working~~ *business* days of receipt of the request for the conference, the department shall contact all pertinent parties to determine whether participation is desired. A checklist shall be sent by the department to the LEA or AEA to receive information about the student.

c. A preappeal conference will be scheduled and held at a time and place reasonably convenient to all parties involved. Written notice will be sent to all parties by the department.

d. The LEA or the AEA shall submit the special education preappeal checklist to the department (with a copy to the parent) within ten ~~working~~ *business* days after receiving the request.

e. The student's complete school record shall be made available for review by the parent prior to the conference, if requested in writing at least ten calendar days before the preappeal.

f. The individual's complete school record shall be available to the participants at the preappeal conference.

g. The preappeal conference ~~will include at least two representatives of the department and will~~ *shall* be chaired ~~by the department or~~ by a mediator provided by the department.

h. If an agreement is reached, a written summary of the preappeal agreement ~~will~~ *shall* be prepared by the ~~department, or the~~ assigned mediator, and disseminated to all parties involved within ten ~~working~~ *business* days following the conference.

i. If agreement is not reached at the special education preappeal conference, all parties ~~will~~ *shall* be notified of the procedures to be followed in filing a formal special education appeal as described in division XI.

41.106(2) Assurances. The special education preappeal process shall in no way deny or delay a party's right to a full due process hearing if the party wishes to utilize the formal process. In addition, special education preappeal conference proceedings and offers of agreement during the conference shall not be entered as arguments or evidence in a hearing. However, the parties may stipulate to agreements reached in the special education preappeal conference.

41.106(3) Placement during proceedings. Unless the parties agree otherwise, the student involved in the preappeal must remain in the student's present educational placement during the pendency of the proceedings.

41.106(4) ~~Dismissal. A request for dismissal may be made to the department at any time by the party initiating the preappeal.~~ *Withdrawals or automatic closures. The initiating party may request a withdrawal of the preappeal prior to the conference. Automatic closure of the department file will occur if any of the following circumstances apply:*

a. One of the parties refuses to participate in the voluntary process.

b. The preappeal conference is held but parties are not able to reach an agreement. There will be a ten-calendar-day waiting period after the preappeal to continue the placement as described in subrule 41.106(3) in the event a party wishes to pursue a hearing.

c. The preappeal conference is held and parties are able to reach an agreement and the agreement does not specify a withdrawal date. If a withdrawal date is part of the agreement, an agency withdrawal will occur on the designated date.

281—41.107(256B,34CFR300) Right to a due process 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~~ *relating to* 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—41.108(34CFR300) Attorney fees. ~~Each public agency shall inform parents that in~~ *In* any action or proceeding involving procedural safeguards, courts may award parents reasonable attorney fees under 20 U.S.C. ~~1415(e)(4)~~ *1415(i)(3)* as part of the costs to the parent or guardian of a child or youth with a disability who is a prevailing party. *Attorney fees may not be awarded relating to any meeting of the IEP team unless such meeting is convened as a result of an administrative proceeding or judicial action.*

281—41.109(256B,34CFR300) Independent educational evaluation.

41.109(1) Definitions. As used in this rule:

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

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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.

41.109(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.

a. If a parent requests an independent educational evaluation at public expense, the agency must, without unnecessary delay, either initiate a hearing under division XI to show that its evaluation is appropriate, or ensure an independent educational evaluation is provided at public expense unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria. ~~*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.

b. If a parent requests an independent educational evaluation, the public agency may ask why the parent objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

41.109(3) Locations *and criteria* of independent educational evaluations. Each agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained, *and the applicable agency criteria for independent educational evaluations as described in subrule 41.109(6).*

41.109(4) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation, *if it meets agency criteria,* 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.

41.109(5) Administrative law judge. 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.

41.109(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, *to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for these criteria, an agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.* These criteria shall be set forth in AEA board policy.

281—41.110(256B,34CFR300) Surrogate parent procedures.

41.110(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~~ *is not* 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. *An agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides noneducational care for the individual and who meets the standards in subrule 41.110(2)"b."* Foster parent is deemed a person acting as the parent of an individual and in such situations surrogate parent appointment is not necessary, unless circumstances indicate otherwise. *A foster parent qualifies as a parent under these rules if the natural parents' authority to make educational decisions on the eligible individual's behalf has been extinguished under state law; the foster parent has an ongoing, long-term parental relationship with the eligible individual; the foster parent is willing to participate in making educational decisions in the eligible individual's behalf; and the foster parent has no interest that would conflict with the interests of the eligible individual.* 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.~~

41.110(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 regional 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.

41.110(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.

41.110(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 *a* surrogate parent, sample forms used by LEAs and AEAs, specific needs

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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.

41.110(5) Monitoring. The department shall provide assistance to, and shall monitor, surrogate parent programs.

~~281—41.111 Reserved.~~

281—41.111(34CFR300) Transfer of parental rights at age of majority.

41.111(1) Basic requirements. When an eligible individual reaches the age of majority as defined by Iowa Code section 599.1, the agency shall provide any notice required by these rules to both the eligible individual and the parents. All other rights accorded to parents under these rules transfer to the eligible individual. Whenever rights are transferred, the agency shall notify the eligible individual and the parents of the transfer of rights as described in subrule 41.67(3). All rights accorded to parents under these rules transfer to eligible individuals who are incarcerated in an adult or juvenile, state, or local correctional institution.

41.111(2) Appointment of guardian. Transfer of rights to the eligible individual will occur as defined in subrule 41.111(1) unless a guardian is appointed through the provisions of Iowa Code chapter 633, division 13, part 1.

DIVISION XI

SPECIAL EDUCATION APPEALS

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, *if appropriate,* 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 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 *preappeal conference or* hearing when an educational public 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. *If a hearing is initiated, the department shall inform the parents of the availability of the mediation conference as described in subrule 41.113(10).*

b. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the eligible individual, and the question of financial responsibility, are subject to the due process procedures of 34 CFR §§300.500-300.515.

c. A public agency may use the *preappeal or* hearing procedures to determine if the individual may be evaluated or initially provided special education and related services without parental consent. If a public agency ~~does so~~ *requests a hearing* 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.

d. 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.

e. Under certain circumstances, an expedited hearing is provided under subrule 41.73(4).

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

~~41.113(3) Appeal. An appeal shall be made in writing 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.~~

41.113(3) Parent notice to the department. The parent of an individual with a disability or the attorney representing the individual shall provide notice (which shall remain confidential) to the department in a request for a hearing.

41.113(4) Content of parent notice. The notice required in subrule 41.113(3) must include the name of the individual; the address of the residence of the individual; the name of the school the individual is attending; a description of the nature of the problem of the individual relating to the proposed or refused initiation or change, including facts relating to the problem and a proposed resolution of the problem to the extent known and available to the parents at the time.

41.113(5) Model form to assist parents. The department's model form shall be made available to assist parents in filing a request for due process that includes the information required in subrules 41.113(3) and 41.113(4).

41.113(6) Right to due process hearing. A public agency may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in subrules 41.113(3) and 41.113(4).

41.113~~(4)~~ *(7)* Notice. The director of education or designee shall, within five ~~working~~ *business* days after the receipt of the appeal, notify the proper school officials in writing of the appeal and the officials shall, within ten ~~working~~ *business* days *after receipt of the notice,* file with the department ~~complete~~ *all* ~~educational~~ records ~~and proceedings related~~ *relevant* to the decision appealed.

41.113~~(5)~~ *(8)* 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)~~ *(9)* 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 calendar 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)~~ *(10)* Mediation conference. Parties shall be contacted by department personnel to ascertain whether they wish to participate in a mediation conference. *Mediation is a voluntary process in which an impartial third party, a mediator, facilitates the resolution of disagreements by promoting*

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dialogue among the parties to clarify the issues and assist them in making their own mutually acceptable decisions and agreements. The involved parties shall be notified that ~~participation in this conference~~ *mediation* is voluntary and that ~~such a conference~~ *participation in mediation* in no way shall deny or delay a party's right to a ~~full~~ due process hearing *or to any other rights afforded under these rules.* ~~Such a conference, if held, shall be scheduled at a time and place that is convenient to all involved persons.~~ *Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.* ~~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 at the mediation conference shall not be entered as arguments or evidence in a hearing. However,~~ *Discussions that occur during the mediation process must be confidential, except as may be provided in Iowa Code chapter 679C, and may not be used as evidence in any subsequent due process hearings or civil proceedings; however,* the parties may stipulate to agreements reached in mediation. *Prior to the start of the mediation, the parties to the mediation conference and the mediator will be required to sign an Agreement to Mediate form which contains this confidentiality provision. Agreements reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.*

a. The mediation process is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

b. The mediator shall not be an employee of an LEA, AEA or state agency, or another state education agency that is providing direct services to an individual who is the subject of the mediation process and must not have a personal or professional conflict of interest.

c. The state shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

d. An AEA may establish procedures to assist parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party, who is under contract with a parent training and information center or community parent resource center, or an appropriate alternative dispute resolution entity and who would explain the benefits of the mediation process, and encourage the parents to use the process.

41.113~~(8)~~ *(11)* 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 calendar days after the receipt of a request for a hearing. *If a continuance is requested it shall be heard and determined according to the provisions of this subrule.*

41.113~~(9)~~ *(12)* 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 shall be granted upon a determination by the administrative law judge that any of the following circumstances apply:

a. The 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)~~ *(13)* 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.

a. Any person serving or designated to serve as an administrative law judge is subject to disqualification for bias, prejudice, interest, or any other cause for which a judge is or may be disqualified.

b. Any party may timely request the disqualification of an administrative law judge after receipt of notice indicating that the person will preside or upon discovering facts establishing grounds for disqualification whichever is later.

c. A person whose disqualification is requested shall determine whether to grant the request, stating facts and reasons for the determination.

d. If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute must be appointed by the director of education from the list of other qualified administrative law judges.

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.~~

41.114~~(8)~~ *(7)* 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 hear-

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ing 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 calendar days after the receipt of the request for the hearing unless the administrative law judge granted an extension of time beyond the 45 calendar 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: "I do solemnly swear or affirm that the testimony or evidence which I am 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 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

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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 calendar days after the receipt of the request for the hearing unless the administrative law judge granted an extension of time beyond the 45 calendar 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 for subpoenas may be denied or delayed if not submitted to the department at least five ~~calendar~~ *business* 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 calendar days before the hearing shall be prohibited.~~ *Any party has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.*

41.120(4) Additional disclosure of information requirement. At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. An administrative law judge may bar any party that fails to comply with these requirements from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

41.120~~(4)~~ *(5)* 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)~~ *(6)* 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)~~ *(7)* 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)~~ *(8)* 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.

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,

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or the rendering of a decision against a party who violates the rules.

281—41.122(17A,256B) Record.

41.122(1) Open hearing. Parents involved in hearings shall be given the right to open the hearing to the public. The hearing shall be recorded by mechanized means or by certified court 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 or an appeal has the right to obtain a written or, at the option of the parents, electronic, verbatim record of the hearing and obtain written or, at the option of the parents, electronic findings of fact and decisions.* ~~Any party to a hearing has the right to obtain, upon request, an electronic verbatim record of the hearing.~~ *The record of the hearing and the findings of fact and decisions described in this rule must be provided at no cost to parents.*

41.122(2) Transcripts. All recording or notes by certified court reporters 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 calendar 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. A party initiating civil action in federal court shall provide an informational copy of the petition or complaint to the department within 14 days of filing the action. *The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.*

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~~ *Except as provided in subrule 41.73(2), during* the pendency of any administrative or judicial proceeding regarding a ~~complaint~~ *hearing*, unless the agency and the parents of the individual agree otherwise, the individual involved in the ~~complaint~~ *hearing* must remain in the ~~present~~ *current* educational placement. *If the hearing involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings. If the decision of an administrative law judge in a due process hearing agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state or local agency and the parents.* 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~~ *school year services.* Approved extended *school* 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 *school* year instructional pro-

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grams shall be funded through procedures as provided for special education instructional programs.

281—41.132(256B,282,34CFR300,*303*) 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, ~~1994~~ *1999*.

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 237.1 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. Special education instructional funds generated through the weighting plan can be used to pay tuition, transportation, and other necessary special education costs, but shall not be used to provide child care.

a. Full-time ECSE instructional ~~programming~~ *services* 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.

b. Part-time ECSE instructional ~~programming~~ *services* shall include up 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.

c. Funds under 20 U.S.C. Chapter 33, Part C, may be used to provide FAPE, in accordance with these rules, to eligible individuals from their third birthday to the beginning of the following school year.

41.132(9) Funding for instructional services. When an LEA board approves a delivery system for instructional services as described in subrule 41.84(2), the director, in accord with Iowa Code sections 256B.9 and 273.5, will assign the appropriate special education weighting to each eligible individual by designating a level of service. The level of 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. One of three levels of service shall be assigned by the director:

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. (Reference Iowa Code section 256B.9(1)"b")

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. (Reference Iowa Code section 256B.9(1)"c")

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. (Reference Iowa Code section 256B.9(1)"d")

***41.132(10)** Children with disabilities who are covered by public insurance.*

a. A public agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under these rules, as permitted under the public insurance program, except as provided in paragraph "b" of this subrule.

b. With regard to services required to provide FAPE to an eligible individual under these rules, the public agency:

(1) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE;

(2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided under these rules; but may pay the cost that the parent otherwise would be required to pay; and

(3) May not use a child's benefits under a public insurance program if that use would:

1. Decrease available lifetime coverage or any other insured benefit;

EDUCATION DEPARTMENT[281](cont'd)

2. Result in the family's paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;

3. Increase premiums or lead to the discontinuation of insurance; or

4. Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

41.132(11) Children with disabilities who are covered by private insurance.

a. With regard to services required to provide FAPE to an eligible child under these rules, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent as defined in subrule 41.103(1);

b. Each time the public agency proposes to access the parent's private insurance proceeds it must:

(1) Obtain parent consent in accordance with paragraph "a" of this subrule; and

(2) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

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 an administrative law judge *to assist in making a decision about FAPE*, 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 41.109(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~~ *§300.502*, July 1, ~~1994~~ *1999*.

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. *In turn, in accordance with 34 CFR §300.197, any public agency in receipt of a notice from the department that the agency has failed to comply with such corrective action shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this rule to the attention of the public within the jurisdiction of the agency.*

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 20 U.S.C. §1413 and 34 CFR §300.110, July 1, ~~1994~~ *1999*, the state must submit a state plan to the Secretary of Education.

41.138(1) Plan contents and process. The state plan shall meet the requirements of 34 CFR §§300.121 through ~~300.154~~ *300.156* and §§300.280 through 300.284, July 1, ~~1994~~ *1999*.

41.138(2) 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 the department, LEAs, AEAs, and other state-operated special education programs as detailed in rule 41.1(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.

41.143(1) 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. The department shall conduct monitoring activities based on predetermined and disseminated standards and procedures. Each agency shall provide the department with reports, records and access to programs and personnel needed to conduct monitoring activities.

41.143(2) Copies of applicable standards shall be disseminated to each private school and facility to which a public agency has referred or placed a child with a disability.

41.143(3) An opportunity shall be provided for those private schools and facilities to participate in the development and revision of standards that apply to them.

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 oc-

EDUCATION DEPARTMENT[281](cont'd)

cur, the department shall implement sanctions as described in 41.135(256B,273,282).

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HISTORICAL DIVISION[223]

Notice of Intended Action

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

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

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

The proposed amendments to the historic preservation, museum, and documentary collection grant programs remove the general requirement that, for 60 months after the final disbursement, request recipients must make the resources which benefit from the grant accessible to the public for 96 hours per year or provide a statement in the next 36 months to provide minimal access to the resource; add a new subrule stating that applicants funded in two consecutive fiscal years are not eligible to receive funding for the following two consecutive fiscal years; change the number of copies of the application to be submitted from six to ten; allow a designee of the grant administrator to approve a grant contract; add language that requires completion of contract within 30 months of date of grant administrator's signature as well as administrator's signature; and clarify that grant acknowledgment signs must be displayed for at least 36 months from the contract end date. A proposed new rule adds the one-room schoolhouse grant program to implement 1999 Iowa Acts, Senate File 464, section 44.

Any interested person may make written suggestions or comments on the proposed amendments prior to 4:30 p.m. on October 26, 1999. Such written material should be addressed to Patricia Ohlerking, State Historical Society of Iowa, 600 E. Locust Street, Des Moines, Iowa 50319-0290.

These amendments are intended to implement Iowa Code section 303.16 as amended by 1999 Iowa Acts, Senate File 464, section 44.

The following amendments are proposed.

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

49.4(5) All private corporations, businesses, and individual applicants shall demonstrate that the historical resources which benefit from being acquired, developed or preserved, or the portions of the historical resource so benefited, shall be accessible to the public no less than an average of 96 hours per year or provide a statement concerning actions to be taken in the forthcoming 36 months to provide this minimal accessibility of the funded project to the public, unless access is restricted by specific federal or state Code. ~~This shall be in effect for 60 months after approval of the final disbursement request.~~ Archaeological sites that are part of funded projects are not required by this program to be accessible to the public.

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

49.4(10) Applicants funded in two consecutive fiscal years are not eligible to receive funding for the following two consecutive fiscal years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Planned educational activities within a country school.

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

HISTORICAL DIVISION[223](cont'd)

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

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

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

49.9(6) Financial management.

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

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

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

ARC 9381A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

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

This amendment implements a new Medicaid coverage group for working individuals with disabilities as mandated by the General Assembly in 1999 Iowa Acts, Senate File 211.

This coverage group will provide access to Medicaid for persons with a disability who work and have a net family income that is less than 250 percent of poverty. If the individual is under 18 and unmarried, "family" will include parents living with the individual, siblings under 18 and unmarried living with the individual, and children of the individual who live with the individual. If the individual is 18 years of age or older, or married, "family" will include the individual's spouse living with the individual and any children living with the individual who are under 18 and unmarried. Net family income is gross income less Supplemental Security Income disregards, exemptions, and exclusions, including the earned income disregard of $65 plus one-half of additional earned income and the unearned income disregard of $20.

Disability will be determined as under the Supplemental Security Income program, except that being engaged in "substantial gainful activity" (generally, earning more than $700 per month) will not automatically mean that an individual is not disabled under this coverage group.

It is believed this coverage group will provide incentive to persons with a disability to return to the workforce, even though they continue to have a disabling condition, as they will still be able to access medical coverage even if they lose disability payments due to their earnings.

For the purposes of this program, $10,000 in resources and any additional resources held by the disabled individual in a medical savings account, retirement account, or funds in an assistive technology account will be disregarded in determining eligibility.

A premium will be assessed based on a sliding fee scale when the gross income of the eligible individual is above 150 percent of poverty as set forth below.

INCOME OF THE ELIGIBLE INDIVIDUAL ABOVE:	MONTHLY PREMIUM
150% of Federal Poverty Level	$20
174% of Federal Poverty Level	$38
198% of Federal Poverty Level	$56
222% of Federal Poverty Level	$74
246% of Federal Poverty Level	$92
270% of Federal Poverty Level	$110
294% of Federal Poverty Level	$128
318% of Federal Poverty Level	$146
342% of Federal Poverty Level	$164
366% of Federal Poverty Level	$182
390% of Federal Poverty Level	$201

There are two reasons why this premium scale goes above 250 percent of poverty. First, eligibility is determined based on family and not individual income. An individual who is the only wage earner in a large family can have income substantially above 250 percent of the poverty level for an individual, while the family is still below 250 percent of the higher family level for the family.

Secondly, eligibility is calculated using disregards and the premium amount is not.

For example, given a family size of one: The individual has $700 unearned income and $2,000 earned income. Eligibility would be calculated as follows:

$	700	Unearned income
-	20	$20 unearned income disregard
$	680	Countable unearned income
$	2,000	Earned income
-	65	$65 earned income disregard
$	1,935	
-	967.50	½ earned income disregard
	967.50	Countable earned income
$	680.00	Countable unearned income
+	967.50	Countable earned income

$ 1,647.50 Total countable income to compare to 250% of poverty ($1,717)

$1647.50 is less than $1,717 (250% of poverty) so the individual is eligible.

The premium is calculated by totaling gross income as follows:

$	700	Unearned income
+	2,000	Earned income
$	2,700	Total gross income

$2,700 equals 393 percent of poverty. The premium would be $201.

There are no provisions for waiver of specific situations as eligibility requirements for this coverage group are set by federal and state statute. The Department believes that all el-

HUMAN SERVICES DEPARTMENT[441](cont'd)

igible persons should be subject to the same rules regarding family composition and premiums. Persons may request an exception to policy on an individual basis under provisions at rule 441—1.8(217).

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before October 27, 1999.

Oral presentations may be made by persons appearing at the following meetings. Written comments will also be accepted at these times.

Cedar Rapids - October 29, 1999 10 a.m.
Cedar Rapids Regional Office
Iowa Building - Suite 600
Sixth Floor Conference Room
411 Third St. S.E.
Cedar Rapids, Iowa 52401

Council Bluffs - October 27, 1999 9 a.m.
Administrative Conference Room
Council Bluffs Regional Office
417 E. Kanesville Boulevard
Council Bluffs, Iowa 51501

Davenport - October 28, 1999 10 a.m.
Davenport Area Office
Bicentennial Building - Fifth Floor
Large Conference Room
428 Western
Davenport, Iowa 52801

Des Moines - October 27, 1999 1 p.m.
Des Moines Regional Office
City View Plaza
Conference Room 102
1200 University
Des Moines, Iowa 50314

Mason City - October 29, 1999 11 a.m.
Mason City Area Office
Mohawk Square, Liberty Room
22 North Georgia Avenue
Mason City, Iowa 50401

Ottumwa - October 27, 1999 10 a.m.
Ottumwa Area Office
Conference Room 3
120 East Main
Ottumwa, Iowa 52501

Sioux City - October 27, 1999 1:30 p.m.
Sioux City Regional Office
Fifth Floor
520 Nebraska St.
Sioux City, Iowa 51101

Waterloo - October 27, 1999 10 a.m.
Waterloo Regional Office
Pinecrest Office Building
Conference Room 220
1407 Independence Avenue
Waterloo, Iowa 50703

Any persons who intend to attend a public hearing and have special requirements such as hearing or vision impairments should contact the Office of Policy Analysis at (515)281-8440 and advise of special needs.

This amendment is intended to implement Iowa Code section 249A.3 as amended by 1999 Iowa Acts, Senate File 211.

The following amendment is proposed.

Amend 441—Chapter 75 by adopting the following **new** subrule:

75.1(39) Working persons with disabilities.

a. Medical assistance shall be available to all persons who meet all of the following conditions:

(1) They are disabled as determined pursuant to rule 441—75.20(249A), except that being engaged in substantial gainful activity will not preclude a determination of disability.

(2) They are less than 65 years of age.

(3) They are members of families (including families of one) whose income is less than 250 percent of the most recently revised official federal poverty level for the family. Family income shall include gross income of all family members, less supplemental security income program disregards, exemptions, and exclusions, including the earned income disregards.

(4) They receive earned income from employment or self-employment.

(5) They would be eligible for medical assistance under another coverage group set out in this rule (other than the medically needy coverage groups at subrule 75.1(35)), disregarding all income, up to $10,000 of available resources, and any additional resources held by the disabled individual in a retirement account, a medical savings account, or an assistive technology account. For this purpose, disability shall be determined as under subparagraph (1) above.

(6) They have paid any premium assessed under paragraph "b" below.

b. A premium shall be assessed when gross income of the eligible individual is greater than 150 percent of the federal poverty level for an individual. Gross income includes all earned and unearned income of the eligible individual.

(1) Premiums shall be assessed as follows:

INCOME OF THE ELIGIBLE INDIVIDUAL ABOVE:	MONTHLY PREMIUM
150% of Federal Poverty Level	$20
174% of Federal Poverty Level	$38
198% of Federal Poverty Level	$56
222% of Federal Poverty Level	$74
246% of Federal Poverty Level	$92
270% of Federal Poverty Level	$110
294% of Federal Poverty Level	$128
318% of Federal Poverty Level	$146
342% of Federal Poverty Level	$164
366% of Federal Poverty Level	$182
390% of Federal Poverty Level	$201

(2) An individual's continued eligibility is contingent upon the payment of the assessed monthly premiums.

(3) When the department's fiscal agent notifies the applicant of the amount of the premiums, the applicant shall pay any premiums due as follows:

1. Payment of the premium for the month of approval must be received within ten days of notice by the fiscal agent of the amount of the premium.

2. When an application is approved before the fifteenth of the month, payment for the following month must be received by the last day of the approval month to remain eligible for the following month.

HUMAN SERVICES DEPARTMENT[441](cont'd)

3. When an application is approved as of the fifteenth of the month through the last day of the month, payment for the month following the month of approval must be received by the fourteenth of the following month to remain eligible.

4. Payments for retroactive months and months prior to the month of approval must be paid within 45 days of notice by the fiscal agent to receive coverage for those months of eligibility.

5. After the month following the month of approval, premiums must be received no later than the fourteenth day of the month prior to the month of coverage.

When the premium is not received by the due date, Medicaid eligibility shall be canceled.

At the request of the family, premiums may be paid in advance (e.g., on a quarterly or semiannual basis) rather than a monthly basis.

(4) An individual's case may be reopened no more than once every six months when a premium due is not received as described within this subparagraph. However, the premium must be paid in full within the calendar month following the month of nonpayment for reopening.

(5) Premiums may be submitted in the form of cash or personal checks to the department's fiscal agent at the following address: Consultec INC, 7755 Office Plaza Drive, West Des Moines, Iowa 50266. Payment may also be made by automatic bank account withdrawals, payroll deductions, or other methods established by the fiscal agent.

(6) Failure to pay the premium in accordance with policy established under this paragraph shall result in cancellation of Medicaid. Once an individual is canceled from Medicaid due to nonpayment of premiums, the individual must reapply to establish Medicaid eligibility unless the reopening provisions of this section apply.

(7) A medical card shall not be issued for a month until any premium due has been received. When a premium is not received by the due date, a notice of decision will be issued to cancel Medicaid. The notice will include appeal rights and reopening provisions that apply if payment is received.

c. For purposes of this rule, the following definitions apply:

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of an individual with a disability.

"Assistive technology savings account" means an account with a financial institution, separate from other funds, set up to save for either an assistive technology device or an assistive technology service when a physician has established the medical necessity of the device or service.

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

"Family," if the individual is under 18 and unmarried, includes parents living with the individual, siblings under 18 and unmarried living with the individual, and children of the individual who live with the individual. If the individual is 18 years of age or older, or married, "family" includes the individual's spouse living with the individual and any children living with the individual who are under 18 and unmarried. No other persons shall be considered members of an individual's family. An individual living alone or with others not listed above shall be considered to be a family of one.

"Medical savings account" means an account exempt from federal income taxation pursuant to Section 220 of the United States Internal Revenue Code (26 U.S.C. § 220).

"Retirement account" means any asset exempt from execution under Iowa Code section 627.6(8)"f."

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HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

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

This amendment revises the statewide average charges for nursing facility care and psychiatric medical institution for children (PMIC) care. The statewide average charge is used to determine whether a person who has established a medical assistance income trust qualifies for Medicaid.

Any person is allowed to establish a medical assistance income trust under Iowa Code section 633.709. For a person whose income exceeds the Medicaid eligibility limit of 300 percent of the Supplemental Security Income (SSI) benefit for one person (currently $1,500) but whose income is below the statewide average charge for the type of medical facility care the person needs, a medical assistance income trust may be used to establish Medicaid eligibility.

The Department is required to update these average statewide charges annually. The Department did update these charges effective July 1, 1999, at which time the average charge to a private pay resident of nursing facility care increased from $2,397 to $2,536. The average charge of a PMIC increased from $4,135 to $4,218.

The Department alternates updating the charges by conducting an actual survey one year and applying actual and projected increases the next year. Increases were projected for the 1999 fiscal year. However, the actual cost reports from facilities received in June showed an increase in costs for nursing facilities and PMICs that was significantly more than the projected rate increases.

In light of this unanticipated increase in costs, a new survey of private charges was completed. This new survey showed that the statewide average charge for nursing facilities was $2,723, and the statewide average charge for PMICs was $4,359. This amendment increases the statewide average charges for nursing facilities and PMICs to these amounts. This will allow individuals who have income below these amounts to qualify for Medicaid using medical assistance income trusts.

This amendment does not include a provision for waivers in specified situations because it confers a benefit and because everyone should be subject to the same amounts. Individuals may request a waiver of the statewide average charge rule under the Department's general rule on exceptions at rule 441—1.8(217).

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office

HUMAN SERVICES DEPARTMENT[441](cont'd)

Building, Des Moines, Iowa 50319-0114, on or before October 27, 1999.

This amendment is intended to implement Iowa Code section 249A.4.

The following amendment is proposed.

Amend subrule **75.24(3)**, paragraph **"b,"** introductory paragraphs and subparagraphs **(1)** and **(6)**, as follows:

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.

For disposition of trust amounts pursuant to Iowa Code sections 633.707 to 633.711, the average statewide charges and Medicaid rates for the period from ~~July 1~~ *December 1*, 1999, to June 30, 2000, shall be as follows:

(1) The average statewide charge to a private pay resident of a nursing facility is ~~$2,536~~ *$2,723* per month.

(6) The average statewide charge to a private pay resident of a psychiatric medical institution for children is ~~$4,218~~ *$4,359* per month.

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HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," appearing in the Iowa Administrative Code.

The Department of Human Services previously adopted rules providing for a Home- and Community-Based Services waiver program for persons with a physical disability who currently reside in a medical institution and who have been residents of a medical institution for a minimum of 30 days. However, implementation of this program required federal approval.

These amendments make changes to the rules that are being required by the Health Care Financing Administration (HCFA) for approval of the waiver. The changes are as follows:

- Community businesses are being added as providers of home and vehicle modifications. HCFA believed the Department would be limiting consumer access by not allowing community businesses as providers.
- Persons who are at the ICF/MR level of care will not be eligible to use this waiver. HCFA would not approve this waiver with the ICF/MR population included, as they do not believe this population should be mixed with the nursing facility population.

The elimination of eligibility for this waiver for persons needing the ICF/MR level of care removes any county funding from this waiver. Therefore, policy regarding securing county approval for slots and county reimbursement is removed from these rules.

- The total monthly cost of waiver services that each waiver consumer may use is being lowered from $1150 per month to $621 per month, as the cost comparison used to justify the waiver can no longer include the costs for ICF/MR level of care. Persons whose service needs are greater than the limit on the total monthly cost of waiver services will not be able to use this waiver.

The substance of these amendments is also Adopted and Filed Emergency and is published herein as **ARC 9384A**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments do not provide for waiver in specific situations because all foreseeable situations are covered by these amendments and because HCFA required these changes for all applicants and recipients. Any specific situations would be in regard to individuals and could be handled by a waiver under the Department's general rule on exceptions at rule 441—1.8(217).

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before October 27, 1999.

These amendments are intended to implement Iowa Code section 249A.4.

ARC 9386A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 185, "Rehabilitative Treatment Services," appearing in the Iowa Administrative Code.

This amendment eliminates the requirement that Rehabilitative Treatment and Supportive Service (RTSS) providers submit cost reports as a part of the rate establishment process for RTS services for which a weighted average rate has been established.

Current rules require a new round of cost reports to be submitted by RTSS providers by March 31, 1999, to be used to establish rates for services provided on or after July 1, 2000. The current system is based upon historical costs and the Department and providers are currently involved in the development of a bundled services system to replace the RTSS system with a tentative implementation date of mid to late 2000. The successor system contains a simplified cost reporting system as part of its rate establishment process. Requiring cost reports to be submitted in order to establish

HUMAN SERVICES DEPARTMENT[441](cont'd)

rates that may not be used or may only be used for a short time is not desirable.

This amendment does not provide for waivers in specified situations because such a provision is unnecessary. This amendment removes a performance requirement.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before October 27, 1999.

This amendment is intended to implement Iowa Code sections 234.6 and 234.38.

The following amendment is proposed.

Amend rule 441—185.112(234) as follows:

Amend the introductory paragraph as follows:

441—185.112(234) ~~Interim determination~~ *Determination* of rates. Rules 441—185.102(234) to 441—185.107(234), 185.109(234) and 185.110(234) shall be held in abeyance for purposes of establishing rates effective ~~during the time period beginning~~ January 1, 1998, ~~to June 30, 2000,~~ unless otherwise provided for in these rules. Rates for a service to be effective on or after February 1, 1998, shall be established based on the payment rate negotiated between the provider and the department. This negotiated rate shall be based upon the historical and future reasonable and necessary cost of providing that service, other payment-related factors and availability of funding. Negotiated rates may be increased without negotiation if funds are appropriated for an across-the-board increase. A rate in effect as of December 31, 1997, shall continue in effect until a negotiated rate is established in accordance with the requirements of subrules 185.112(1) to 185.112(3), subrule 185.112(6), or subrule 185.112(12) or until the service is terminated in accordance with subrule 185.112(4).

Amend subrule **185.112(1)**, paragraph **"a,"** as follows:

a. On or after January 1, 1998, the department shall begin negotiating payment rates with providers of rehabilitative treatment and supportive services to be effective for services provided on or after February 1, 1998~~, through June 30, 2000~~.

Amend subrule **185.112(6)**, paragraphs **"d"** and **"e,"** as follows:

d. If an existing provider ceases to contract for and provide a service or program for which a zero rate has been established, and decides to again contract for and provide that program or service ~~and has a contract for that service in effect prior to June 30, 2000~~, the rate shall be established in accordance with subrule 185.112(2) and the starting point for negotiations shall be the weighted average rate.

e. If a provider ceases to contract for and provide a service or program after a rate has been established in accordance with subrule 185.112(1) and ~~prior to December 31, 1999,~~ decides to again contract for and provide that program or service, the rate shall be established at the rate in effect when service was interrupted.

Rescind and reserve subrule **185.112(10)**.

ARC 9387A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals proposes to amend Chapter 58, "Intermediate Care Facilities," and to rescind Chapter 59, "Skilled Nursing Facilities," Iowa Administrative Code.

The amendments modify dietary rules by updating language and references relating to the United States Food and Drug Administration's Food Code. In addition, the amendments implement a title change for the chapter which contains standards for nursing facilities and rescind rules pertaining to skilled nursing facilities. Under a change in the federal regulatory system for nursing facilities, all regulations were incorporated into one standard for nursing facilities. Since these standards applicable to all nursing facilities are contained in Chapter 58 rules, Chapter 59 rules are no longer needed.

Any interested person may make written comments or suggestions on the proposed amendments on or before October 26, 1999. Pursuant to Iowa Code section 17A.3(1) as amended by 1998 Iowa Acts, chapter 1202, section 7, persons may also submit requests to receive copies of existing Department rules. Written comments or requests should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319-0083. E-mail may be sent to moliver@dia.state.ia.us; faxes may be sent to (515) 242-6863.

A public hearing will be held on October 26, 1999, at 1:30 p.m. in the Director's Conference Room, Second Floor, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa. Persons may present their views orally or in writing at the public hearing.

These amendments are intended to implement Iowa Code section 135C.14(8).

The following amendments are proposed.

ITEM 1. Amend **481—Chapter 58** by striking the words "intermediate care facility" and inserting in lieu thereof the words "nursing facility" wherever they appear.

ITEM 2. Amend rule **481—58.1(135C)** by deleting subrule numbers and by adopting the following **new** definitions in alphabetical order:

"Nourishing snack" is defined as a verbal offering of items, single or in combination, from the basic food groups. Adequacy of the "nourishing snack" will be determined both by resident interviews and by evaluation of the overall nutritional status of residents in the facility.

"Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of clostridium botulinum or, in raw shell eggs, the growth of salmonella enteritidis. Poten-

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

tially hazardous food includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth of bacteria.

"Substantial evening meal" is defined as an offering of three or more menu items at one time, one of which includes a high protein such as meat, fish, eggs or cheese. The meal would represent no less than 20 percent of the day's total nutritional requirements.

ITEM 3. Amend subrule **58.24(1)**, paragraph **"a,"** as follows:

a. There shall be written policies and procedures for the dietetic service department that include staffing, nutrition, ~~and~~ menu planning~~;~~, therapeutic diets~~;~~, preparation~~;~~, service~~;~~, ordering~~;~~, receiving~~;~~, storage~~;~~, sanitation~~;~~, and hygiene of staff. The policies and procedures shall be kept in a notebook and made available for use in the dietetic service department. (III)

ITEM 4. Rescind subrules **58.24(2)** to **58.24(9)** and adopt the following **new** subrules in lieu thereof:

58.24(2) Dietary staffing.

a. The facility shall employ a qualified dietary supervisor who:

(1) Is a qualified dietitian as defined in 58.24(2)"e"; or

(2) Is a graduate of a dietetic technician training program approved by the American dietetic association; or

(3) Is a certified dietary manager certified by the certifying board for dietary managers of the Dietary Managers Association (DMA) and maintains that credential through 45 hours of DMA-approved continuing education; or

(4) Has completed a DMA-approved course curriculum necessary to take the certification examination required to become a certified dietary manager; or

(5) Has documented evidence of at least two years' satisfactory work experience in food service supervision and who is in an approved dietary manager association program and will successfully complete the program within 12 months of the date of enrollment; or

(6) Has completed or is in the final 90-hour training course approved by the department. (II, III)

b. The supervisor shall have overall supervisory responsibility for the dietetic service department and shall be employed for a sufficient number of hours to complete management responsibilities that include:

(1) Participating in regular conferences with consultant dietitian, administrator and other department heads; (III)

(2) Writing menus with consultation from the dietitian and seeing that current menus are posted and followed and that menu changes are recorded; (III)

(3) Establishing and maintaining standards for food preparation and service; (II, III)

(4) Participating in selection, orientation, and in-service training of dietary personnel; (II, III)

(5) Supervising activities of dietary personnel; (II, III)

(6) Maintaining up-to-date records of residents identified by name, location and diet order; (III)

(7) Visiting residents to learn individual needs and communicating with other members of the health care team regarding nutritional needs of residents when necessary; (II, III)

(8) Keeping records of repairs of equipment in the dietetic service department. (III)

c. The facility shall employ sufficient supportive personnel to carry out the following functions:

(1) Preparing and serving adequate amounts of food that are handled in a manner to be bacteriologically safe; (II, III)

(2) Washing and sanitizing dishes, pots, pans and equipment at temperatures required by procedures described elsewhere; (II, III)

(3) Serving of therapeutic diets as prescribed by the physician and following the planned menu. (II, III)

d. The facility shall not assign personnel duties simultaneously in food service and laundry, housekeeping, or nursing service except in an emergency situation. If such a situation occurs, proper sanitary and personal hygiene procedure shall be followed as outlined under the rules pertaining to hygiene of staff. (II, III)

e. If the dietetic service supervisor is not a licensed dietitian, a consultant dietitian is required. The consultant dietitian shall be licensed by the state of Iowa pursuant to Iowa Code chapter 152A.

f. Consultants' visits shall be scheduled to be of sufficient duration and at a time convenient to:

(1) Record, in the resident's medical record, any observations, assessments and information pertinent to medical nutrition therapy; (I, II, III)

(2) Work with nursing staff on resident care plans; (III)

(3) Consult with the administrator and others on developing and implementing policies and procedures; (III)

(4) Write or approve general and therapeutic menus; (III)

(5) Work with the dietetic supervisor on developing procedures, recipes and other management tools; (III)

(6) Present planned in-service training and staff development for food service employees and others. Documentation of consultation shall be available for review in the facility by the department. (III)

g. In facilities licensed for more than 15 beds, food service personnel shall be on duty for a minimum of a 12-hour span extending from the preparation of breakfast through supper. (III)

58.24(3) Nutrition and menu planning.

a. Menus shall be planned and followed to meet nutritional needs of each resident in accordance with the physician's orders. (II, III)

b. Menus shall be planned and served to include foods and amounts necessary to meet the current Recommended Daily Dietary Allowances, 1989 edition, adopted by the Food and Nutrition Board of the National Research Council, National Academy of Sciences. (II)

The food groups listed below and the food groups for menu planning in the 1998 edition of the Simplified Diet Manual, Iowa State University Press, Ames, Iowa, shall be used as a minimum for planning resident menus.

(1) Milk - two or more cups served as beverage or used in cooking;

(2) Meat group - two or more servings of meat, fish, poultry, eggs, cheese or equivalent; at least four to five ounces edible portion per day;

(3) Vegetable and fruit group - four or more servings (two cups). This shall include a citrus fruit or other fruit and vegetable important for vitamin C daily, a dark green or deep yellow vegetable for vitamin A at least every other day, and other fruits and vegetables, including potatoes;

(4) Bread and cereal group - four or more servings of whole-grain, enriched or restored;

(5) Foods other than those listed shall be included to meet daily energy requirements (calories) to add to the total nutrients and variety of meals.

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c. At least three meals or their equivalent shall be served daily, at regular hours comparable to normal mealtimes in the community. (II)

(1) There shall be no more than a 14-hour span between a substantial evening meal and breakfast except as provided in subparagraph (3) below. (II, III)

(2) The facility shall offer snacks at bedtime daily. (II, III)

(3) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast of the following day. The current resident group must agree to this meal span and a nourishing snack must be served. (II)

d. Menus shall include a variety of foods prepared in various ways. The same menu shall not be repeated on the same day of the following week. (III)

e. Menus shall be written at least one week in advance. The current menu shall be located in an accessible place in the dietetic service department for easy use by persons purchasing, preparing and serving food. (III)

f. Records of menus as served shall be filed and maintained for 30 days and shall be available for review by department personnel. When substitutions are necessary, they shall be of similar nutritive value and recorded. (III)

g. A file of tested recipes adjusted to the number of people to be fed in the facility shall be maintained. (III)

h. Alternate foods shall be offered to residents who refuse the food served. (II, III)

58.24(4) Therapeutic diets.

a. Therapeutic diets shall be prescribed by the attending physician. A current therapeutic diet manual shall be readily available to attending physicians, nurses and dietetic service personnel. This manual shall be used as a guide for writing menus for therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and reviewing procedures for preparation and service of food. (III)

b. Personnel responsible for planning, preparing and serving therapeutic diets shall receive instructions on those diets. (III)

58.24(5) Food preparation and service.

a. Methods used to prepare foods shall be those which conserve nutritive value and flavor and meet the taste preferences of the residents. (III)

b. Foods shall be attractively served. (III)

c. Foods shall be cut up, chopped, ground or blended to meet individual needs. (II, III)

d. Self-help devices shall be provided as needed. (II, III)

e. Table service shall be attractive. (III)

f. Plasticware, china and glassware that are unsightly, unsanitary or hazardous because of chips, cracks or loss of glaze shall be discarded. (III)

g. All food that is transported through public corridors shall be covered. (III)

h. All potentially hazardous food or beverages capable of supporting rapid and progressive growth of microorganisms that can cause food infections or food intoxication shall be maintained at temperatures of 41°F or below or at 140°F or above at all times, except during necessary periods of preparation. Frozen food shall be maintained frozen. (I, II, III)

i. Potentially hazardous food that is cooked, cooled and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 165°F for 15 seconds. (I, II, III)

j. Food must be reheated to 165°F within no more than two hours after the heating process begins. (I, II, III)

k. Cooked potentially hazardous food shall be cooled:

(1) Within two hours, from 140°F to 70°F; and

(2) Within four hours, from 70°F to 41°F or less. (I, II, III)

58.24(6) Dietary ordering, receiving, and storage.

a. All food and beverages shall be of wholesome quality and procured from sources approved or considered satisfactory by federal, state and local authorities. Food or beverages from unlabeled, rusty, leaking, broken or damaged containers shall not be served. (I, II, III)

b. A minimum of at least a one-week supply of staple foods and a three-day supply of perishable foods shall be maintained on the premises to meet the planned menu needs until the next food delivery. Supplies shall be appropriate to meet the requirements of the menu. (III)

c. All milk shall be pasteurized. (III)

d. Milk may be served in individual, single-use containers. Milk may be served from a dispensing device that has been approved for such use or from the original container. Milk served from an approved device shall be dispensed directly into the glass or other container from which the resident drinks. (II, III)

e. Records which show amount and kind of food purchased shall be retained for three months and shall be made available to the department upon request. (III)

f. Dry or staple items shall be stored at least six inches (15 cm) above the floor in a ventilated room, not subject to sewage or wastewater backflow, and protected from condensation, leakage, rodents or vermin in accordance with the Food Code, 1999 edition. (III)

g. Pesticides, other toxic substances and drugs shall not be stored in the food preparation or storage areas used for food or food preparation equipment and utensils. Soaps, detergents, cleaning compounds or similar substances shall not be stored in food storage rooms or areas. (II)

h. Food storage areas shall be clean at all times. (III)

i. There shall be a reliable thermometer in each refrigerator, freezer and in storerooms used for food. (III)

j. Foods held in refrigerated or other storage areas shall be appropriately covered. Food that was prepared and not served shall be stored appropriately, clearly identifiable and dated. (III)

58.24(7) Sanitation in food preparation area.

a. Unless otherwise indicated in this chapter or 481—Chapter 61, the sanitary provisions as indicated in Chapters 3, 4 and 7 of the 1999 Food Code, U.S. Public Health Service, Food and Drug Administration, Washington, D.C. 20204, shall apply.

b. Residents shall not be allowed in the food preparation area. (III)

c. The food preparation area shall not be used as a dining area for residents, staff or food service personnel. (III)

d. All food service areas shall be kept clean, free from litter and rubbish, and protected from rodents, animals, roaches, flies and other insects. (II, III)

e. All utensils, counters, shelves and equipment shall be kept clean, maintained in good repair, and shall be free from breaks, corrosion, cracks and chipped areas. (II, III)

f. There shall be effective written procedures established for cleaning all work and serving areas. (III)

g. A schedule of cleaning duties to be performed daily shall be posted. (III)

h. An exhaust system and hood shall be clean, operational and maintained in good repair. (III)

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i. Spillage and breakage shall be cleaned up immediately and disposed of in a sanitary manner. (III)

j. Wastes from the food service that are not disposed of by mechanical means shall be kept in leakproof, nonabsorbent, tightly closed containers when not in immediate use and shall be disposed of frequently. (III)

k. The food service area shall be located so it will not be used as a passageway by residents, guests or non-food service staff. (III)

l. The walls, ceilings and floors of all rooms in which food is prepared and served shall be in good repair, smooth, washable, and shall be kept clean. Walls and floors in wet areas should be moisture-resistant. (III)

m. Ice shall be stored and handled in such a manner as to prevent contamination. Ice scoops should be sanitized daily and kept in a clean container. (III)

n. There shall be no animals or birds in the food preparation area. (III)

o. All utensils used for eating, drinking, preparing and serving food and drink shall be cleaned and disinfected or discarded after each use. (III)

p. If utensils are washed and rinsed in an automatic dishmachine, one of the following methods shall be used:

(1) When a conventional dishmachine is utilized, the utensils shall be washed in a minimum of 140°F using soap or detergent and sanitized in a hot water rinse of not less than 170°F. (II, III)

(2) When a chemical dishmachine is utilized, the utensils shall be washed in a minimum of 120°F using soap or detergent and sanitized using a chemical sanitizer that is automatically dispensed by the machine and is in a concentration equivalent to 50 parts per million (ppm) available chloride. (II, III)

q. If utensils are washed and rinsed in a three-compartment sink, the utensils shall be thoroughly washed in hot water at a minimum temperature of 110°F using soap or detergent, rinsed in hot water to remove soap or detergent, and sanitized by one of the following methods:

(1) Immersion for at least 30 seconds in clean water at 180°F; (II, III)

(2) Immersion in water containing bactericidal chemical at a minimum concentration as recommended by the manufacturer. (II, III)

r. After sanitation, the utensils shall be allowed to drain and dry in racks or baskets on nonabsorbent surfaces. Drying cloths shall not be used. (III)

s. Procedures for washing and handling dishes shall be followed in order to protect the welfare of the residents and employees. Persons handling dirty dishes shall not handle clean dishes without first washing their hands. (III)

t. A mop and mop pail shall be provided for exclusive use in kitchen and food storage areas. (III)

58.24(8) Hygiene of food service personnel.

a. Food service personnel shall be trained in basic food sanitation techniques, shall be clean and wear clean clothing, including a cap or a hairnet sufficient to contain, cover and restrain hair. Beards, mustaches and sideburns that are not closely cropped and neatly trimmed shall be covered. (III)

b. Food service personnel shall be excluded from duty when affected by skin infections or communicable diseases in accordance with the facility's infection-control policies. (II, III)

c. Employee street clothing stored in the food service area shall be in a closed area. (III)

d. Food preparation sinks shall not be used for hand washing. Separate hand-washing facilities with soap, hot and cold running water, and single-use towels shall be used properly. (II, III)

e. Persons other than food service personnel shall not be allowed in the food preparation area unless required to do so in the performance of their duties. (III)

f. The use of tobacco shall be prohibited in the kitchen. (III)

ITEM 5. Rescind and reserve **481—Chapter 59**.

ARC 9392A

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 505.8(2) and 507B.12, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 16, "Replacement of Life Insurance and Annuities," Iowa Administrative Code.

The proposed new rules will adopt, with some modifications, the National Association of Insurance Commissioners (NAIC) revised model regulation governing the replacement of life insurance and annuities. In recognition of numerous computer system modifications underway at insurance companies due to year 2000 changes, the Division has proposed a two-step schedule for implementation of the proposed new rules which the Insurance Division anticipates will become effective July 1, 2000.

A public hearing will be held at 2 p.m. at the offices of the Insurance Division on October 26, 1999. The Division address is 330 Maple Street, Des Moines, Iowa 50319. Written comments may also be submitted at the same address, to the attention of Rosanne Mead, Assistant Commissioner. All comments are due at the Division by 4:30 p.m. on October 26, 1999.

Comments may also be transmitted by fax to (515)281-3059 or by E-mail to rosanne.mead@comm6.state.ia.us.

These rules are intended to implement Iowa Code chapter 507B.

The following amendment is proposed.

Amend 191—Chapter 16 by reserving rules **191—16.11** to **191—16.20** in Division I and adopting the following **new** division:

DIVISION II

EFFECTIVE JULY 1, 2000

191—16.21(507B) Purpose.

16.21(1) The purpose of these rules is:

a. To regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities.

b. To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions by:

INSURANCE DIVISION[191](cont'd)

(1) Ensuring that purchasers receive information with which a decision can be made in the purchaser's own best interest;

(2) Reducing the opportunity for misrepresentation and incomplete disclosure; and

(3) Establishing penalties for failure to comply with requirements of these rules.

16.21(2) These rules are authorized by Iowa Code section 507B.12 and are intended to implement Iowa Code section 507B.4.

191—16.22(507B) Definitions.

"Commissioner" means the Iowa insurance commissioner.

"Contract" means an individual annuity contract.

"Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

"Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

"Existing policy or contract" means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

"Financed purchase" means the purchase of a new policy involving the actual use of funds obtained by the withdrawal or surrender of, or by borrowing from, values of an existing policy to pay all or part of any premium due on a new policy issued by the same insurer. If a request for withdrawal, surrender, or borrowing involving the policy values of an existing policy is accompanied by direction to pay premiums on a new policy owned by the same policyholder within 13 months before or after the effective date of the new policy and is known by the insurer, it will be deemed prima facie evidence of a financed purchase.

"Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years as defined in Iowa Administrative Code 191—Chapter 14.

"Policy" means an individual life insurance policy.

"Policy summary," for the purposes of these rules, means:

1. For policies or contracts other than universal life policies, a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information: current death benefit; annual contract premium; current cash surrender value; current dividend; application of current dividend; and amount of outstanding loan.

2. For universal life policies, a written statement that shall contain at least the following information: the beginning and end date of the current report period; the policy value at the end of the previous report period and at the end of the current report period; the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders); the current death benefit at the end of the current report period on each life covered by the policy; the net cash surrender value of the policy as of the end of the current report period; and the amount of outstanding loans, if any, as of the end of the current report period.

"Producer" means a person licensed under Iowa Code chapter 522.

"Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

"Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

3. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

4. Reissued with any reduction in cash value; or

5. Used in a financed purchase.

"Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

"Sales material" means a sales illustration and any other written, printed or electronically presented information created, completed or provided by the company or producer that is used in the presentation to the policy or contract owner and which describes the benefits, features and costs of the specific policy or contract which is purchased.

191—16.23(507B) Exemptions.

16.23(1) Unless otherwise specifically included, these rules shall not apply to transactions involving:

a. Credit life insurance.

b. Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single provider in connection with enrolling that individual employee. Group life insurance or group annuity certificates marketed through direct-response solicitation shall be subject to the provisions of rule 16.28(507B).

c. Group life insurance and annuities used to fund formal prepaid funeral contracts.

d. An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner.

e. Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company.

f. Except as noted below, policies or contracts used to fund:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

(3) A governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state

INSURANCE DIVISION[191](cont'd)

or local government or tax-exempt organization under Section 457 of the Internal Revenue Code; or

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

These rules shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pretax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more annuity providers or policy providers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subrule, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single provider in connection with enrolling that individual employee.

g. New coverage provided under a life insurance policy or contract where the cost is borne wholly by the insured's employer or by an association of which the insured is a member.

h. Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed.

i. Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this chapter.

j. Structured settlement annuities.

16.23(2) Registered contracts shall be exempt from the requirements of paragraph 16.26(1)"b" and subrule 16.27(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

191—16.24(507B) Duties of producers.

16.24(1) A producer who initiates an application for a policy or a contract shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the applicant does not have an existing policy or contract, the producer's duties with respect to replacement are complete.

16.24(2) If the applicant does have an existing policy or contract, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A or A1 or other substantially similar form approved by the commissioner.

a. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and that a copy of the notice was left with the applicant.

b. The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

16.24(3) In connection with a replacement transaction, the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. A copy of any electronically presented sales material shall be provided to the policyholder in printed form no later than at the time of policy or contract delivery.

16.24(4) Except as provided in subrule 16.26(3), in connection with a replacement transaction, the producer shall submit to the insurer to which an application for a policy or contract is presented a copy of each document required by this subrule, a statement identifying any preprinted or electronically presented insurer-approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

191—16.25(507B) Duties of all insurers that use producers on or after January 1, 2001.

16.25(1) Each insurer that uses producers shall maintain a system of supervision and control to ensure compliance with the requirements of these rules that shall include at least the following:

a. Informing its producers of the requirements of these rules and incorporating the requirements of these rules into all relevant producer training manuals prepared by the insurer;

b. Providing to each producer a written statement of the insurer's position with respect to the acceptability of replacements including providing guidance to its producer as to the appropriateness of these transactions;

c. Reviewing the appropriateness of each replacement transaction that the producer does not indicate is in accord with paragraph 16.25(1)"b" above;

d. Confirming that the requirements of these rules have been met; and

e. Detecting transactions that are replacements of existing policies or contracts by the existing insurer but that have not been reported as such by the applicant or producer. Compliance with this subrule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters or programs of internal monitoring.

16.25(2) Each insurer that uses producers shall have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer and shall, upon request, make such records available to the insurance division. The capacity to monitor shall include the ability to produce records for each producer's:

a. Life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;

c. Number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;

c. Annuity contract replacements as a percentage of the producer's total annual annuity contract sales;

d. Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the insurer's monitoring system as required by paragraph "e" of subrule 16.25(1); and

e. Replacements, indexed by replacing producer and existing insurer.

16.25(3) Each insurer that uses producers shall require with or as a part of each application for life insurance or for an annuity a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts.

INSURANCE DIVISION[191](cont'd)

16.25(4) Each insurer that uses producers shall require with each application for life insurance or for an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Appendix A or A1.

16.25(5) When the applicant has existing policies or contracts, each replacing insurer that uses producers shall be able to produce completed and signed copies of the notice regarding replacements for at least five years after the termination or expiration of the proposed policy or contract.

16.25(6) When the applicant has existing policies or contracts, each replacing insurer that uses producers shall be able to produce copies of any sales material as required by subrule 16.24(4), the basic illustration and any supplemental illustrations related to the specific policy or contract which is purchased and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract.

16.25(7) Each insurer that uses producers shall ascertain that the sales material and illustrations required by subrule 16.24(4) meet the requirements of these rules and are complete and accurate for the proposed policy or contract.

16.25(8) If an application does not meet the requirements of these rules, each insurer that uses producers shall notify the producer and applicant and fulfill the outstanding requirements.

16.25(9) Records required to be retained by this rule may be maintained in paper, photographic, microprocessed, magnetic, mechanical or electronic media or by any process which accurately reproduces the actual document.

191—16.26(507B) Duties of replacing insurers that use producers.

16.26(1) Where a replacement is involved in the transaction, the replacing insurer that uses producers shall:

a. Verify that the required forms are received and are in compliance with these rules;

b. Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer;

c. Be able to produce copies of the notification regarding replacement required in subrule 16.24(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of an insurer's state of domicile, whichever is later; and

d. Provide to the policy or contract owner notice of the right to return the policy or contract within 30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract. The notice may be included in Appendix A, A1 or C.

16.26(2) Where a replacement is involved in the transaction and where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount that the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

16.26(3) Where a replacement is involved in the transaction and where an insurer prohibits the use of sales material other than that approved by the insurer, the insurer may, as an alternative to the requirements of subrule 16.24(4) do all of the following:

a. Require of and obtain from the producer a signed statement with each application that:

(1) Represents that the producer used only insurer-approved sales material; and

(2) Represents that copies of all sales material were left with the applicant in accordance with subrule 16.24(3).

b. Provide to the applicant a letter or by verbal communication by a person whose duties are separate from the marketing area of the insurer, within ten days of the issuance of the policy or contract, which shall include:

(1) Information that the producer has represented that copies of all sales material have been left with the applicant in accordance with subrule 16.24(3);

(2) The toll-free number by which the applicant can contact company personnel involved in the compliance function if copies of all sales material were not left with the applicant; and

(3) Information regarding the importance of retaining copies of the sales material for future reference.

c. Be able to produce a copy of the letter or other verification obtained pursuant to this subrule in the policy file for at least five years after the termination or expiration of the policy or contract.

191—16.27(507B) Duties of the existing insurer. Where a replacement is involved in the transaction, the existing insurer shall:

16.27(1) Upon notice that its existing policy or contract may be replaced or a policy may be part of a financed purchase, retain copies of the notification in its home or regional office, indexed by replacing insurer, notifying it of the replacement for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later.

16.27(2) Send a letter to the policy or contract owner notifying the owner of the right to receive information regarding the existing policy or contract values including, if available, an in-force illustration or policy summary if an in-force illustration cannot be produced within five business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five business days of receipt of the request from the policy or contract owner.

16.27(3) Upon receipt of a request to borrow, surrender or withdraw any policy values, send to the applicant a notice, advising the policyowner that the release of policy values may affect the guaranteed elements, nonguaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policyowner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

191—16.28(507B) Duties of insurers with respect to direct-response solicitations.

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16.28(1) In the case of an application that is initiated as a result of a direct-response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

16.28(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

a. Provide to applicants or prospective applicants with the policy or contract a notice, as described in Appendix C, or other substantially similar form approved by the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, without having to obtain approval of the form from the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed, postage prepaid envelope with instructions for the return of the signed notice referred to in this subrule; and

b. Comply with the requirements of paragraph 16.26(1)"b," if the applicant furnishes the names of the existing insurers, and the requirements of paragraphs 16.26(1)"c" and "d" and subrule 16.26(2).

191—16.29(507B) Violations and penalties.

16.29(1) Any failure to comply with these rules shall be considered a violation of Iowa Administrative Code rules 191—15.7(507B) and 191—15.8(507B). Examples of violations include but are not limited to:

a. Any deceptive or misleading information set forth in sales material;

b. Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;

c. The intentional incorrect recording of an answer;

d. Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

e. Advising a policy or contract owner to write directly to the insurer in such a way as to attempt to obscure the identity of the replacing producer or insurer.

16.29(2) Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate these rules.

16.29(3) Where it is determined that the requirements of these rules have not been met, the replacing insurer shall provide to the policy owner an in-force illustration if available or policy summary for the replacement policy or available disclosure document for the replacement contract and the notice regarding replacements in Appendix A.

16.29(4) Violations of these rules shall subject the violators to penalties that may include the revocation or suspension of a producer's or insurer's license, monetary fines, the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred, or any other penalties authorized by Iowa Code chapter 507B or Iowa Administrative Code 191—Chapter 15.

191—16.30(507B) Severability. If any rule or portion of a rule of this division, or its applicability to any person or circumstances, is held invalid by a court, the remainder of this division, or the applicability of its provisions to other persons, shall not be affected.

191—16.31(507B) Effective dates. Rule 16.25(507B) shall take effect on January 1, 2001. All other rules in this division shall become effective on July 1, 2000.

These rules are intended to implement Iowa Code chapter 507B.

APPENDIX A

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant.

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy or contract and may reduce the amount paid upon the death of the insured.

INSURANCE DIVISION[191](cont'd)

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ___ YES ___ NO
2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the contract number if available) and whether each policy will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. [If you request one, an in-force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because _____.

I certify that the responses herein are, to the best of my knowledge, accurate:

_____ _____

Applicant's Signature and Printed Name Date

_____ _____

Producer's Signature and Printed Name Date

I do not want this notice read aloud to me. _____ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS: Are they affordable?

Could they change?
You're older—are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES: New policies usually take longer to build cash values and to pay dividends.

Acquisition costs for the old policy may have been paid, you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY: If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.

You may need a medical exam for a new policy.
[Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.]

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

INSURANCE DIVISION[191](cont'd)

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?
Is this a tax-free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

APPENDIX A1

REPLACEMENT OF LIFE INSURANCE POLICIES OR ANNUITY CONTRACTS

This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant.

You are contemplating the purchase of an annuity contract. In some cases this purchase may involve discontinuing or changing an existing life insurance policy or annuity contract. If so, a replacement is occurring.

A replacement may occur when a new contract is purchased and, in connection with the sale, an existing life insurance policy or annuity contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated.

You should carefully consider whether a replacement is in your best interest. You may pay acquisition costs on the new annuity contract and there may be surrender costs deducted from your existing life insurance policy or annuity contract. You may be able to make changes to your existing life insurance policy or annuity contract to meet your insurance needs at less cost. Using existing funds from your existing life insurance policy or annuity contract to purchase a new annuity contract will reduce the value of your existing policy or contract and may reduce the death benefit of your existing policy or contract.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing life insurance policy or annuity contract? ___YES ___ NO
2. Are you considering using funds from your existing life insurance policies or annuity contracts to pay the premium or premiums on the new annuity contract? ___YES ___ NO

If you answered "yes" to either of the above questions, list each existing life insurance policy or annuity contract you are contemplating replacing (include the name of the insurer, the insured or annuitant, and the policy or contract number if available).

INSURER NAME	CONTRACT OR POLICY #	ANNUITANT OR INSURED
1.		
2.		
3.		

Make sure you know the facts. Contact your existing company or its agent for information about your existing life insurance policy or annuity contract. [If you request one, an in-force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing life insurance policy or annuity contract is being replaced because_____.

I certify that the responses herein are, to the best of my knowledge, accurate:

_____ _____

Applicant's Signature and Printed Name Date

_____ _____

Producer's Signature and Printed Name Date

I do not want this notice read aloud to me. _____ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing life insurance policy or annuity contract and the proposed annuity contract. One way to do this is to ask the company or agent that sold you your existing life insurance policy or annuity contract to provide you with information concerning your existing life insurance policy or annuity contract. This may include an illustration of how your existing life insurance policy or annuity contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare life insurance policies or annuity contracts. You should discuss the following with your agent to determine whether replacement of your existing life insurance policy or annuity contract makes sense:

PREMIUMS: Are they affordable?

INSURANCE DIVISION[191](cont'd)

Could they change?
How long will you have to pay premiums on the new annuity contract? On the existing life insurance policy or annuity contract?

POLICY VALUES: Acquisition costs for the existing life insurance policy or annuity contract may have been paid, you may incur costs for the new annuity contract.

What surrender charges do the policies have?
What expense and sales charges will you pay on the new annuity contract?
Does the new annuity provide more or better benefits?

INSURABILITY: If your health has changed since you bought your existing life insurance policy or annuity contract, the new annuity contract could provide fewer benefits, or you could be turned down.

You may need a medical exam for a new annuity contract.
[Claims on some annuity contract for up to the first two years can be denied based on inaccurate statements.]

IF YOU ARE KEEPING THE EXISTING LIFE INSURANCE POLICY OR ANNUITY CONTRACT AS WELL AS THE NEW ANNUITY CONTRACT:

How are premiums for both policies and/or contracts being paid?
How will the premiums on your existing life insurance policy or annuity contract be affected?
Will a loan be deducted from death benefits?
What values from the existing life insurance policy or annuity contract are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your existing life insurance policy or annuity contract?
What are the interest rate guarantees for the new annuity contract?
Have you compared the charges and expenses of your existing life insurance policy or annuity contract to the charges and expenses of the new annuity contract?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new annuity contract?
Is this a tax-free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the existing life insurance policy or annuity contract under the federal tax code?
Will the existing insurer be willing to modify the existing life insurance policy or annuity contract?
How does the quality and financial stability of the new company compare with your existing company?

APPENDIX B

NOTICE REGARDING REPLACEMENT
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

APPENDIX C

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

INSURANCE DIVISION[191](cont'd)

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy or contract and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ___ YES ___ NO
2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

Please list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the contract number if available) and whether each policy will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. [If you request one, an in-force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

I certify that the responses herein are, to the best of my knowledge, accurate:

_____ _____

Applicant's Signature and Printed Name Date

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS: Are they affordable?

Could they change?
You're older—are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES: New policies usually take longer to build cash values and to pay dividends.

Acquisition costs for the old policy may have been paid, you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY: If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.

You may need a medical exam for a new policy.
[Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.]

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?

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Is this a tax-free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

ARC 9377A

LOTTERY DIVISION[705]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 99E.9(3) and 17A.3, the Lottery Division hereby gives Notice of Intended Action to amend Chapter 2, "Licensing," Iowa Administrative Code.

The proposed amendment divides the current rule to make it more readable, and it provides for a stepped penalty process for retailers who make sales to minors.

The Lottery does not intend to grant waivers for this amendment because the amendment pertains to a statutory requirement and the amendment cannot waive the requirement.

Any interested person may make written suggestions or comments on the proposed amendment on or before October 26, 1999. Such written material should be directed to the Iowa Lottery, Attention: Ken Brickman, Assistant Commissioner, 2015 Grand Avenue, Des Moines, Iowa 50312, or may be transmitted via facsimile to (515)281-7882.

The Lottery has posted this proposed amendment to its Web site, http://www.ialottery.com.

This amendment is intended to implement Iowa Code sections 99E.17 and 99E.18.

The following amendment is proposed.

Amend rule 705—2.12(99E) as follows:

705—2.12(99E) Suspension or revocation of a license.

2.12(1) The lottery may suspend or revoke any license issued pursuant to these rules for one or more of the following reasons:

a. ~~failure~~ *Failing* to meet or maintain the eligibility criteria for license application and issuance established by Iowa Code chapter 99E or these rules;

b. ~~violation~~ *Violation* of any of the provisions of chapter 99E, these rules, or the license terms and conditions;

c. ~~failure~~ *Failing* to file any return or report or to keep records required by the lottery; failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments which are dishonored; fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery;

d. ~~if~~ *If* public convenience is adequately served by other licensees;

e. ~~failing~~ *Failing* to sell a minimum number of tickets as established by the lottery;

f. ~~a~~ *A* history of thefts or other forms of losses of tickets or revenue from the business;

g. ~~violating~~ *Violating* federal, state, or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the retailer has substantial control;

h. ~~obtaining~~ *Obtaining* a license by fraud, misrepresentation, concealment or through inadvertence or mistake;

i. ~~making~~ *Making* a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery;

j. ~~denying~~ *Denying* the lottery or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted;

k. ~~failing~~ *Failing* to promptly produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license;

l. ~~systematically~~ *Systematically* pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is inimical to the proper operation of an authorized lottery;

m. ~~failing~~ *Failing* to follow the instructions of the lottery for the conduct of any particular game or special event;

n. ~~failing~~ *Failing* to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event;

o. ~~making~~ *Making* a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event;

p. ~~for~~ *For* a licensee who is an individual, where the lottery receives a certificate of noncompliance from the child support unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance; or

q. ~~allowing~~ *Allowing* activities on the licensed premises which could compromise the dignity of the state.

2.12(2) The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee. All other notices of revocation or suspension shall be 20 days following service upon a licensee.

2.12(3) If a retailer's license is suspended for more than 180 days from the effective date of the suspension, the lottery will revoke the retailer's license upon 15 days' notice served in conformance with 705—2.139(99E,252J).

2.12(4) *Upon suspicion that a retailer has sold a ticket to an underage player, the lottery will investigate and provide a written warning to the retailer describing the report of the event and of the potential violation of Iowa Code section 99E.18(2). In the event a retailer sells a ticket to an underage player and the lottery can substantiate the claim, the lottery shall suspend the retailer's license for 7 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a second time in a period of one year from the date of the first event, the lottery shall suspend the retailer's license for a period of 30 days. When a retailer sells a ticket to an underage player and the lottery can sub-*

LOTTERY DIVISION[705](cont'd)

stantiate the claim a third time in a period of one year from the date of the first event as described in this rule, the retailer's license shall be suspended for one year.

2.12(4-5) Upon revocation or suspension of a retailer's license *of 30 days or longer,* the retailer shall surrender to the lottery, by a date designated by the lottery, the license, lottery identification card, and all other lottery property. *The lottery will settle the retailer's account as if the retailer had terminated its relationship with the lottery voluntarily.*

ARC 9380A

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 106, "Deer Hunting," Iowa Administrative Code.

This amendment addresses recent legislation which provides that landowners cooperating with the U.S. Department of Agriculture's Animal and Plant Health Inspection Service may obtain depredation permits to take deer at no charge.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 26, 1999. 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)281-8894. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on October 29, 1999, 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.

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

This amendment is also Adopted and Filed Emergency and is published herein as **ARC 9378A**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

ARC 9379A

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 110, "Trapping Limitations," Iowa Administrative Code.

These rules give the regulations for certain restrictions on the placement and use of various types of traps. This amendment permits the use of colony traps for muskrats, as passed by the Seventy-eighth General Assembly, and requires that they be placed entirely under water.

Any interested person may make written suggestions or comments on the proposed amendment on or before October 26, 1999. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)281-6156 or at the Fish and Wildlife Division offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on October 26, 1999, 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 amendment.

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

This amendment is intended to implement Iowa Code sections 456A.24 and 481A.6.

The following amendment is proposed.

Adopt **new** rule 571—110.7(481A) as follows:

571—110.7(481A) Colony traps. All colony traps must be set entirely under water.

ARC 9393A

NURSING BOARD[655]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of In-

NURSING BOARD[655](cont'd)

tended Action to amend Chapter 7, "Advanced Registered Nurse Practitioners," Iowa Administrative Code.

These amendments add a national professional nursing certifying body to the approval list for advanced practice certification. The word "license" has been changed to "licensure" in two places to improve readability. These amendments identify that fee information is located in 655—Chapter 3 and rescind subrule 7.2(11) which includes the definition of "peer review committee for investigations for ARNPs" because the information is found in 655—Chapter 4.

Any interested person may make written comments or suggestions on or before October 26, 1999. Such written materials should be directed to the Executive Director, Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who want to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at the above address.

These amendments are intended to implement Iowa Code sections 17A.3, 147.53, 147.76, and 152.1.

The following amendments are proposed.

ITEM 1. Amend rule **655—7.1(152)**, definition of "National professional nursing certifying body," to read as follows:

"National professional nursing certifying body" is a professional nursing certifying body approved by the board. Agencies approved by the board include the American Nurses Credentialing Center, the American Academy of Nurse Practitioners, the American College of Nurse-Midwives Certification Council, the Council on Certification of Nurse Anesthetists, the Council on Recertification of Nurse Anesthetists, the National Certification Board of Pediatric Nurse Practitioners and Nurses, the National Certification Corporation for the Obstetric, Gynecologic, and Neonatal Nursing Specialties, ~~and~~ the Oncology Nursing Certification Organization, *and the American Association of Critical Care Nurses Certification Corporation.*

ITEM 2. Amend subrule **7.2(5)**, paragraph **"b,"** to read as follows:

b. The registered nurse shall be issued a registration card and a certificate to practice as an ARNP which clearly denotes the name, title, specialty area(s) of nursing practice, and expiration date of registration. The expiration date shall be based on the same period of ~~license~~ *licensure* to practice as a registered nurse.

ITEM 3. Amend subrule 7.2(8), introductory paragraph, to read as follows:

7.2(8) Application process for renewal of registration. Renewal of registration for the advanced registered nurse practitioner shall be for the same period of ~~license~~ *licensure* to practice as a registered nurse. The executive director or a designee shall have the authority to determine if all requirements have been met for renewal as an advanced registered nurse practitioner. A registered nurse who wishes to continue practice as an advanced registered nurse practitioner shall submit the following at least 30 days prior to the license expiration to the office of the Iowa board of nursing:

ITEM 4. Amend subrule **7.2(8)**, paragraph **"b,"** to read as follows:

b. Renewal fee as outlined in rule ~~7.1(152)~~ *655—3.1(17A,147,152,272C)*, definition of "fees."

ITEM 5. Rescind subrule **7.2(11)**.

ARC 9374A

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 124.301, 147.76, and 272C.4, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 6, "General Pharmacy Licenses," Chapter 7, "Hospital Pharmacy Licenses," Chapter 8, "Minimum Standards for the Practice of Pharmacy," Chapter 15, "Correctional Facility Pharmacy Licenses," and Chapter 36, "Discipline," Iowa Administrative Code.

The amendments were approved at the July 15, 1999, regular meeting of the Board of Pharmacy Examiners.

The amendments provide for the self-assessment of pharmacies to be completed annually by the pharmacist in charge of each pharmacy. The amendments identify the form to be used for such self-assessment and how to obtain the form, establish procedures to be followed upon the identification of deficiencies in practice in the pharmacy, and establish requirements for availability and retention of all records of pharmacy self-assessments. The amendments identify additional instances when a pharmacy self-assessment is required to be completed and provide for investigation and possible disciplinary action for failure to perform required assessments or including false or misleading information on a self-assessment form. Completion of required pharmacy self-assessments is clearly identified as a responsibility of the pharmacist in charge and failure to fulfill that responsibility pursuant to these rules is identified as grounds for disciplinary action against the pharmacist's and the pharmacy's license. The Pharmacy Board does not intend to grant waivers under the provisions of this rule. Waivers would undermine the purposes of the rule which include ensuring that pharmacies are in compliance with rules and regulations designed to protect the public health and encouraging self-education of pharmacists in charge of pharmacies regarding those rules and regulations.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 5, 2000. Such written materials should be sent to Lloyd K. Jessen, Executive Secretary/Director, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

There will be a public hearing on November 19, 1999, at 1 p.m. in the Board Room, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

These amendments are intended to implement Iowa Code sections 155A.13, 155A.15, and 272C.4.

The following amendments are proposed.

ITEM 1. Amend subrule **6.2(1)** by adopting the following **new** paragraph **"l"**:

PHARMACY EXAMINERS BOARD[657](cont'd)

l. Completing self-assessments of the pharmacy pursuant to rules 657—8.16(155A) and 657—8.17(155A).

ITEM 2. Adopt the following new subrule 7.6(7):

7.6(7) The pharmacist in charge shall complete self-assessments of the pharmacy pursuant to rules 657—8.16(155A) and 657—8.17(155A).

ITEM 3. Adopt the following new rules:

657—8.16(155A) Self-assessment of pharmacy by pharmacist in charge.

8.16(1) Annual self-assessment. The pharmacist in charge of each pharmacy shall complete a self-assessment of the pharmacy's compliance with federal and state pharmacy laws and regulations. The assessment shall be performed before March 31 of each year. The completed assessment form shall be signed by the pharmacist in charge and shall include a statement that the pharmacist in charge verifies the accuracy of the information included in the assessment. The primary purpose of the self-assessment is to promote compliance through self-examination and education.

8.16(2) Special self-assessment. In addition to the self-assessment required in subrule 8.16(1), the pharmacist in charge shall complete a self-assessment within 30 days whenever:

a. A new pharmacy license has been issued or

b. There is a change in the pharmacist in charge and the pharmacist becomes the new pharmacist in charge of the pharmacy.

8.16(3) Assessment form. The components of this assessment shall be on a form prescribed by the board. In the event a pharmacy holds more than one type of license, the pharmacist in charge shall be required to complete all items on the form related to each type of pharmacy license the pharmacy holds. The board shall provide pharmacies with copies of the current forms for use in their self-assessments by the first day of January of each year. Copies of the current forms may also be obtained by request from the Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

8.16(4) Deficiencies. If the pharmacist in charge, while performing the assessment, finds deficiencies in the pharmacy's compliance with federal and state laws and regulations, the pharmacist in charge shall adopt and implement written procedures for coming into compliance with the relevant laws and regulations and shall attach the procedures to the self-assessment form. The pharmacist in charge shall be prepared to demonstrate to the board or an agent of the board how the procedures are being implemented.

8.16(5) Records retained. Pharmacies shall maintain the original of each signed and verified self-assessment form completed for the pharmacy for a period of three years after the self-assessment is performed. The original completed self-assessment shall be made available to the board or the board's agent upon request.

657—8.17(155A) Inadequate self-assessment of pharmacy.

8.17(1) Noncompliance with requirements. Failure to complete a self-assessment as required by subrule 8.16(1) or 8.16(2), or failure to retain the original completed self-assessment form or to make an original completed self-assessment form available to the board or the board's agent as required by subrule 8.16(5), may subject the pharmacy's license and the pharmacist in charge's license to disciplinary action.

8.17(2) Discrepancy with observed procedures. In the event a board investigator notes a discrepancy between the completed self-assessment and the investigator's observations of the pharmacy's compliance with federal and state laws and regulations, the pharmacist in charge shall complete a new assessment and submit it to the board within two weeks of receiving written notification of the discrepancy. Failure to submit a new assessment to the board within two weeks shall result in investigation of the pharmacy and the pharmacist in charge. If the investigation reveals that false or misleading information was included on self-assessment forms, the pharmacy's license and the pharmacist in charge's license may be subject to disciplinary action.

ITEM 4. Amend rule **657—15.9(124,126,155A)** by adopting the following new paragraph **"6"**:

6. Completion of all self-assessments of the pharmacy pursuant to rules 657—8.16(155A) and 657—8.17(155A).

ITEM 5. Amend subrule **36.1(4)** by adopting the following new paragraphs:

ac. Failure to perform or maintain the record of a self-assessment as required by 657—8.16(155A).

ad. Failure to perform and submit to the board a new self-assessment as required in 657—subrule 8.17(2).

ae. Inclusion of false or misleading information on self-assessment forms when performing the self-assessment required by 657—subrule 8.16(1), 8.16(2), or 8.17(2).

ARC 9408A

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Dietetic Examiners hereby gives Notice of Intended Action to amend Chapter 80, "Board of Dietetic Examiners," Iowa Administrative Code.

Items 1 and 2 pertain to changes in the process for examination completion and obtaining a temporary license. These amendments revise the process for obtaining a temporary license to be consistent with the changes in the process for completion of the required examination. The examination required for licensure candidates in Iowa is the Commission on Dietetic Registration (CDR) examination. The CDR examination has been changed to an automated format to increase accessibility for candidates to complete the examination.

Items 3 through 7 revise the continuing education requirements to be consistent with the new CDR process for recertification. The new requirements will allow for the consideration of additional continuing education activities that may not currently be recognized for continuing education credit in Iowa, if the activities are included in the individual licensee's CDR professional development portfolio.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Item 8 revises the dates pertaining to the review and response to continuing education applications.

Item 9 revises the record retention and reporting requirement for continuing education providers.

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

Any interested person may make written comments on the proposed amendments not later than October 26, 1999, addressed to Sharon Dozier, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

A public hearing will be held on October 26, 1999, from 10 a.m. to 12 noon in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa 50319-0075. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. The Board requests submission of a written copy of all oral comments presented at the hearing. Persons with disabilities requiring assistive services or devices to participate should contact the Department of Public Health and advise of special needs.

The Board has determined that the amendments will have no impact on small business within the meaning of Iowa Code section 17A.4A [1998 Iowa Acts, chapter 1202, section 10].

These amendments are intended to implement Iowa Code chapters 152A and 272C and Iowa Code section 147.55.

The following amendments are proposed.

ITEM 1. Amend subrule 80.5(1) as follows:

80.5(1) An applicant who will be taking the written examination ~~at the next regularly scheduled examination~~ *within four months following graduation* may be granted a temporary license if evidence of completion of the required academic and experience requirements for licensure is included with the application to the board. *The applicant must provide verification of the date of the scheduled examination to the board.*

ITEM 2. Amend subrule 80.5(4) as follows:

80.5(4) Applicants shall ~~notify the board, in writing,~~ *submit a notarized copy* of the results of the examination within two weeks of receipt of the results. Results shall be sent to the Board of Dietetic Examiners, Department of Public Health, Lucas State Office Building, ~~Fourth~~ *Fifth* Floor, Des Moines, Iowa 50319-0075.

ITEM 3. Amend subrule 80.100(4) as follows:

80.100(4) Hours of continuing education credit may be obtained by attending ~~and participating in~~ a continuing education ~~activity~~ *program* offered within the state of Iowa which has prior approval by the board~~.~~, *or through participation in other types of activities identified in the individual licensee's professional development portfolio for Commission on Dietetic Registration (CDR) certification. Programs or activities not otherwise prior approved by the board shall be subject to approval in the event of an audit.*

ITEM 4. Amend subrule 80.101(1) as follows:

80.101(1) Obtaining continuing education. Hours of continuing education credit may be obtained by *one of the following:*

a. ~~attending~~ *Attending* and participating in a continuing education activity offered within the state of Iowa which has prior approval by the board. If the continuing education activity is attended outside the state of Iowa, the continuing education hours can be accrued if the session meets the criteria of the board for subject matter. ~~and is approved by the Commission on Dietetic Registration of the American Dietetic Association.~~

b. Attending or participating in continuing education activities that are identified to meet specified objectives in conjunction with the Commission on Dietetic Registration (CDR) professional development portfolio for the licensee. Programs or activities not otherwise approved by the board shall be subject to approval in the event of an audit.

ITEM 5. Amend subrule **80.101(2)** by adopting the following **new** paragraph **"d"**:

d. Dietetic practice related to community health care needs.

ITEM 6. Amend subrule 80.101(3) as follows:

80.101(3) Standards for approval of continuing *professional* education, programs and activities. *Program offerings must be conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered experts concerning the subject matter of the program.* A continuing education activity shall be qualified for approval if the board determines that:

a. It ~~constitutes an organized program of learning (including a workshop or symposium) which~~ contributes directly to the professional competency of the licensee; and

b. It pertains to subject matters which relate integrally to the practice of dietetics. ~~and is in compliance with the continuing education guidelines of the board; and~~

~~c. It is conducted by individuals who have a special education, training and experience by reason of which said individuals should be considered experts concerning the subject matter of the program.~~

ITEM 7. Adopt the following **new** subrule:

80.101(8) Other professional education activities. Unless otherwise addressed in these rules, activities designed to address learning needs documented in the individual licensee's CDR professional development portfolio will be reviewed based on the following:

1. A narrative of how the activity relates to the individual learning plan.

2. A summary of how the activity will be evaluated to ensure achievement of the planned outcomes.

ITEM 8. Amend subrule 80.102(1) as follows:

80.102(1) Prior approval of activities. An organization or person ~~which~~ *that* seeks prior approval of a course, ~~or program~~ *program, or activity* shall apply to the board for approval on a form provided by the board at least ~~60~~ *30* days in advance of the commencement of the activity. The application shall state the dates, subjects offered, objectives for the activity, total hours of instruction, names and qualifications of speakers and other pertinent information. The board shall approve or deny such application within ~~90~~ *60* days of receipt of the application. ~~The provider shall submit an attendance list of Iowa-licensed persons attending within 30 days after the conclusion of the program to the board office.~~

ITEM 9. Amend rule 645—80.104(152A) as follows:

645—80.104(152A) ~~Report of providers and retention of records.~~ *Retention of continuing education records.* Each

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

continuing education provider shall ~~submit a list~~ *maintain a record by course offering* of Iowa-licensed dietitians and number of continuing education hours earned ~~on a form provided by the board within 30 days after the program is completed~~ *for a minimum of four years from the date of the program.* The licensee shall maintain a record of proof of attendance at each continuing education program for a period of at least four years from the date of completing the continuing education.

ARC 9416A

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 135.105A, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 70, "Lead Professional Certification," Iowa Administrative Code.

Iowa Code section 135.105A directs the Department of Public Health to establish a program for the training and certification of lead inspectors and lead abaters and states that a person shall not perform lead abatement or lead inspections unless the person has completed a training program approved by the Department and has obtained certification. Property owners are required to be certified only if the property in which they will perform lead inspections or lead abatement is occupied by a person other than the owner or a member of the owner's immediate family while the measures are being performed.

A person may be certified as both a lead inspector and a lead abater. However, a person who is certified as both shall not provide both inspection and abatement services at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site. Iowa's law stipulates that it could take effect only after the Department of Public Health obtained authorization from the U.S. Environmental Protection Agency (EPA) for its program to train and certify lead inspectors and abaters. Iowa's program was authorized by the U.S. EPA on July 13, 1999. In addition, on July 29, 1999, the U.S. EPA extended the federal deadline for lead professionals to be certified from August 31, 1999, to March 1, 2000.

The proposed amendments extend Iowa's deadline for certification to the new federal deadline of March 1, 2000, and incorporate other changes recommended by the U.S. EPA in its review of Iowa's program. While U.S. EPA regulations refer to children six years or under, federal legislation refers to children under the age of six years. The U.S. EPA is changing its regulations to refer to children under the age of six years and has asked the authorized states to do the same. The definition of "certified lead professional" has been changed to include the discipline of project designer. The definition of "elevated blood lead child" has been changed to clarify that children with blood lead levels equal to 20 micrograms per deciliter are included in addition to children with blood lead levels greater than 20 micrograms per deciliter.

A provision for interim certification has been added to allow lead professionals who have passed an approved course up to six months to pass the state certification examination. Federal regulations stipulate that the state certification examination may not be administered by the provider of an approved training course; therefore, this provision has been added to these amendments. The requirement for certified lead abatement workers and certified visual risk assessors to pass a state certification examination has been removed since this is not required by federal regulations for these two disciplines.

The required length of refresher training courses for certified lead inspectors and elevated blood lead inspectors has been changed from 8 hours to 16 hours since a 16-hour course is required by the federal regulations for these two disciplines. In addition, certified lead inspectors who completed an approved 24-hour training course and elevated blood lead inspectors who completed an approved 32-hour training course must complete 16 hours of additional training and an 8-hour refresher course before recertification. The date by which certified lead professionals must meet education and experience requirements has been changed from March 31, 1999, to September 1, 1999, since Iowa's program was not authorized until July 13, 1999. To be consistent with federal regulations, lead professionals who completed approved courses more than three years before being recertified under Iowa's authorized program must complete an 8-hour refresher course.

The Department has determined that these amendments are not subject to waiver or variance because Iowa's program must be as protective as the U.S. EPA regulations which do not allow variances or waivers.

Consideration will be given to all written suggestions or comments on the proposed amendments on or before October 26, 1999. Such written materials should be sent to the Lead Poisoning Prevention Program, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319; E-mail rgergely@idph.state.ia.us; fax (515) 281-4529.

Also, there will be a public hearing on October 26, 1999, 10 a.m. (local Iowa time) over the Iowa Communications Network (ICN) at which time persons may present their views. The sites for the public hearing are as follows:

- Atlantic National Guard Armory, 201 Poplar, Atlantic
- Carroll High School, ICN Classroom A169, Carroll
- Department of Human Services, 411 3rd Street SE, Suite 500, Cedar Rapids
- Iowa Department of Education, ICN Room, 2nd Floor, Grimes State Office Building, Des Moines
- Dubuque Community School District, ICN Classroom, 2300 Chaney, 2nd Floor, Dubuque
- North Iowa Area Community College, Classroom 2, Careers Building 128, 500 College Drive, Mason City
- Ottumwa National Guard Armory, ICN Room, 2858 North Court Road, Ottumwa

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9415A**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 135.105A.

ARC 9417A

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 135.105A, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 70, "Lead Professional Certification," Iowa Administrative Code.

The proposed amendments change the name of the lead inspector discipline to lead inspector/risk assessor and change the name of the elevated blood lead (EBL) inspector discipline to elevated blood lead (EBL) inspector/risk assessor. This change was requested by currently certified inspectors who anticipate working in other states. In many other states, "inspector" and "risk assessor" are separate disciplines. Iowa's current rules combine the training, education, and experience requirements for inspectors and risk assessors, but call the discipline "lead inspector." Inspectors who anticipate working in other states are concerned that other states will not realize that they meet the requirements for both "inspector" and "risk assessor" unless the term "risk assessor" is included in the name of the discipline. In addition, the proposed amendments change the experience requirement for lead abatement contractors from one year as a certified lead abatement worker or two years in building trades to one year as a certified lead abatement contractor or two years of related experience or education (lead, housing inspection, building trades, property management and maintenance). This change was requested by staff of the City of Dubuque Housing Services Department because they are concerned that there will not be enough certified lead abatement contractors under the current requirements to complete the work in the city's lead hazard remediation program that is funded by the U.S. Department of Housing and Urban Development. This proposed change would meet the requirement that these rules be as protective as the U.S. EPA requirements for certified lead abatement contractors.

The Department has determined that these rules are not subject to waiver or variance because Iowa's program must be as protective as the U.S. EPA regulations, which do not allow variances or waivers.

Consideration will be given to all written suggestions or comments on the proposed amendments on or before October 26, 1999. Such written materials should be sent to the Lead Poisoning Prevention Program, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319; E-mail rgergely@idph.state.ia.us; fax (515) 281-4529.

Also, there will be a public hearing on October 26, 1999, at 10 a.m. (local Iowa time) over the Iowa Communications Network (ICN) at which time persons may present their views. The sites for the public hearing are as follows:

- Atlantic National Guard Armory, 201 Poplar, Atlantic
- Carroll High School, ICN Classroom A169, Carroll
- Department of Human Services, 411 3rd Street SE, Suite 500, Cedar Rapids
- Iowa Department of Education, ICN Room, 2nd Floor, Grimes Building, Des Moines
- Dubuque Community School District ICN Classroom, 2300 Chaney, 2nd Floor, Dubuque
- North Iowa Area Community College, Classroom 2, Careers Building 128, 500 College Drive, Mason City
- Ottumwa National Guard Armory, ICN Room, 2858 North Court Road, Ottumwa

These amendments are intended to implement Iowa Code section 135.105A.

The following amendments are proposed.

ITEM 1. Amend the following definitions in rule **641—70.2(135)**:

"Certified elevated blood lead (EBL) inspector/*risk assessor*" means a person who has met the requirements of 641—70.5(135) and who has been certified by the department.

"Certified lead inspector/*risk assessor*" means a person who has met the requirements of 641—70.5(135) and who has been certified by the department.

"Certified lead professional" means a person who has been certified by the department as a lead inspector/*risk assessor*, elevated blood lead (EBL) inspector, lead abatement contractor, lead abatement worker, or visual risk assessor.

"Discipline" means one of the specific types or categories of lead-based paint activities identified in this chapter for which individuals may receive training from approved courses and become certified by the department. For example, "lead inspector/*risk assessor*" is a discipline.

ITEM 2. Amend rule 641—70.3(135) as follows:

641—70.3(135) Certification. Prior to August 1, 1999, lead professionals may be certified by the department. Beginning August 1, 1999, lead professionals must be certified by the department in the appropriate discipline before they conduct lead abatement, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, and visual risk assessments, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person other than the owner or a member of the owner's immediate family while these activities are being performed. In addition, elevated blood lead (EBL) inspections shall be conducted only by certified elevated blood lead (EBL) ~~inspectors~~ *inspector/risk assessors* employed by or under contract with a certified elevated blood lead (EBL) inspection agency. Lead professionals shall not state that they have been certified by the state of Iowa unless they have met the requirements of rule 70.5(135) and been issued a certificate by the department. Prior to August 1, 1999, elevated blood lead (EBL) inspection agencies may be certified by the department. Beginning August 1, 1999, elevated blood lead (EBL) inspection agencies must be certified by the department. Elevated blood lead (EBL) inspection agencies shall not state that they have been certified by the state of Iowa unless they have met the requirements of rule 70.5(135) and been issued a certificate by the department.

ITEM 3. Amend subrule **70.4(1)**, paragraph **"b,"** subparagraph **(2)**, as follows:

(2) Certification as a lead inspector/*risk assessor*, elevated blood lead (EBL) inspector/*risk assessor*, or lead abatement contractor.

ITEM 4. Amend subrule **70.4(3)**, introductory paragraph and paragraph **"a,"** as follows:

70.4(3) To be approved for the training of lead ~~inspectors~~ *inspector/risk assessors* prior to March 1, 1999, a course

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must be at least 24 training hours with a minimum of 8 hours devoted to hands-on training activities. Beginning March 1, 1999, a course must be at least 40 training hours with a minimum of 12 hours devoted to hands-on training activities. Lead inspector/*risk assessor* training courses shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of an inspector/*risk assessor.*

ITEM 5. Amend subrule **70.4(4)**, introductory paragraph and paragraph **"a,"** as follows:

70.4(4) To be approved for the training of elevated blood lead (EBL) ~~inspectors~~ *inspector/risk assessors* prior to March 1, 1999, a course must be at least 32 training hours with a minimum of 8 hours devoted to hands-on training activities. Beginning March 1, 1999, a course must be at least 48 training hours with a minimum of 12 hours devoted to hands-on training activities. Elevated blood lead (EBL) inspector/*risk assessor* training courses shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of an elevated blood lead (EBL) inspector/*risk assessor.*

ITEM 6. Amend subrule **70.5(1)**, paragraph **"c,"** as follows:

c. A person wishing to become a certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* shall provide documentation of successful completion of the manufacturer's training course or equivalent for the X-ray fluorescence (XRF) analyzer that the inspector/*risk assessor* will use to conduct lead inspections.

ITEM 7. Amend subrule **70.5(2)**, introductory paragraph and paragraph **"a,"** as follows:

70.5(2) To become certified by the department as a lead inspector/*risk assessor,* elevated blood lead (EBL) inspector/*risk assessor,* lead abatement contractor, lead abatement worker, or visual risk assessor, an applicant must meet the education and experience requirements for the appropriate discipline:

a. Lead ~~inspectors~~ *inspector/risk assessors* and elevated blood lead (EBL) ~~inspectors~~ *inspector/risk assessors* must meet one of the following requirements:

ITEM 8. Amend subrule **70.5(2)**, paragraph **"b,"** subparagraph **(2)**, as follows:

(2) Two years of *related* experience *or education* ~~in building trades~~ *(e.g., lead, housing inspection, building trades, property management and maintenance).*

ITEM 9. Amend subrule **70.5(3)**, paragraphs **"b"** and **"c,"** as follows:

b. For lead ~~inspectors~~ *inspector/risk assessors,* a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(3).

c. For elevated blood lead (EBL) ~~inspectors~~ *inspector/risk assessors,* a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(4).

ITEM 10. Amend subrule **70.5(4)**, paragraph **"c,"** as follows:

c. Documentation that the agency employs or has contracted with a certified elevated blood lead (EBL) inspector/*risk assessor* to provide environmental case management of all elevated blood lead (EBL) children in the agency's service area, including follow-up to ensure that lead-based paint hazards identified as a result of elevated blood lead (EBL) inspections are corrected.

ITEM 11. Amend subrule 70.5(6), introductory paragraph, as follows:

70.5(6) The department shall develop and administer the state certification examinations for the disciplines of lead inspector/*risk assessor,* elevated blood lead (EBL) inspector/*risk assessor,* lead abatement contractor, lead abatement worker, and visual risk assessor.

ITEM 12. Amend subrule 70.6(2) as follows:

70.6(2) A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* must conduct lead inspections according to the following standards. Beginning on August 1, 1999, lead inspections shall be conducted only by a certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor.*

a. When conducting an inspection, the inspector/*risk assessor* shall use the documented methodologies, including selection of rooms and components for sampling or testing, specified in Chapter 7 of the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development).

b. No change.

c. If lead-based paint is identified through an inspection, the inspector/*risk assessor* must conduct a visual inspection to determine the presence of lead-based paint hazards and any other potential lead hazards.

d. A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* shall prepare a written report for each residential dwelling or child-occupied facility inspected and shall provide a copy of this report to the person requesting the inspection. A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* shall maintain a copy of each written report for no fewer than three years. The inspection report shall include, at least:

(1) to (5) No change.

(6) Name, signature, and certification number of each certified lead inspector/*risk assessor* or certified elevated blood lead inspector/*risk assessor* conducting the investigation;

(7) to (12) No change.

ITEM 13. Amend subrule 70.6(3) as follows:

70.6(3) A certified elevated blood lead (EBL) inspector/*risk assessor* must conduct elevated blood lead (EBL) inspections according to the following standards. Beginning on August 1, 1999, EBL inspections shall be conducted only by a certified EBL inspector/*risk assessor.*

a. When conducting an elevated blood lead (EBL) inspection, the elevated blood lead (EBL) inspector/*risk assessor* shall use the documented methodologies, including selection of rooms and components for sampling or testing, specified in Chapter 7 of the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development).

b. No change.

c. If lead-based paint is identified through an inspection, the inspector/*risk assessor* must conduct a visual inspection

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to determine the presence of lead-based paint hazards and any other potential lead hazards.

d. A certified elevated blood lead (EBL) inspector/*risk assessor* shall prepare a written report for each residential dwelling or child-occupied facility where an elevated blood lead (EBL) inspection has been conducted and shall provide a copy of this report to the owner and the occupant of the dwelling. The report shall include, at least:

(1) to (5) No change.

(6) Name, signature, and certification number of each certified elevated blood lead (EBL) inspector/*risk assessor* conducting the investigation;

(7) to (12) No change.

e. A certified elevated blood lead (EBL) inspector/*risk assessor* shall maintain a written record for each residential dwelling or child-occupied facility where an elevated blood lead (EBL) inspection has been conducted for no fewer than ten years. The record shall include, at least:

(1) to (4) No change.

ITEM 14. Amend subrule **70.6(4)**, introductory paragraph and paragraph **"h,"** as follows:

70.6(4) A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* must conduct lead hazard screens according to the following standards. Beginning on August 1, 1999, lead hazard screens shall be conducted only by a certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor.*

h. A certified lead inspector/*risk assessor* or a certified elevated blood lead inspector/*risk assessor* shall prepare a written report for each residential dwelling or child-occupied facility where a lead hazard screen is conducted and shall provide a copy of this report to the person requesting the lead hazard screen. A certified lead inspector/*risk assessor* or a certified elevated blood lead inspector/*risk assessor* shall maintain a copy of each written report for no fewer than three years. The report shall include, at least:

(1) to (5) No change.

(6) Name, signature, and certification number of each certified lead inspector/*risk assessor* or certified elevated blood lead inspector/*risk assessor* conducting the investigation;

(7) to (14) No change.

ITEM 15. Amend subrule 70.6(5) as follows:

70.6(5) A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* must conduct risk assessments according to the following standards. Beginning on August 1, 1999, risk assessments shall be conducted only by a certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor.*

a. to e. No change.

f. In multifamily dwellings and child-occupied facilities, dust samples shall also be collected from common areas adjacent to the sampled residential dwellings or child-occupied facility and in other common areas where the lead inspector/*risk assessor* or elevated blood lead (EBL) inspector/*risk assessor* determines that at least one child six years of age or less is likely to come in contact with dust. Dust samples may be either composite or single-surface samples.

g. In child-occupied facilities, dust samples shall be collected from the window well, window trough, and floor in each room, hallway, or stairwell utilized by one or more children, six years of age or less, and in other common areas where the lead inspector/*risk assessor* or elevated blood lead (EBL) inspector/*risk assessor* determines that at least one child six years of age or less is likely to come in contact with dust. Dust samples may be either composite or single-surface samples.

h. to j. No change.

k. A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* shall prepare a written report for each residential dwelling or child-occupied facility where a risk assessment is conducted and shall provide a copy of the report to the person requesting the risk assessment. A certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* shall maintain a copy of the report for no fewer than three years. The report shall include, at least:

(1) to (5) No change.

(6) Name, signature, and certification number of each certified inspector/*risk assessor* conducting the investigation;

(7) to (16) No change.

ITEM 16. Amend subrule **70.6(6)**, paragraph **"g,"** introductory paragraph and subparagraph (7), as follows:

g. Postabatement clearance procedures shall be conducted by a certified lead inspector/*risk assessor* or a certified elevated blood lead (EBL) inspector/*risk assessor* using the following procedures:

(7) The certified lead inspector/*risk assessor* or certified elevated blood lead (EBL) inspector/*risk assessor* shall compare the residual lead level as determined by the laboratory analysis from each dust sample with applicable clearance levels for lead in dust on floors and window troughs. If the residual lead levels in a dust sample exceed the clearance levels, then all the components represented by the failed dust sample shall be recleaned and retested until clearance levels are met.

ITEM 17. Amend subrule **70.6(6)**, paragraph **"i,"** subparagraph (4), as follows:

(4) The name, address, and signature of each certified lead inspector/*risk assessor* or certified elevated blood lead (EBL) inspector/*risk assessor* conducting clearance sampling, the date on which the clearance testing was conducted, and the results of all postabatement clearance testing and all soil analyses, if applicable.

ITEM 18. Amend subrule **70.6(7)**, introductory paragraph and paragraph **"c,"** as follows:

70.6(7) A certified lead inspector/*risk assessor,* a certified elevated blood lead (EBL) inspector/*risk assessor,* or a certified visual risk assessor must conduct visual risk assessments according to the following standards. Beginning on August 1, 1999, visual risk assessments shall be conducted only by a certified lead inspector/*risk assessor,* a certified elevated blood lead (EBL) inspector/*risk assessor,* or a certified visual risk assessor.

c. A certified lead inspector/*risk assessor,* a certified elevated blood lead (EBL) inspector/*risk assessor,* or a certified visual risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where a visual risk assessment is conducted and shall provide a copy of the report to the person requesting the visual risk assessment. A certified lead inspector/*risk assessor,* a certified elevated blood lead (EBL) inspector/*risk assessor,* or a certified visual risk assessor shall maintain a copy of the report for no fewer than three years. The report shall include, at least:

(1) to (5) No change.

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(6) Name, signature, and certification number of each certified visual assessor, certified lead inspector/*risk assessor*, or certified elevated blood lead (EBL) inspector/*risk assessor* conducting the visual risk assessment;

(7) and (8) No change.

ITEM 19. Amend subrule 70.6(9) as follows:

70.6(9) A person may be certified as a lead inspector/*risk assessor*, visual risk assessor, or elevated blood lead (EBL) inspector/*risk assessor* and as a lead abatement contractor or lead abatement worker. However, a person who is certified both as a lead inspector/*risk assessor*, visual risk assessor, or elevated blood lead (EBL) inspector/*risk assessor* and as a lead abatement contractor or lead abatement worker shall not provide both lead inspection or visual risk assessment and lead abatement services at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site.

ITEM 20. Amend subrule 70.6(10) as follows:

70.6(10) Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this rule shall be collected by persons certified as a lead inspector/*risk assessor* or an elevated blood lead (EBL) inspector/*risk assessor*. These samples shall be analyzed by a recognized laboratory.

ARC 9418A

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 135.11 and 1999 Iowa Acts, Senate File 276, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 201, "Organized Delivery Systems," Iowa Administrative Code.

The proposed additions and amendments address a variety of organized delivery system and policy requirements. "Emergency services" has been defined and must be a covered treatment for organized delivery systems subject to Department of Public Health regulation. An organized delivery system must provide continuity of care for pregnancy and terminal illness. Organized delivery systems must also set up procedures to review coverage for experimental treatment when such treatment is limited or denied. Utilization review requirements have been defined. A process for external review of coverage denial decisions has been outlined and must be implemented by organized delivery systems subject to Department of Public Health regulation. These amendments also provide a mechanism for the appeal of a denial of coverage based on medical necessity. These additions and amendments are required to implement 1999 Iowa Acts, Senate File 276.

These rules are not subject to waiver or variance because 1999 Iowa Acts, Senate File 276 [Iowa Code chapter 514J], provides no such provision. The requirements listed herein are taken directly from the statutory provisions that are not subject to waiver.

Any person may make written comments on the proposed amendments and additions on or before October 26, 1999. These comments should be directed to Mariette Brodeur, Senior Health Regulation and Policy Advisor, Department of Public Health, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may also be transmitted by fax to (515)281-4958 or by E-mail to Mbrodeur@health.state.ia.us.

Also, there will be a public hearing on October 26, 1999, from 11 a.m. to 12 noon utilizing the Iowa Communications Network at which time persons may present their views. The following ICN sites have been confirmed for the hearing:

Des Moines	Department of Education, 2nd Floor ICN Conference Room, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319
Mason City	North Iowa Area Community College, Classroom 2, Careers Bldg. 128, 500 College Drive, Mason City, Iowa 50401 Contact: Linda Rourick (515)422-4336
Burlington	Burlington High School, ICN Classroom, 421 Terrace Dr., Burlington, Iowa 52601 Contact: Dr. Jim Wood (319)753-2211
Keokuk	Keokuk High School, Education Tech Center, 727 Washington St., Keokuk, Iowa 52632 Contact: Lora Wolff (319)524-4611
Sioux City	Department of Human Services, Trospar-Hoyt Building, 4th Floor, 822 Douglas St., Sioux City, Iowa 51109 Contact: Linda Sanchez (712)255-2668 or (712)255-9833

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

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

The following amendments are proposed.

ITEM 1. Amend rule **641—201.2(135,75GA,ch158)** as follows:

Adopt the following **new** definitions in alphabetical order:

"Coverage decision" means a final adverse decision based on medical necessity. This definition does not include a denial of coverage for a service or treatment specifically listed in plan or evidence of coverage documents as excluded from coverage.

"Emergency medical condition" means a medical condition that manifests itself by symptoms of sufficient severity, including but not limited to severe pain, that an ordinarily prudent person, possessing average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in one of the following:

1. Placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

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2. Serious impairment to bodily function.
3. Serious dysfunction of a bodily organ or part.

"Enrollee" means an individual, or an eligible dependent, who receives health care benefits coverage through an organized delivery system.

"Independent review entity" means a reviewer or entity, certified by the commissioner pursuant to Iowa Code section 514J.6 [1999 Iowa Acts, Senate File 276, section 12].

"Utilization review" means a program or process by which an evaluation is made of the necessity, appropriateness, and efficiency of the use of health care services, procedures, or facilities given or proposed to be given to an individual within this state. Such evaluation does not apply to requests by an individual or provider for a clarification, guarantee, or statement of an individual's health insurance coverage or benefits provided under a health insurance policy, nor to claims adjudication. Unless it is specifically stated, verification of benefits, preauthorization, or a prospective or concurrent utilization review program or process shall not be construed as a guarantee or statement of insurance coverage or benefits for any individual under a health insurance policy.

Rescind the definition of "Emergency services" and adopt the following **new** definition in lieu thereof:

"Emergency services" means covered inpatient and outpatient health care services that are furnished by a health care provider who is qualified to provide the services that are needed to evaluate or stabilize an emergency medical condition.

ITEM 2. Amend rule 641—201.6(135,75GA,ch158), catchwords, as follows:

641—201.6(135,75GA,ch158,*78GA,SF276*) Provider network and contracts*; treatment and services.*

ITEM 3. Amend subrule 201.6(6) as follows:

201.6(6) Emergency services. Emergency services ~~(inpatient and outpatient)~~, as defined in rule 201.2(135,75GA, ch158), shall be provided by the ODS, either through its own facilities or through guaranteed arrangements with other providers, on a 24-hour basis.

a. to c. No change.

d. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. *Coverage for emergency services is subject to the terms and conditions of the health plan or contract.*

e. No change.

f. Prior authorization for emergency services shall not be required. All services necessary to evaluate and stabilize an emergency medical condition shall be considered covered emergency services.

ITEM 4. Amend subrule 201.6(8) as follows:

201.6(8) Prohibition of interference with medical communications.

a. An ODS shall not prohibit, *penalize* or otherwise restrict a participating provider from advising an enrollee of the ODS about the health status of the enrollee or medical care or treatment of the enrollee's condition or disease, regardless of whether benefits for such care or treatment are provided under the plan, if the provider is acting within the lawful scope of practice.

b. An ODS shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the ODS that, in the opinion of the provider, jeopardizes patient health or welfare.

c. An ODS shall not prohibit, penalize, or otherwise restrict a provider from advocating on behalf of a covered individual within a review or grievance process established by the organized delivery system.

ITEM 5. Amend rule 641—201.6(135,75GA,ch158) by adopting the following **new** subrules:

201.6(9) Continuity of care—pregnancy.

a. An ODS that terminates its contract with a participating health care provider shall continue to provide coverage under the contract to a covered person in the second or third trimester of pregnancy for continued care from such health care provider. Such persons may continue to receive such treatment or care through postpartum care related to the child birth and delivery. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the contract.

b. A covered person who makes an involuntary change in health plans may request that the new health plan cover the services of the covered person's physician specialist who is not a participating health care provider under the new health plan, if the covered person is in the second or third trimester of pregnancy. Continuation of such coverage shall continue through postpartum care related to the child birth and delivery. Payment for covered benefits and benefit level shall be according to the terms and conditions of the new health plan contract.

c. An ODS that terminates the contract of a participating health care provider for cause shall not be liable to pay for health care services provided by the health care provider to a covered person following the date of termination.

201.6(10) Continuity of care—terminal illness.

a. If an ODS terminates its contract with a participating health care provider, a covered individual who is undergoing a specified course of treatment for a terminal illness or a related condition, with the recommendation of the covered individual's treating physician licensed under Iowa Code chapter 148, 150, or 150A, may continue to receive coverage for treatment received from the covered individual's physician for the terminal illness or a related condition, for a period of up to 90 days. Payment for covered benefits and benefit level shall be according to the terms and conditions of the contract.

b. A covered person who makes a change in health plans involuntarily may request that the new health plan cover services of the covered person's treating physician licensed under Iowa Code chapter 148, 150, or 150A, who is not a participating health care provider under the new health plan, if the covered person is undergoing a specified course of treatment for a terminal illness or a related condition. Continuation of such coverage shall continue for up to 90 days. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the contract.

c. Notwithstanding paragraphs "a" and "b" above, an ODS that terminates the contract of a participating health care provider for cause shall not be required to cover health care services provided by the health care provider to a covered person following the date of termination.

201.6(11) Experimental treatment review. An ODS that limits coverage for experimental medical treatment, drugs, or devices, shall develop and implement a procedure to evaluate experimental medical treatments.

a. A description of the procedure must be submitted to the division of insurance in writing and include, at a minimum:

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(1) The process used to determine whether the ODS will provide coverage for new medical technologies and new uses of existing technologies;

(2) A requirement for review of information from appropriate government regulatory agencies and published scientific literature concerning new medical technologies, new uses of existing technologies, and the use of external experts in making decisions; and

(3) A process for a person covered under a plan or contract to request an appeal of a denial of coverage because the proposed treatment is experimental.

b. An evaluation of a particular treatment shall not be required more than once a year.

c. An ODS shall include appropriately licensed or qualified professionals in the evaluation process.

d. An ODS that limits coverage for experimental treatment, drugs, or devices shall clearly disclose such limitations in a contract, policy, or certificate of coverage.

201.6(12) Utilization review requirements. An organized delivery system that provides health benefits to a covered individual residing in this state shall not conduct utilization review, either directly or indirectly, under a contract with a third party who does not meet the requirements established for accreditation by the Utilization Review Accreditation Commission, National Committee on Quality Assurance, or another national accreditation entity recognized and approved by the commissioner. This subrule does not apply to any utilization review performed solely under contract with the federal government for review of patients eligible for services under any of the following:

1. Title XVIII of the federal Social Security Act.
2. The civilian health and medical program of the uniformed services.
3. Any other federal employee health benefit plan.

ITEM 6. Adopt **new** rule 641—201.18(135,78GA, SF276) as follows:

641—201.18(135,78GA,SF276) External review. This rule is intended to implement the provisions of 1999 Iowa Acts, Senate File 276, to provide a uniform process for enrollees of organized delivery systems to appeal a final adverse coverage decision based on medical necessity. This rule applies to any ODS that issues health plans or policies delivered in the state of Iowa. At the time of a coverage decision, an organized delivery system shall notify the enrollee in writing of the right to have the coverage decision reviewed under the external review process established pursuant to 1999 Iowa Acts, Senate File 276, by the division of insurance. The request for an external review shall meet the requirements of the commissioner contained at 191—Chapter 76.

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

NOTICE—USURY

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

September 1, 1998 — September 30, 1998	7.50%
October 1, 1998 — October 31, 1998	7.25%
November 1, 1998 — November 30, 1998	6.75%
December 1, 1998 — December 31, 1998	6.50%
January 1, 1999 — January 31, 1999	6.75%
February 1, 1999 — February 28, 1999	6.75%
March 1, 1999 — March 31, 1999	6.75%
April 1, 1999 — April 30, 1999	7.00%
May 1, 1999 — May 31, 1999	7.25%
June 1, 1999 — June 30, 1999	7.25%
July 1, 1999 — July 31, 1999	7.50%
August 1, 1999 — August 31, 1999	8.00%
September 1, 1999 — September 30, 1999	8.00%
October 1, 1999 — October 31, 1999	8.00%

ARC 9400A

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4, 476.1, 476.2, 479.29, 479A.14, and 479B.20, the Iowa Utilities Board (Board) gives notice that on September 15, 1999, the Board issued an order in Docket No. RMU-99-10, In re: Restoration of Agricultural Lands During and After Pipeline Construction. The Board is proposing to rescind current 199 IAC Chapter 9 and replace it with a new Chapter 9. Currently, Chapter 9 sets the standards for underground improvements, soil conservation structures, and restoration of agricultural lands after pipeline construction. The rules apply to intrastate pipelines, interstate pipelines, and hazardous liquid pipelines.

The Board's proposed new Chapter 9 is intended to implement the changes adopted in 1999 Iowa Acts, Senate File 160, including prescribing standards for the restoration of land for agricultural purposes during and after pipeline construction. The legislation amended Iowa Code sections 479.29, 479.45, 479.48, 479A.14, 479A.24, 479A.27, 479B.20, 479B.29, and 479B.32.

1999 Iowa Acts, Senate File 160, amended Iowa Code chapters 479, 479A, and 479B to focus the Board's authority to establish standards for the restoration of agricultural lands during and after pipeline construction. The amendments direct the Board to adopt rules which include a list of items in the statutes. The legislation affirms the county boards of supervisors' authority to inspect projects and gives the county boards of supervisors the authority to file a complaint with the Board in order to seek civil penalties for noncompliance with various requirements. The new chapter requires petitioners for pipeline construction to file a written land restoration plan and provide copies to all landowners. The statute allows the application of different provisions which are contained in agreements with landowners and defines compensable losses.

In the new Chapter 9, the Board sets out a procedure for review of land restoration plans. Those pipeline companies which are subject to Iowa Code chapters 479 and 479B and, therefore, must file an application for permit shall file a land restoration plan at the time they file an application for permit or application for amendment of permit with the Board. Interstate pipeline companies that are subject to Iowa Code chapter 479A must file a land restoration plan at least 120 days prior to construction in order to allow the Board adequate time to review the plan prior to the commencement of

UTILITIES DIVISION[199](cont'd)

construction. The proposed rules describe the contents of a land restoration plan and then set out detailed requirements for land restoration.

Pursuant to Iowa Code section 479.29(1), the Board will distribute copies of this Notice of Intended Action to each county board of supervisors. This Notice will inform them of the opportunity for oral presentation. Because of the numerous issues involved in this proceeding, the Board would like to encourage a free exchange of information and ideas. With that in mind, the Board will select a workshop format for oral presentation of comments. Interested persons shall file statements of position no later than October 28, 1999, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069. The statements should indicate whether the person will participate in the workshop. After receipt of the statements, the Board will prepare an agenda for the workshop and distribute it to all who have filed statements. The contact person for the workshop is Vicki Place, who can be reached at (515) 281-6104. The workshop will be scheduled for November 17, 1999, at 10 a.m. in the Utilities Board's Hearing Room, 350 Maple Street, Des Moines, Iowa. Pursuant to 199 IAC 3.7(17A,474), all interested persons may participate in this proceeding. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

These rules are intended to implement Iowa Code chapters 479, 479A, and 479B.

The following amendment is proposed.

Rescind 199—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE CONSTRUCTION

199—9.1(479,479A,479B) General information.

9.1(1) Authority. The standards contained herein are prescribed by the Iowa utilities board pursuant to the authority granted to the board in Iowa Code sections 479.29, 479A.14, and 479B.20, relating to land restoration standards for pipelines.

9.1(2) Purpose. The purpose of this chapter is to establish standards for the restoration of agricultural lands during and after pipeline construction. Agricultural lands disturbed by pipeline construction shall be restored in compliance with these rules.

9.1(3) Definitions. The following words and terms, when used in these rules, shall have the meanings indicated below:

a. "Agricultural land" shall mean:

(1) Land which is presently under cultivation, or

(2) Land which has previously been cultivated and not subsequently developed for nonagricultural purposes, or

(3) Cleared land capable of being cultivated.

b. "Drainage structures" or "underground improvements" means any permanent structure used for draining agricultural lands including tile systems and buried terrace outlets.

c. "Landowner" means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property. The term landowner may also include tenants if the tenant has a property interest in the affected land or the authorized representative of the landowner or tenant.

d. "Pipeline" means any pipe, pipes, or pipelines used for the transportation or transmission of any solid, liquid, or gaseous substance, except water, in intrastate or interstate commerce.

e. "Pipeline company" means any person, firm, copartnership, association, corporation, or syndicate engaged in or organized for the purpose of owning, operating, or controlling pipelines.

f. "Pipeline construction" means scheduled installation of a new pipeline and replacement or removal of a previously constructed pipeline, but shall not include normal maintenance or emergency construction.

g. "Soil conservation practices" means any land conservation practice recognized by soil conservation agencies including grasslands and grassed waterways, hay land planting, pasture, and timber.

h. "Soil conservation structures" means any permanent structure recognized by soil conservation agencies including but not limited to toe walls, drop inlets, grade control works, terraces, levees, and farm ponds.

i. "Till" means to loosen the soil in preparation for planting or seeding by plowing, chiseling, discing, or similar means. For the purposes of this chapter, agricultural land planted using no-till planting practices is also considered tilled.

j. "Topsoil" means the uppermost part of the soil frequently designated as the plow layer, or the soil depth sometimes referred to as the A horizon. The A horizon means the depth of the soil that is ordinarily moved in tillage, or its equivalent in uncultivated soils.

199—9.2(479,479A,479B) Filing of land restoration plans. Land restoration plans shall be prepared pursuant to Iowa Code sections 479.29(9) and 479B.20(9) for pipeline construction projects requiring a permit or an amendment to a permit which proposes pipeline construction or relocation. Plans for pipeline construction projects requiring a certificate from the federal energy regulatory commission shall be prepared pursuant to Iowa Code section 479A.14(9).

a. Content of plan. A land restoration plan shall include but not be limited to the following:

(1) A brief description of the purpose and nature of the pipeline construction project.

(2) A description of the sequence of events that will occur during pipeline construction.

(3) A description of how compliance with subrules 9.4(1) to 9.4(10) will be accomplished.

(4) The plan should include the point of contact for landowner inquiries or claims as provided for in rule 9.5(479, 479A, 479B).

b. Plan variations. The board may by waiver accept variations from this chapter in such plans if the pipeline company can show good cause and if the alternative methods would restore the land to as good as or better condition than provided for in this chapter.

c. Environmental impact statement and agreements. Preparation of a separate land restoration plan for an interstate natural gas company project subject to federal energy regulatory commission authority may be unnecessary if the requirements of this chapter are substantively satisfied in an environmental impact statement as accepted and modified by the federal certificate issued for the project. Preparation of a separate land restoration plan may be unnecessary if an agricultural impact mitigation or similar agreement is

UTILITIES DIVISION[199](cont'd)

reached by the pipeline company and the appropriate agencies of the state of Iowa and the requirements of this chapter are substantively satisfied therein. If an environmental impact statement or agreement is used to fully or partially meet the requirements of a land restoration plan, the statement or agreement shall be referenced in the filing with the board and shall be considered to be, or to be part of, the land restoration plan for purposes of this chapter.

199—9.3(479,479A,479B) Procedure for review of plan.

9.3(1) A pipeline company that is subject to Iowa Code sections 479.5 or 479B.4 shall file its proposed plan with the board at the time it files its petition for permit pursuant to 199 IAC 10.2(479), or a petition for amendment to permit which proposes pipeline construction or relocation pursuant to 199 IAC 10.9(2). Review of the land restoration plan will be coincident with the board's review of the application for permit and objections to the proposed plan may be filed as part of the permit proceeding.

9.3(2) A pipeline company that is subject to Iowa Code chapter 479A shall file a proposed land restoration plan no later than 120 days prior to the time the construction project is scheduled to commence.

a. Any interested person may file an objection on or before the twentieth day after the date the plan is filed.

b. The board shall either approve or docket the plan for further investigation within 30 days from the date the plan is filed. If there are material questions of fact, the board will set the plan for hearing.

9.3(3) After the board completes its review, the pipeline company shall provide copies of the plan to all landowners of property that will be disturbed by the construction.

199—9.4(479,479A,479B) Restoration of agricultural lands.

9.4(1) Topsoil separation and replacement.

a. Removal. Topsoil removal and replacement in accordance with this rule is required for any open excavation associated with the construction of a pipeline unless otherwise provided in these rules. The existing topsoil layer shall be removed from the trench and the subsoil storage area. In deep soils with more than 12 inches of topsoil, at least 12 inches of topsoil will be removed. In soils with less than 12 inches of topsoil, the entire topsoil layer will be removed. The topsoil and subsoil shall be segregated, stockpiled, and preserved separately during subsequent construction operations. The spoil piles shall have sufficient separation to prevent mixing during the storage period. Topsoil shall not be stored or stockpiled at locations that will be used as a traveled way by construction equipment without the written consent of the landowner.

b. Topsoil removal not required. Topsoil removal is not required where the pipeline is installed by plowing, jacking, boring, or other methods, which do not require the opening of a trench. If provided for in a written agreement with the landowner, topsoil removal is not required if the pipeline can be installed in a trench with a top width of 18 inches or less.

c. Backfill. The topsoil shall be replaced so the upper portion of the pipeline excavation and the crowned surface, and the cover layer of the area used for subsoil storage, contain only the topsoil originally removed. The depth of the replaced topsoil shall conform as nearly as possible to the depth removed. Where excavations are made for road, stream, drainage ditch, or other crossings, the original depth of topsoil shall be replaced as nearly as possible.

9.4(2) Temporary and permanent repair of drain tile.

a. Pipeline clearance from drain tile. Where underground drain tile is encountered, the pipeline shall be installed in such a manner that the permanent tile repair can be installed with at least 12 inches of clearance from the pipeline.

b. Temporary repair. Any underground drain tile damaged, cut, or removed shall be temporarily repaired and maintained as necessary to allow for its proper function during construction of the pipeline. If water is flowing through a damaged tile line, temporary repairs shall be made immediately. The temporary repairs shall be maintained in good condition until permanent repairs are made. If tile lines are dry and water is not flowing, temporary repairs are not required if the permanent repair is made within four days of the time the damage occurred. If temporary repair of the line is determined unnecessary, the exposed tile line shall nonetheless be screened or otherwise protected to prevent the entry of foreign materials and small animals into the tile line system.

c. Marking. Any underground drain tile damaged, cut, or removed shall be marked by placing a highly visible flag in the trench spoil bank directly over or opposite such tile. This marker shall not be removed until the tile has been permanently repaired and the repairs have been approved and accepted by the county inspector.

d. Permanent repairs. Tile disturbed or damaged by pipeline construction shall be repaired to its original or better condition. Permanent repairs shall be completed as soon as is practical after the pipeline is installed in the trench and prior to backfilling of the trench over the tile line. Permanent repair and replacement of damaged drain tile shall be performed in accordance with the following requirements:

(1) All damaged, broken, or cracked tile shall be removed.

(2) Only unobstructed tile shall be used for replacement.

(3) The tile furnished for replacement purposes shall be of a quality and size at least equal to that of the tile being replaced.

(4) Tile shall be replaced so that its original gradient and alignment are restored, except where relocation or rerouting is for angled crossings. Tile lines at a sharp angle to the trench shall be repaired in the manner shown on Drawing No. IUB PL-1 at the end of this chapter.

(5) The replaced tile shall be firmly supported to prevent loss of gradient or alignment due to soil settlement. The method used shall be comparable to that shown on Drawing No. IUB PL-1 at the end of this chapter.

(6) Before completing permanent tile repairs, all tile lines shall be examined visually, by probing, or by other appropriate means on both sides of the trench within any work area to check for tile that might have been damaged by construction equipment. If tile lines are found to be damaged, they must be repaired to operate as well after construction as before construction began.

e. Inspection. Prior to backfilling of the applicable trench, permanent tile repairs shall be inspected for compliance by the county inspector.

f. Backfilling. The backfill surrounding the permanently repaired drain tile shall be completed at the time of the repair and in a manner that ensures that any further backfilling will not damage or misalign the repaired section of the tile line. The backfill shall be inspected for compliance by the county inspector.

g. Subsurface drainage. Subsequent to pipeline construction and permanent repair, if it becomes apparent the tile line in the area disturbed by construction is not functioning

UTILITIES DIVISION[199](cont'd)

correctly or that the land adjacent to the pipeline is not draining properly, which can reasonably be attributed to the pipeline construction, the pipeline company shall make further repairs or install additional tile as necessary to restore subsurface drainage.

9.4(3) Removal of rocks and debris from the right-of-way.

a. Removal. The topsoil, when backfilled, and the easement area shall be free of all rock larger than three inches in average diameter not native to the topsoil prior to excavation, unless otherwise provided for in a written agreement. Where rocks over three inches in size are present, their size and frequency shall be similar to adjacent soil not disturbed by construction. The top 24 inches of the trench backfill shall not contain rocks in any greater concentration or size than exist in the adjacent natural soils. Consolidated rock removed by blasting or mechanical means shall not be placed in the backfill above the natural bedrock profile.

b. Disposal. Rock which cannot remain in or be used as backfill shall be disposed of at locations and in a manner mutually satisfactory to the company and the landowner. Soil from which excess rock has been removed may be used for backfill. All debris attributable to the pipeline construction and related activities shall be removed and disposed of properly. For the purposes of this rule, debris shall include spilled oil, grease, fuel, or other petroleum or chemical products. Such products and any contaminated soil shall be removed for proper disposal.

9.4(4) Restoration of area of soil compaction.

a. Agricultural restoration. Agricultural land, including off right-of-way access roads traversed by heavy construction equipment, shall be deep tilled to alleviate soil compaction upon completion of construction on the property. If the topsoil was removed from the area to be tilled, the tillage shall precede replacement of the topsoil. At least three passes with the deep tillage equipment shall be made. Tillage shall be at least 18 inches deep in land used for crop production and 12 inches on other lands. Upon agreement, this tillage may be performed by the landowners or tenants using their own equipment.

b. Rutted land restoration. Rutted land shall be graded and tilled until restored to as near as practical to its preconstruction condition. If on land from which topsoil was removed, the rutting shall be remedied before the topsoil is replaced.

9.4(5) Restoration of terraces, waterways, and other erosion control structures. Existing soil conservation practices and structures damaged by the construction of a pipeline shall be restored to the line and grade existing at the time of pipeline construction unless otherwise agreed to by the landowner in a written agreement. Any drain lines or flow diversion devices impacted by pipeline construction shall be repaired or modified as needed. Soil used to repair embankments intended to retain water shall be well compacted. Disturbed vegetation shall be reestablished, including a cover crop when appropriate. Restoration of terraces shall be in accordance with Drawing No. IUB PL-2 at the end of this chapter. Such restoration shall be inspected for compliance by the county inspector.

9.4(6) Revegetation of untilled land.

a. Crop production. Agricultural land not in row crop or small grain production at the time of construction, including hay ground and land in conservation or set-aside programs, shall be reseeded, including use of a cover crop when appropriate, following completion of deep tillage and replacement of the topsoil. The seed mix used shall restore the original ground cover unless otherwise requested by the landowner. If the land is to be placed in crop production the following year, paragraph "b" below shall apply.

b. Delayed crop production. Agricultural land used for row crop or small grain production which will not be planted in that calendar year due to the pipeline construction shall be seeded with an appropriate cover crop following replacement of the topsoil and completion of deep tillage. However, cover crop seeding may be delayed if construction is completed too late in the year for a cover crop to become established and in such instances is not required if the landowner or tenant proposes to till the land the following year.

9.4(7) Future installation of drain tile or soil conservation structures.

a. Future drain tile. At locations where the proposed installation of underground drain tile is made known in writing to the company prior to securing of an easement on the property and has been defined by a qualified technician, the pipeline shall be installed at a depth which will permit proper clearance between the pipeline and the proposed tile installation.

b. Future practices and structures. At locations where the proposed installation of soil conservation practices and structures is made known in writing to the company prior to the securing of an easement on the property and has been defined by a qualified technician, the pipeline shall be installed at a depth which will allow for future installation of such soil conservation practices and structures and retain the integrity of the pipeline.

9.4(8) Restoration of land slope and contour. Upon completion of construction, the slope, contour, grade, and drainage pattern of the disturbed area shall be restored as nearly as possible to its preconstruction condition. However, the trench may be crowned to allow for anticipated settlement of the backfill. Excessive or insufficient settlement of the trench area, which visibly affects land contour or undesirably alters surface drainage, shall be remediated by means such as regrading and, if necessary, import of appropriate fill material. Disturbed areas in which erosion causes formation of rills or channels, or areas of heavy sediment deposition, shall be regraded as needed. On steep slopes, methods such as sediment barriers, slope breakers, or mulching shall be used as necessary to control erosion until vegetation can be reestablished.

9.4(9) Restoration of areas used for field entrances and temporary roads. Upon completion of construction, field entrances or temporary roads built as part of the construction project shall be removed and the land made suitable for return to its previous use. Areas affected shall be regraded as required by subrule 9.4(8) and deep tilled as required by subrule 9.4(4). If by agreement or at landowner request a field entrance or road is to be left in place, it shall be left in a graded and serviceable condition.

9.4(10) Construction in wet conditions. Construction in wet soil conditions shall not commence or continue at times when or locations where the passage of heavy construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed. To facilitate construction in soft soils, the pipeline company may elect to remove and stockpile the topsoil from the traveled way. Topsoil removal, storage, and replacement shall comply with subrule 9.4(1).

199—9.5(479,479A,479B) Designation of a pipeline company point of contact for landowner inquiries or claims. For each pipeline construction project subject to this chapter, the pipeline company shall designate a point of contact for landowner inquiries or claims. The designation shall include

the name of an individual to contact and a telephone number and address through which that person can be reached. This information shall be provided to all landowners of property that will be disturbed by the pipeline project prior to commencement of construction. Any change in the point of contact shall be promptly communicated to landowners. A designated point of contact shall be available for at least one year following completion of construction.

199—9.6(479,479A,479B) Separate agreements. This chapter does not preclude the application of provisions for protecting or restoring property different from those contained in this chapter which are contained in easements or other agreements independently executed by the pipeline company and the landowner. The alternative provision shall not be inconsistent with state law or these rules. The agreement shall be in writing and a copy provided to the county inspector.

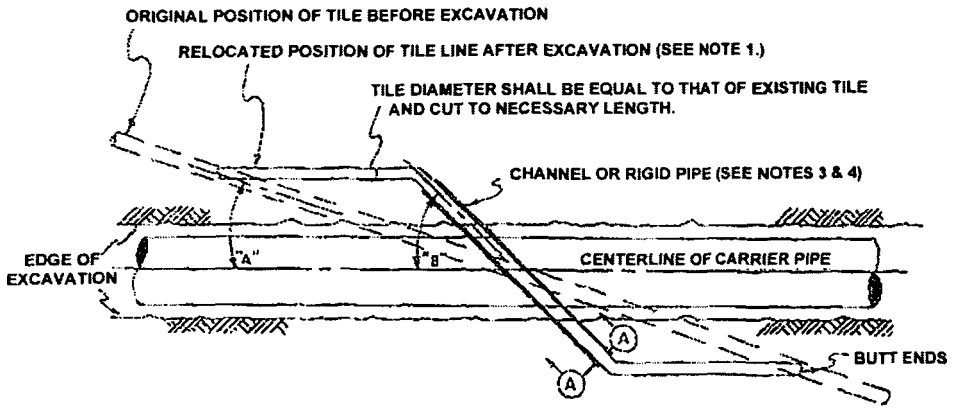
199—9.7(479,479A,479B) Enforcement. A pipeline company shall fully cooperate with county inspectors in the performance of their duties under Iowa Code sections 479.29, 479A.14, and 479B.20. If the pipeline company or its contractor does not comply with the requirements of Iowa Code sections 479.29, 479A.14, or 479B.20, with the land restoration plan, or with an independent agreement on land restoration or line location, the county board of supervisors may petition the utilities board for an order requiring corrective action to be taken or seeking imposition of civil penalties, or both. Upon receipt of a petition from the county board of supervisors, the board will schedule a hearing and such other procedures as appropriate. The county will be responsible for investigation and for prosecution of the case before the board.

See page 578 for Drawing IUB PL-1.

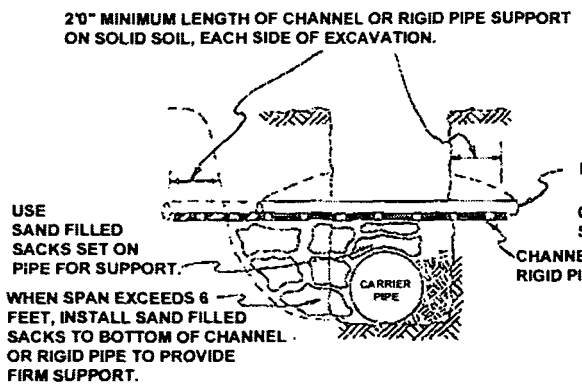
See page 579 for Drawing IUB PL-2.

UTILITIES DIVISION[199](cont'd)

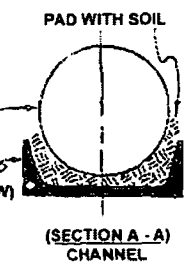
RESTORATION OF DRAIN TILE



(PLAN VIEW)



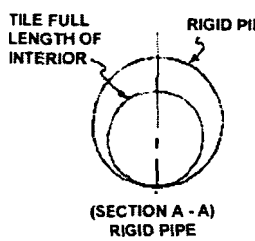
(METHOD OF SUPPORT - - ELEVATION)



CHANNEL SCHEDULE

TILE SIZE	CHANNEL SIZE
3"	4" AT 5.4#
4" - 5"	5" AT 6.7#
6" - 9"	7" AT 9.8#
10" & LARGER	10" AT 15.3#

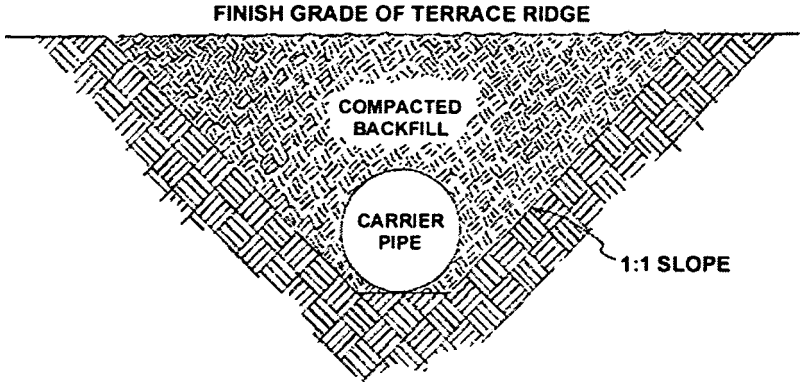
NOTES:
1. TILE SHALL BE RELOCATED AS SHOWN WHEN ANGLE "A" BETWEEN PIPELINE AND ORIGINAL TILE IS LESS THAN 20° UNLESS OTHERWISE AREED TO BY LANDOWNER AND COMPANY.
2. ANGLE "B" SHALL BE 45° FOR USUAL WIDTHS OF TRENCH. FOR EXTRA WIDTHS, IT MAY BE GREATER.
3. DIAMETER OF RIGID PIPE SHALL BE OF ADEQUATE SIZE TO ALLOW FOR THE INSTALLATION OF THE TILE FOR THE FULL LENGTH OF THE RIGID PIPE.
4. OTHER METHODS OF SUPPORTING DRAIN TILE MAY BE USED IF THE ALTERNATE PROPOSED IS EQUIVALENT IN STRENGTH TO THE CHANNEL SECTIONS SHOWN AND IF APPROVED BY THE LANDOWNER.



IUB PL-1

UTILITIES DIVISION[199](cont'd)

RESTORATION OF TERRACE



NOTE:

COMPACTION OF BACKFILL TO BE EQUAL TO THAT OF THE UNDISTURBED ADJACENT SOIL.

IUB PL-2

These rules are intended to implement Iowa Code sections 479.29, 479A.14, and 479B.20.

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UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 476.20, 476.1, 476.2, and 17A.3, the Utilities Board (Board) gives notice that on September 17, 1999, the Board issued an order in Docket No. RMU-99-9, In re: Payment Agreements, "Order Commencing Rule Making," to receive public comment on the adoption of revisions to the Board's rules which currently require a signed written agreement in order for a payment agreement between a utility and a customer to be recognized as a valid agreement.

The Board is proposing to amend the rules to allow the customer and the utility to enter into an oral payment agreement. The utility will be required to provide the customer a written document reflecting the agreed-upon terms of the oral agreement within three days. In order to allow the customer an adequate opportunity to state disagreement with the company's understanding of the agreed-upon terms of the oral agreement as reflected in the document, the utility must provide the customer with an address and phone number where a utility representative can be reached. If the customer does not notify the utility within ten days of the date the written document was postmarked, this will be deemed to be acceptance of the written terms of the agreement. By making the first payment the customer confirms acceptance of the terms of the agreement.

These amendments reflect the fact that over the past ten years several of the larger utilities have closed offices and now transact most customer business by telephone or mail. The requirement that a customer travel to a utility office may be a hardship for a customer, and the amendments to the Board's rules will make it easier for a customer who has been disconnected or will be disconnected to enter into a payment agreement and restore or continue service expeditiously.

The Board is not proposing to add a waiver provision because the Board does not believe it is necessary. The Board has a general waiver provision at 199 IAC 1.3(17A,474) which would apply to these rules.

Any interested person may file a written statement of position on the proposed rules no later than October 26, 1999, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on November 4, 1999, in the Board's hearing room at the address listed above.

UTILITIES DIVISION[199](cont'd)

These amendments are intended to implement Iowa Code sections 476.2, 476.3 and 476.20.

The following amendments are proposed.

ITEM 1. Amend paragraph **19.4(10)"c"** as follows:

c. Terms. The agreement may require the customer to bring the account to a current status by paying specific amounts at scheduled times. The utility shall offer customers or disconnected customers the option of spreading payments evenly over at least 12 months. Payments for potential customer agreements may be spread evenly over at least 6 months.

The agreement shall also include provision for payment of the current account. The agreement negotiations and periodic payment terms shall comply with tariff provisions which are consistent with these rules. *When the customer makes the agreement in person at a company facility, a* ~~A~~ signed copy of the agreement shall be provided to the customer, disconnected customer or potential customer. *When the customer makes the agreement over the telephone or through electronic transmission, the utility will render to the customer a written document reflecting the terms and conditions of the agreement within three days of the date the parties entered into the oral agreement. The document will be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the document shall be considered rendered to the customer when delivered to the last-known address of the person responsible for payment for the service. The document shall state that unless the customer notifies the utility within ten days from the date the document is rendered, it will be deemed the customer accepts the terms as reflected in the written document. The document stating the terms and agreements shall include the address and a toll-free number where a qualified representative can be reached. By making the first payment, the customer confirms acceptance of the terms of the oral agreement.*

Second agreement. If a customer has retained service from November 1 through April 1 but is in default of a payment agreement, the utility may offer the customer a second payment agreement that will divide the past-due amount into equal monthly payments with the final payment due by the fifteenth day of the next October. The utility may also require the customer to enter into a level payment plan to pay the current bill.

The customer who has been in default of a payment agreement from November 1 to April 1 may be required to pay current bills based on a budget estimate of the customer's actual usage, weather normalized, during the prior 12-month period or based on projected usage if historical use data is not available.

ITEM 2. Amend paragraph **20.4(11)"c"** as follows:

c. Terms. The agreement may require the customer to bring the account to a current status by paying specific amounts at scheduled times. The utility shall offer customers or disconnected customers the option of spreading payments evenly over at least 12 months. Payments for potential customer agreements may be spread evenly over at least 6 months.

The agreement shall also include provision for payment of the current account. The agreement negotiations and periodic payment terms shall comply with tariff provisions which are consistent with these rules. *When the customer makes the agreement in person at a company facility, a* ~~A~~ signed copy of the agreement shall be provided to the customer, disconnected customer or potential customer. *When the customer makes the agreement over the telephone or through electronic transmission, the utility will provide the customer a written copy of the terms and conditions of the agreement within ten days of the date the parties entered into the oral agreement. Remittance of the first scheduled payment by the customer will serve as acknowledgment of the terms of the oral agreement.*

Second agreement. If a customer has retained service from November 1 through April 1 but is in default of a payment agreement, the utility may offer the customer a second payment agreement that will divide the past-due amount into equal monthly payments with the final payment due by the fifteenth day of the next October. The utility may also require the customer to enter into a level payment plan to pay the current bill.

The customer who has been in default of a payment agreement from November 1 to April 1 may be required to pay current bills based on a budget estimate of the customer's actual usage, weather normalized, during the prior 12-month period or based on projected usage if historical use data is not available.

ARC 9390A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 159.5(11) and 200.14, the Department of Agriculture and Land Stewardship hereby amends Chapter 43, "Fertilizers and Agricultural Lime," Iowa Administrative Code.

This amendment is intended to decrease the cost of anhydrous ammonia nurse tanks by not requiring postweld heat treatment of the entire tank in compliance with revised American National Standard Safety Requirements for the Storage and Handling of Anhydrous Ammonia. The Department is not imposing a new requirement but is relaxing an existing one; therefore, no waiver is required.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impractical because it is in the best interest of the industry and the public that the amendment be effective immediately in order for the change to be applicable for the present and upcoming application season.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator on September 15, 1999, as it confers a benefit upon the industry and the public by permitting the purchase of anhydrous ammonia nurse tanks at less cost and in compliance with accepted safety standards.

This amendment is intended to implement Iowa Code chapter 200.

This amendment became effective on September 15, 1999.

The following amendment is adopted.

Amend rule **21—43.6(200)** by renumbering numbered paragraphs **"4"** through **"19"** as **"5"** through **"20"** and adopting a **new** numbered paragraph **"4"** as follows:

4. Strike subrule 5.2.2.1 in its entirety and insert in lieu thereof the following:

5.2.2.1 The entire container shall be postweld heat treated after completion of all welds to the shells and heads. The method employed shall be as prescribed in the ASME Code, except that the provisions for extended time at lower temperature for postweld heat treatment shall not be permitted. Welded attachments to pads may be made after postweld heat treatment [10]. Exception: Implements of husbandry will not require postweld heat treatment if they are fabricated with hot-formed heads or with cold-formed heads that have been stress relieved.

[Filed Emergency 9/15/99, effective 9/15/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9384A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

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 Department of Human Services previously adopted rules providing for a Home- and Community-Based Services waiver program for persons with a physical disability who currently reside in a medical institution and who have been residents of a medical institution for a minimum of 30 days. However, implementation of this program required federal approval.

These amendments make changes to the rules that are being required by the Health Care Financing Administration (HCFA) for approval of the waiver. The changes are as follows:

- Community businesses are being added as providers of home and vehicle modifications. HCFA believed the Department would be limiting consumer access by not allowing community businesses as providers.
- Persons who are at the ICF/MR level of care will not be eligible to use this waiver. HCFA would not approve this waiver with the ICF/MR population included, as they do not believe this population should be mixed with the nursing facility population.

The elimination of eligibility for this waiver for persons needing the ICF/MR level of care removes any county funding from this waiver. Therefore, policy regarding securing county approval for slots and county reimbursement is removed from these rules.

- The total monthly cost of waiver services that each waiver consumer may use is being lowered from $1150 per month to $621 per month, as the cost comparison used to justify the waiver can no longer include the costs for ICF/MR level of care. Persons whose service needs are greater than the limit on the total monthly cost of waiver services will not be able to use this waiver.

The Department of Human Services finds that notice and public participation are unnecessary, impracticable, and contrary to the public interest. The Department has received a directive from the Health Care Financing Administration setting the conditions under which this waiver will be approved. Delaying federal approval and implementation of the waiver to allow for public comment would needlessly delay implementation. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit. Federal approval of the waiver allowing implementation of the program on these terms is a benefit to the public. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

These amendments are also published herein under Notice of Intended Action as **ARC 9383A** to allow for public comment.

These amendments do not provide for waiver in specific situations because all foreseeable situations are covered by these amendments and because HCFA required these changes for all applicants and recipients. Any specific situations would be in regard to individuals and could be handled

HUMAN SERVICES DEPARTMENT[441](cont'd)

by a waiver under the Department's general rule on exceptions at rule 441—1.8(217).

The Council on Human Services adopted these amendments September 14, 1999.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments became effective October 1, 1999.

The following amendments are adopted.

ITEM 1. Amend subrule 77.41(3) as follows:

77.41(3) Home and vehicle modification providers. A home and vehicle modification provider shall be ~~an~~ *either:*

a. An approved HCBS brain injury or mental retardation supported community living service provider ~~and shall meet~~ *that meets all* the following standards:

~~a.~~ *(1)* The provider shall obtain a binding contract with a community business to perform the work at the reimbursement provided by the department without additional charge. The contract shall include, at a minimum, cost, time frame for work completion, employer's liability coverage, and workers' compensation coverage.

~~b.~~ *(2)* The business shall provide physical or structural modifications to homes or vehicles according to service descriptions listed in 441—subrule 78.46(2).

~~c.~~ *(3)* The business, or the business's parent company or corporation, shall have the necessary legal authority to operate in conformity with federal, state and local laws and regulations.

b. A community business that performs the work and meets all the following standards:

(1) The community business shall enter into binding contracts with consumers to perform the work at the reimbursement provided by the department without additional charge. The contract shall include, at a minimum, cost, time frame for work completion, employer's liability coverage, and workers' compensation coverage.

(2) The business shall provide physical or structural modifications to homes or vehicles according to service descriptions listed in 441—subrule 78.46(2).

(3) The business, or the business's parent company or corporation, shall have the necessary legal authority to operate in conformity with federal, state and local laws and regulations.

ITEM 2. Amend rule 441—83.102(249A) as follows:

Amend subrule **83.102(1)**, paragraph **"h,"** as follows:

h. Be in need of ~~intermediate care facility for the mentally retarded (ICF/MR),~~ skilled nursing~~,~~ or intermediate care facility level of care. ~~For those who are in need of ICF/MR level of care and who are currently residing in an ICF/MR facility, the discharge planner must contact the county of financial responsibility for the consumer to determine the county's agreement with referral to the physical disability waiver.~~ Initial decisions on level of care shall be made for the department by the Iowa Foundation for Medical Care (IFMC) within two working days of receipt of medical information. After notice of an adverse decision by IFMC, the Medicaid applicant or recipient or the applicant's or recipient's representative may request reconsideration by IFMC pursuant to subrule 83.109(2). On initial and reconsideration decisions, IFMC determines whether the level of care requirement is met based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2). Adverse decisions by IFMC on reconsiderations may be appealed to the department pursuant to 441—Chapter 7 and rule 441—83.109(249A).

Amend subrule **83.102(2)**, paragraph **"b,"** as follows:

b. The total monthly cost of physical disability waiver services shall not exceed ~~$1150~~ *$621* per month.

Amend the catchwords of subrule 83.102(3) as follows:

83.102(3) ~~State slots~~ *Slots.*

Rescind and reserve subrule **83.102(4)**.

Amend the catchwords of subrule 83.102(5) as follows:

83.102(5) Securing a ~~state~~ slot.

Rescind and reserve subrule **83.102(6)**.

Amend subrule 83.102(7) as follows:

83.102(7) HCBS physical disability waiver waiting lists. When services are denied because the statewide limit for institutionalized persons is reached, a notice of decision denying service based on the limit and stating that the person's name shall be put on a statewide waiting list shall be sent to the person by the department.

When services are denied because the two slots per region for persons already residing in the community at the time of application are filled, a notice of decision denying service based on the limit on those slots and stating that the person's name shall be put on a waiting list by region for one of the community slots shall be sent to the person by the department.

~~When services are denied because the county of legal settlement has not established any slots in the county plan, a notice of decision will be issued denying service stating that the person is not eligible because the county has chosen not to participate in the HCBS physical disabilities waiver. The names of the persons who are not eligible because the county has chosen not to participate shall be placed on a waiting list by county by the department in case the county decides to participate.~~

~~When services are denied because all county of legal settlement slots are filled, a notice of decision will be issued denying service stating that the person is not eligible because all county slots are filled. The names of the persons who are not eligible because all county slots are filled shall be placed on a waiting list by county by the department in case a slot becomes available or the county decides to add additional slots.~~

ITEM 3. Amend subrule **83.107(3)** by rescinding and reserving paragraph **"f."**

ITEM 4. Rescind and reserve rule **441—83.110(249A)**.

[Filed Emergency 9/13/99, effective 10/1/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9378A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 106, "Deer Hunting," Iowa Administrative Code.

This amendment addresses recent legislation which provides that landowners cooperating with the U.S. Department of Agriculture's Animal and Plant Health Inspection Service may obtain depredation permits to take deer at no charge.

NATURAL RESOURCE COMMISSION[571](cont'd)

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impracticable because of the immediate need for rule change to help implement the new provisions of this law.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator on September 13, 1999, as the period for taking these animals is September 1 through November 30. If landowners are going to address the problem this year, the amendment needs to become effective immediately.

The Natural Resource Commission adopted this amendment on September 9, 1999.

This amendment is also published herein under Notice of Intended Action as **ARC 9380A** to allow public comment. This emergency filing permits the Department to more easily implement the new provisions of the law.

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

This amendment became effective September 13, 1999.

The following amendment is adopted.

Amend subrule 106.11(4) as follows:

106.11(4) Depredation permits. ~~Two~~ *Three* types of ~~depredation~~ permits may be issued under a depredation management plan.

a. Deer depredation licenses. Deer depredation licenses may be sold to hunters for the regular deer license fee to be used during one or more legal hunting seasons. Depredation licenses will be available to producers of agricultural and horticultural crops.

(1) Depredation licenses will be issued in blocks of five licenses up to the number specified in the management plan.

(2) Depredation licenses may be sold to individuals designated by the producer as having permission to hunt. No individual may obtain more than two depredation licenses. Licenses will be sold by designated department field employees.

(3) Depredation licenses issued to the producer or producer's family member may be the one free license for which the producer family is eligible annually.

(4) Depredation licenses will be valid only for antlerless deer, unless otherwise specified in the management plan, regardless of restrictions that may be imposed on regular deer hunting licenses in that county.

(5) Hunters may keep any deer legally tagged with a depredation license.

(6) All other regulations for the hunting season specified on the license will apply.

b. Deer shooting permits. Permits for shooting deer outside an established hunting season may be issued to producers of high-value horticultural crops when damage cannot be controlled in a timely manner during the hunting seasons (such as late summer buck rubs in an orchard and winter browsing in a Christmas tree plantation), and to other agricultural producers.

(1) Deer shooting permits will be issued at no cost to the producer.

(2) The producer or one or more designees approved by the department may take all the deer specified on the permit.

(3) Permits available to producers of high-value horticultural crops will allow taking deer from August 1 through March 31. Permits issued for August 1 through August 31 shall be valid only for taking antlered deer. Permits issued for September 1 through March 31 may be valid for taking antlered deer, antlerless deer or any deer, depending on the nature of the damage. Permits available to other agricultural producers will allow taking deer from September 1 through October 31.

(4) The times, dates, place and other restrictions on the shooting of deer will be specified on the permit.

(5) Antlers from all deer recovered must be turned over to the conservation officer to be disposed of according to department rules.

(6) Shooters must wear blaze orange and comply with all other applicable laws and regulations pertaining to shooting and hunting.

c. Agricultural depredation permits. Agricultural depredation permits will be issued to a resident landowner or designated tenant who has sustained at least $1,000 of damage to agricultural crops if the landowner or tenant is cooperating with the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) to reduce crop damage by deer or have an approved DNR deer depredation plan.

(1) Agricultural depredation permits will be issued to the resident landowner or designated tenant at no cost and shall be valid only on the farm unit where the damage is occurring.

(2) Permits issued to the resident landowner or designated tenant shall allow the taking of antlerless deer from September 1 through November 30. The number of permits issued to individual landowners or tenants will be determined by a department depredation biologist and will be part of the deer depredation management plan.

(3) Deer taken on these permits must be taken by the resident landowner or the designated tenant only.

(4) Times, places, and other restrictions will be specified on the permit.

(5) Shooters must wear blaze orange and comply with all other applicable laws and regulations.

~~c~~ *d.* Deer depredation licenses and shooting permits will be valid only on the land where damage is occurring or the immediately adjacent property. Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

~~d~~ *e.* Depredation licenses, *agricultural depredation permits* and shooting permits will be issued in addition to any other licenses for which the hunters may be eligible.

~~e~~ *f.* Depredation licenses and shooting permits will not be issued if the producer restricts the legal take of deer from the property sustaining damage by limiting hunter numbers below levels required to control the deer herd.

[Filed Emergency 9/13/99, effective 9/13/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9415A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 135.105A, the Department of Public Health hereby amends Chapter 70, "Lead Professional Certification," Iowa Administrative Code.

Iowa Code section 135.105A directs the Department of Public Health to establish a program for the training and cer-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

tification of lead inspectors and lead abaters and states that a person shall not perform lead abatement or lead inspections unless the person has completed a training program approved by the Department and has obtained certification. Property owners are required to be certified only if the property in which they will perform lead inspections or lead abatement is occupied by a person other than the owner or a member of the owner's immediate family while the measures are being performed.

A person may be certified as both a lead inspector and a lead abater. However, a person who is certified as both shall not provide both inspection and abatement services at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site. The legislation establishing this Iowa Code section stated that this section could take effect only after the Department of Public Health obtained authorization from the U.S. Environmental Protection Agency (EPA) for its program to train and certify lead inspectors and abaters. Iowa's program was authorized by the U.S. EPA on July 13, 1999. In addition, on July 29, 1999, the U.S. EPA extended the federal deadline for lead professionals to be certified from August 31, 1999, to March 1, 2000.

These amendments extend Iowa's deadline for certification to the new federal deadline of March 1, 2000, and incorporate other changes recommended by the U.S. EPA in its review of Iowa's program. While U.S. EPA regulations refer to children six years or under, federal legislation refers to children under the age of six years. The U.S. EPA is changing its regulations to refer to children under the age of six years and has asked the authorized states to do the same. The definition of "certified lead professional" has been changed to include the discipline of project designer. The definition of "elevated blood lead child" has been changed to clarify that children with blood lead levels equal to 20 micrograms per deciliter are included in addition to children with blood lead levels greater than 20 micrograms per deciliter.

A provision for interim certification has been added to allow lead professionals who have passed an approved course up to six months to pass the state certification examination. Federal regulations state that the state certification examination may not be administered by the provider of an approved training course; therefore, this provision has been added to these amendments. The requirement for certified lead abatement workers and certified visual risk assessors to pass a state certification examination has been removed since this is not required by federal regulations for these two disciplines.

The required length of refresher training courses for certified lead inspectors and elevated blood lead inspectors has been changed from 8 hours to 16 hours since a 16-hour course is required by the federal regulations for these two disciplines. In addition, certified lead inspectors who completed an approved 24-hour training course and elevated blood lead inspectors who completed an approved 32-hour training course must complete 16 hours of additional training, and an 8-hour refresher course is required before recertification. The date by which certified lead professionals must meet education and experience requirements has been changed from March 31, 1999, to September 1, 1999, since Iowa's program was not authorized until July 13, 1999. To be consistent with federal regulations, lead professionals who completed approved courses more than three years before being recertified under Iowa's authorized program must complete an 8-hour refresher course.

The Department has determined that these amendments are not subject to waiver or variance because Iowa's program must be as protective as the U.S. EPA regulations which do not allow variances or waivers.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because Iowa's regulations must be as protective as the U.S. EPA regulations that became effective on August 31, 1999.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and these amendments should be made effective upon filing. The Department finds this confers a benefit on persons who wish to become certified lead professionals by allowing an additional six months to meet the state certification requirements.

These amendments became effective on September 17, 1999.

These amendments are also published herein under Notice of Intended Action as ARC 9416A to allow for public comment.

These amendments are intended to implement Iowa Code section 135.105A.

The following amendments are adopted.

ITEM 1. Amend rule 641—70.1(135) as follows:

641—70.1(135) Applicability. Prior to ~~August 1, 1999~~ *March 1, 2000*, this chapter applies to all persons who are certified lead professionals in Iowa. ~~After August 1, 1999~~ *Beginning March 1, 2000*, this chapter applies to all persons who are lead professionals in Iowa. While this chapter requires lead professionals to be certified and establishes specific requirements for how to perform lead-based paint activities if a property owner, manager, or occupant chooses to undertake them, nothing in this chapter requires a property owner, manager, or occupant to undertake any particular lead-based paint activity.

ITEM 2. Amend the following definitions in rule **641—70.2(135)**:

"Certified elevated blood lead (EBL) inspector" means a person who has met the requirements of 641—70.5(135) *for certification or interim certification* and who has been certified by the department.

"Certified lead abatement contractor" means a person who has met the requirements of 641—70.5(135) *for certification or interim certification* and who has been certified by the department.

"Certified lead inspector" means a person who has met the requirements of 641—70.5(135) *for certification or interim certification* and who has been certified by the department.

"Certified lead professional" means a person who has been certified by the department as a lead inspector, elevated blood lead (EBL) inspector, lead abatement contractor, lead abatement worker, *project designer,* or visual risk assessor.

"Certified project designer" means a person who has met the requirements of 641—70.5(135) *for certification or interim certification* and who has been certified by the department.

"Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited by the same child ~~six years of age or under~~ *under the age of six years*, on at least two different days within any week (Sunday through Saturday period, provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours). Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

"Elevated blood lead (EBL) child" means any child who has had one venous blood lead level greater than *or equal to* 20 micrograms per deciliter or at least two venous blood lead levels of 15 to 19 micrograms per deciliter.

"Living area" means any area of a residential dwelling used by at least one child~~, six years of age or less~~ *under the age of six years*, including, but not limited to, living rooms, kitchen areas, dens, playrooms, and children's bedrooms.

"State certification examination" means a discipline-specific examination ~~administered~~ *approved* by the department to test the knowledge of a person who has completed an approved training course and is applying for certification in a particular discipline. *The state certification examination may not be administered by the provider of an approved course.*

"Target housing" means housing constructed prior to 1978 with the exception of housing for the elderly or for persons with disabilities and housing which does not contain a bedroom, unless at least one child ~~six years of age or less~~ *under the age of six years*, resides or is expected to reside in the housing for the elderly or persons with disabilities or housing which does not contain a bedroom.

ITEM 3. Amend rule 641—70.3(135) as follows:

641—70.3(135) Certification. Prior to ~~August 1, 1999~~ *March 1, 2000*, lead professionals may be certified by the department. Beginning ~~August 1, 1999~~ *March 1, 2000*, lead professionals must be certified by the department in the appropriate discipline before they conduct lead abatement, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, and visual risk assessments, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person other than the owner or a member of the owner's immediate family while these activities are being performed. In addition, elevated blood lead (EBL) inspections shall be conducted only by certified elevated blood lead (EBL) inspectors employed by or under contract with a certified elevated blood lead (EBL) inspection agency. Lead professionals shall not state that they have been certified by the state of Iowa unless they have met the requirements of rule 70.5(135) and been issued a certificate by the department. Prior to ~~August 1, 1999~~ *March 1, 2000*, elevated blood lead (EBL) inspection agencies may be certified by the department. Beginning ~~August 1, 1999~~ *March 1, 2000*, elevated blood lead (EBL) inspection agencies must be certified by the department. Elevated blood lead (EBL) inspection agencies shall not state that they have been certified by the state of Iowa unless they have met the requirements of rule 70.5(135) and been issued a certificate by the department.

ITEM 4. Amend subrule **70.4(1)**, paragraph **"m,"** subparagraph **(3)**, as follows:

(3) The course test blueprint *and the course test.*

ITEM 5. Amend subrule 70.4(9), introductory paragraph, as follows:

70.4(9) To be approved for refresher training *of visual risk assessors, lead abatement contractors, lead abatement workers, and project designers*, a course must be at least 8 training hours. ~~and shall cover at least the following subjects:~~ *To be approved for refresher training of lead inspectors who completed an approved 24-hour training course or elevated blood lead inspectors who completed an approved 32-hour training course, a course must be at least 8 training hours to meet the recertification requirements of subrule 70.5(3). To be approved for refresher training of lead inspectors and elevated blood lead inspectors to meet the recertification requirements of subrule 70.5(5), a course must be at least 16 training hours. All refresher courses shall cover at least the following topics:*

ITEM 6. Amend rule 641—70.5(135), catchwords, as follows:

641—70.5(135) Certification, *interim certification,* and recertification.

ITEM 7. Amend subrule **70.5(1)**, paragraph **"e,"** as follows:

e. Beginning ~~March 1, 1999~~ *March 1, 2000,* ~~a~~ *to become certified as a lead inspector, elevated blood lead (EBL) inspector, lead abatement contractor, or project designer,* a certificate showing that the applicant has passed the state certification examination in the discipline in which the applicant wishes to become certified.

ITEM 8. Amend subrule **70.5(1)** by adding a **new** paragraph **"g"** as follows:

g. A person may receive interim certification from the department as a lead inspector, elevated blood lead (EBL) inspector, lead abatement contractor, or project designer by submitting the items required by paragraphs 70.5(1)"a" to "d" and "f" to the department. If the applicant completed an approved course prior to September 1, 1999, the interim certification shall expire on March 1, 2000. If the applicant completed an approved course on or after September 1, 1999, the interim certification shall expire six months from the date of completion of an approved course. An interim certification must be upgraded to a certification by submitting a certificate showing that the applicant has passed the state certification examination to the department as required by paragraph 70.5(1)"e." Interim certification is equivalent to certification.

ITEM 9. Amend subrule 70.5(2), introductory paragraph, as follows:

70.5(2) *Beginning September 1, 1999,* ~~To~~ *to* become certified by the department as a lead ~~inspector, elevated blood lead (EBL) inspector, lead abatement contractor, lead abatement worker, or visual risk assessor~~ *professional*, an applicant must meet the education and experience requirements for the appropriate discipline:

ITEM 10. Amend subrule **70.5(3)**, introductory paragraph, and paragraphs **"b," "c,"** and **"e,"** as follows:

70.5(3) Certifications issued prior to ~~March 31, 1999~~ *September 1, 1999*, shall expire on ~~August 1, 1999~~ *February 29, 2000*. By ~~August 1, 1999~~ *March 1, 2000*, lead professionals certified prior to ~~March 1, 1999~~ *September 1, 1999*, must be recertified by submitting the following:

b. For lead inspectors, a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(3) *and the completion of an 8-hour refresher course.*

c. For elevated blood lead (EBL) inspectors, a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(4) *and the completion of an 8-hour refresher course.*

e. ~~A~~ *If the date on which the applicant completed an approved training course is three years or more before the date of recertification, a* certificate showing that the applicant has successfully completed an approved refresher training course for the appropriate discipline.

ITEM 11. Amend subrule 70.5(5) as follows:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

70.5(5) Beginning ~~March 1, 1999~~ *March 1, 2000*, individuals certified as lead professionals must be recertified each year. To be recertified, lead professionals must submit the following:

a. A completed application form.

b. A $50 nonrefundable fee.

c. Every three years, a certificate showing that the applicant has successfully completed an approved refresher training course for the appropriate discipline. *If the applicant completed an approved training program prior to March 1, 2000, the initial refresher training course must be completed no more than three years after the date on which the applicant completed an approved training program.*

ITEM 12. Amend subrule 70.5(6) as follows:

70.5(6) The department shall ~~develop and administer~~ *approve* the state certification examinations for the disciplines of lead inspector, elevated blood lead (EBL) inspector, lead abatement contractor, ~~lead abatement worker, and visual risk assessor~~ *and project designer. The state certification examination may not be administered by the provider of an approved course.*

a. An individual may take the state certification examination no more than three times within six months of receiving a certificate of completion from an approved course.

b. If an individual does not pass the *state* certification exam within six months of receiving a certificate of completion from an approved course, the individual must retake the appropriate approved course before reapplying for certification.

ITEM 13. Amend subrule 70.6(1) as follows:

70.6(1) Prior to ~~March 1, 1999~~ *March 1, 2000*, when performing any lead-based paint activity described as an inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, visual risk assessment, or lead abatement, a certified individual must perform that activity in compliance with the appropriate requirements below. Beginning ~~on March 1, 1999~~ *March 1, 2000*, all lead-based paint activities shall be performed according to the work practice standards in rule 70.6(135) and a certified individual must perform that activity in compliance with the appropriate requirements below.

ITEM 14. Amend subrule 70.6(2), introductory paragraph, as follows:

70.6(2) A certified lead inspector or a certified elevated blood lead (EBL) inspector must conduct lead inspections according to the following standards. Beginning ~~on August 1, 1999~~ *March 1, 2000*, lead inspections shall be conducted only by a certified lead inspector or a certified elevated blood lead (EBL) inspector.

ITEM 15. Amend subrule 70.6(3), introductory paragraph, as follows:

70.6(3) A certified elevated blood lead (EBL) inspector must conduct elevated blood lead (EBL) inspections according to the following standards. Beginning ~~on August 1, 1999~~ *March 1, 2000, elevated blood lead (EBL)* inspections shall be conducted only by a certified EBL inspector.

ITEM 16. Amend subrule **70.6(4)**, introductory paragraph and paragraphs **"a," "d,"** and **"e,"** as follows:

70.6(4) A certified lead inspector or a certified elevated blood lead (EBL) inspector must conduct lead hazard screens according to the following standards. Beginning ~~on August 1, 1999~~ *March 1, 2000*, lead hazard screens shall be conducted only by a certified lead inspector or a certified elevated blood lead (EBL) inspector.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child ~~six years of age or less~~ *under the age of six years* shall be collected.

d. In residential dwellings, two composite dust samples shall be collected. One sample shall be collected from the floors and the other from the window well and window trough in rooms, hallways, or stairwells where at least one child ~~six years of age or less~~ *under the age of six years* is most likely to come in contact with dust.

e. In multifamily dwellings and child-occupied facilities, a composite dust sample shall also be collected from common areas where at least one child ~~six years of age or less~~ *under the age of six years* is likely to come in contact with dust.

ITEM 17. Amend subrule **70.6(4)**, paragraph **"h,"** subparagraph **(13)**, as follows:

(13) Background information collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child ~~six years of age or less~~ *under the age of six years*; and

ITEM 18. Amend subrule **70.6(5)**, introductory paragraph and paragraphs **"a," "f,"** and **"g,"** as follows:

70.6(5) A certified lead inspector or a certified elevated blood lead (EBL) inspector must conduct risk assessments according to the following standards. Beginning ~~on August 1, 1999~~ *March 1, 2000*, risk assessments shall be conducted only by a certified lead inspector or a certified elevated blood lead (EBL) inspector.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child ~~six years of age or less~~ *under the age of six years* shall be collected.

f. In multifamily dwellings and child-occupied facilities, dust samples shall also be collected from common areas adjacent to the sampled residential dwellings or child-occupied facility and in other common areas where the lead inspector or elevated blood lead (EBL) inspector determines that at least one child ~~six years of age or less~~ *under the age of six years* is likely to come in contact with dust. Dust samples may be either composite or single-surface samples.

g. In child-occupied facilities, dust samples shall be collected from the window well, window trough, and floor in each room, hallway, or stairwell utilized by one or more children, ~~six years of age or less~~ *under the age of six years,* and in other common areas where the lead inspector or elevated blood lead (EBL) inspector determines that at least one child ~~six years of age or less~~ *under the age of six years* is likely to come in contact with dust. Dust samples may be either composite or single-surface samples.

ITEM 19. Amend subrule **70.6(5)**, paragraph **"k,"** subparagraph **(13)**, as follows:

(13) Background information collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child ~~six years of age or less~~ *under the age of six years*;

ITEM 20. Amend subrule 70.6(6), introductory paragraph, as follows:

70.6(6) A certified lead abatement contractor or certified lead abatement worker must conduct lead abatement accord-

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ing to the following standards. Beginning ~~on August 1, 1999~~ *March 1, 2000*, lead abatement shall be conducted only by a certified lead abatement contractor or a certified lead abatement worker.

ITEM 21. Amend subrule **70.6(7)**, introductory paragraph and paragraph **"a,"** as follows:

70.6(7) A certified lead inspector, a certified elevated blood lead (EBL) inspector, or a certified visual risk assessor must conduct visual risk assessments according to the following standards. Beginning ~~on August 1, 1999~~ *March 1, 2000*, visual risk assessments shall be conducted only by a certified lead inspector, a certified elevated blood lead (EBL) inspector, or a certified visual risk assessor.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child ~~six years of age or less~~ *under the age of six years* shall be collected.

ITEM 22. Adopt **new** rule 641—70.10(135) as follows:

641—70.10(135) Waivers. Rules in this chapter are not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

[Filed Emergency 9/17/99, effective 9/17/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9389A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 190C.12 and 190C.13, the Department of Agriculture and Land Stewardship rescinds Chapter 47 "Organic Food Production," and adopts a new Chapter 47, "Organic Certification and Organic Standards," Iowa Administrative Code.

The new chapter is intended to establish organic standards for producers, processors and handlers of organic agricultural products and to establish an organic certification program within the department.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 14, 1999, as **ARC 9200A**.

These rules contain changes from the Notice of Intended Action to reflect public comment and consideration by the Department and the Organic Standards Board. The changes are as follows:

1. Rule 21—47.1(190C), Purpose: Language related to EPA residue standards and a specific reference to the National Organic Program has not been adopted.
2. Rule 21—47.2(190C), Definitions: The terms "audit," "audit trail," and "manure re-feeding" were added and several other definitions which were deemed unnecessary were not adopted.
3. Subrule 47.3(13), Fees: In this subrule (formerly 47.3(14)), the fee structure basically remains the same other than reducing the size of fee categories and reducing many of the specific fees.
4. Subrule 47.5(4), Source of certified inputs: This new subrule combines several statements about certified inputs that were made in various places in the proposed rules and includes additional language to clarify the rules regarding inputs.
5. Subrule 47.5(11), Parties exempted from organic certification: In this subrule (formerly 47.5(3)), certain record-keeping requirements have been reduced, and marketing restrictions for such parties have been eliminated.
6. Subrule 47.6(7), Runoff and flooding: This subrule has been added to address potential contamination of crops due to flooding.
7. Subrule 47.6(11), Rotations: This subrule (formerly 47.6(12)) was revised to require a rotation that would more adequately enhance soil fertility and soil conservation on organic farms.
8. Subrule 47.6(14), Seeds, seedlings and planting stock: This subrule (formerly 47.6(13)) was revised primarily to clarify the intent of the proposed rule.
9. Subrule 47.7(6), Origin of livestock: This subrule was revised to clarify which origin requirements apply to each species.
10. Subrule 47.7(11), Livestock health care: This subrule was revised to clarify which substances are permitted and which substances are prohibited.
11. Subrule 47.10(1), Handlers: This subrule was revised to clarify who must be certified.
12. Rule 21—47.11(190C), Composition and labeling for finished multi-ingredient products: This rule was revised to clarify what ingredients are permitted and what ingredients are prohibited in organic processed products.
13. The words "conventional" and "conventionally" have been changed to "nonorganic" and "nonorganically" to be more consistent with language used in the organic industry.

Waiver provisions are not included in the rules; however, a specific exemption from certification, subrule 47.5(11), is included.

These rules shall become effective on November 10, 1999.

These rules are intended to implement Iowa Code chapter 190C.

Rescind 21—Chapter 27 and adopt the following **new** chapter in lieu thereof:

CHAPTER 47
ORGANIC CERTIFICATION AND ORGANIC STANDARDS

21—47.1(190C) Purpose. In enacting the organic agricultural products Act of 1998, Iowa Code chapter 190C, the Iowa legislature has recognized a variety of needs. These include the need for protection of farmers and consumers with regard to marketing of agricultural products labeled organic in the state of Iowa; the need to define organic agriculture standards that, upon implementation, will promote and enhance agro-ecosystem health, biological diversity and holistic farming practices; and the need to maintain the integrity of organic standards as developed, upheld and perceived by the organic industry. As such, standards relating to the production, processing and handling of organic products have been established through the enactment of the organic agricultural products Act of 1998 and this chapter.

The Act is intended to encourage and enable Iowans to produce agricultural products for the organic market by setting attainable standards and a system of verification of compliance with these standards through a state organic certification program. The department believes that compliance with the Act and this chapter will enhance the quality of organically produced agricultural products and promote interstate and international markets.

The Act establishes the department as a certification agency. However, the Act recognizes the role of private certification agencies providing organic certification services in the state. Private certification agencies should be informed that Iowa producers, processors and handlers certified by such agencies must be in compliance with the Act and this chapter.

Consumers will have a higher level of protection against residues in foods labeled organic than they have with all other foods which must only meet EPA minimum standards. The department recognizes that organic growers are striving to protect and improve the integrity of their products and that testing may be conducted to verify compliance with Iowa Code chapter 190C and this chapter.

The department recognizes that the National Organic Program has not been implemented at the writing of this chapter but that once implemented, USDA accreditation of private and state certification agencies will be required pursuant to the Organic Foods Production Act of 1990. Private certification agencies may provide certification services in Iowa prior to such accreditation being made available by USDA. Once accreditation is available, private certification agencies shall attain USDA accreditation as required by USDA to continue to provide certification services in the state.

The department acknowledges that this chapter is intended to be reasonably consistent with industry, national and international organic standards as established by private certification agencies and international accrediting bodies.

This chapter shall be understood to apply to producers, processors, and handlers of agricultural products advertised or sold as organic. Future amendments to this chapter may be necessary upon the implementation of the National Organic Program.

21—47.2(190C) Definitions. As used in this chapter, the following definitions apply:

"Accreditation" means a procedure by which an authoritative body gives a formal recognition that a body or person is competent to carry out specific tasks.

"Accredited certification agency" means a body, state or private, that has been authorized by the USDA Secretary of Agriculture to conduct certification activities as a certifying agent pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) upon implementation of the National Organic Program.

"Agricultural product/product of agricultural origin" means any product or commodity of agriculture, raw or processed, including any commodity or product derived from livestock, that is marketed for human or livestock use or consumption.

"Allowed" means materials and practices which may be used for the production of organic crops, livestock and processed products with no restrictions.

"Animal" means any mammals, birds, or insects including cattle, sheep, goats, swine, poultry, equine, domesticated game, and bees.

"Animal manure" means excreta of animals, together with whatever bedding materials are used to maintain proper sanitary and health conditions.

"Annual crop" means any crop that is harvested from the same planting during the same crop year and that does not produce crops in subsequent years.

"Antibiotic" means any of various substances, such as penicillin or streptomycin, that are used to inhibit or destroy the growth of microorganisms in the prevention and treatment of diseases.

"Application assistance" means the distribution, collection and review of application materials for completeness, including initiating contact with members to report missing paperwork and incomplete data.

"Application materials" means the application for organic certification including the organic plan, inspection report, and all other materials necessary to determine compliance with Iowa Code chapter 190C and this chapter.

"Audit" means a formal examination and verification of organic practices to determine whether such practices comply with organic standards.

"Audit trail" means a comprehensive system of documentation which verifies the integrity of organic products or ingredients, from production through harvest, storage, transport, processing, handling, and sales.

"Authorized certification agent" means the department's organic agriculture bureau, which shall serve as a certification agent on behalf of and as authorized by the secretary of agriculture pursuant to Iowa Code section 190C.4(2).

"Breeding" means the selection of plants or animals to reproduce desired characteristics in succeeding generations.

"Buffer zone" means a clearly defined and identifiable boundary area bordering an organic production unit that is established to limit inadvertent application or contact of prohibited substances from an adjacent area not under organic management.

"Certificate (organic)" means an annual written assurance which identifies the name and address of the entity certified, effective date of certification, expiration date of certification, certificate number, types of products and processes certified, name and address of certification agency, and standards to which the entity is certified.

"Certification" means the annual procedure by which an independent third party gives written assurance that a clearly identified production or processing system has been methodically assessed and conforms to organic standards.

"Certification seal" means a certification agency's logo, sign or mark which is used to identify products or operations certified as in compliance with the certification agency's standards.

"Certified organic farm" means a farm, or portion of a farm, or site where agricultural products or livestock are produced, that is certified by a certifying agency under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) as utilizing a system of organic farming under the same title.

"Certified organic handling operation" means any operation, or portion of any handling operation, that is certified by the certifying agent under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) as utilizing a system of organic handling described under the same title.

"Certified organic product" means a product which has been produced, processed or handled in conformance with Iowa Code chapter 190C and this chapter and as verified by the existence of a valid organic certificate.

"Certified organic wild crop harvesting operation" means a clearly identified wild crop harvesting site or operation that is certified by a certification agency and is in compliance with Iowa Code chapter 190C and this chapter.

"Commercially available" means the documented ability to obtain a production input or ingredient in an appropriate form, quality and quantity to be feasibly and economically used to fulfill an essential function in a system of organic farming, processing or handling.

"Commingling" means the physical contact between nonpackaged or permeably packaged organic products and nonorganic products during production, processing, transportation, storage, or handling.

"Compost" means a stabilized product of controlled decomposition of an appropriate mixture of nitrogen and carbon-bearing materials to produce humus as a soil conditioner or fertilizer.

"Conversion (transition)" means the act of implementing organic management practices in accordance with organic standards.

"Conversion period (transition period)" means the time between the start of organic management and certification of the crop or livestock production system as organic.

"Critical control point" means a point in a food process used by a certified organic handler when there is a high probability that improper control may cause, allow, or contribute to a hazard, a loss of organic integrity of the food, or to filth in the final food or decomposition of the final food.

"Crop" means a plant or part of a plant intended to be marketed as an agricultural product or fed to livestock.

"Crop rotation" means the practice of alternating annual with annual and perennial crops grown on a specific field in a planned pattern or sequence so that crops of the same species or family are not grown on the same field during consecutive crop years.

"Crop year" means the normal growing season for a given crop.

"Cultural practices" means management-intensive methods which are used to enhance crop or livestock health or prevent weed, pest or disease problems without the use of external inputs including, but not limited to, selection of ap-

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

propriate varieties and breeds; selection of appropriate planting sites; proper timing and density of plantings; construction of livestock facilities designed to optimize animal health; and proper stocking rates.

"Department" means the Iowa department of agriculture and land stewardship.

"Detectable residue level" means the level at which the presence of a pesticide, heavy metal, genetically engineered organism or other substance can be verified using current technology.

"Distributor" is a business that purchases product under its own name, usually from shippers, processors, or other distributors, and generally sells outside its local area.

"Drift" means the physical movement of prohibited pesticide, or fertilizer droplets or granules from the intended target site onto a certified organic field or farm, or portion thereof.

"Extract" means the act of producing a substance by dissolving the soluble fractions of a plant, animal or mineral in water or another solvent; or the product thereof.

"Farm" means an agricultural operation maintained for the purpose of producing agricultural products.

"Feed" means food for livestock, excluding mineral and vitamin supplements and feed additives.

"Feed additive" means a substance or combination of substances added to feed in micro quantities to fulfill a specific need, i.e., nutrients in the form of amino acids, minerals, and vitamins.

"Feed emergency" means a temporary unplanned shortage of certified organic feed due to conditions that are entirely beyond an operator's control.

"Feed supplement" means a feed used with another feed to improve the nutritive balance or performance of the total ration and intended to be:

1. Diluted with other feeds when fed to livestock;
2. Offered free choice with other parts of the ration if separately available; or
3. Further diluted and mixed to produce a complete feed.

"Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use and claimed to have value in promoting plant growth.

"Fiber" means a natural agricultural filament, as of cotton, flax, hemp or wool, including material made of such filaments.

"Field" means an area of land identified as a discrete and distinguishable unit within a farm operation.

"Fogging" means the application of a liquid or solid insecticide which is vaporized by heat or atomization to penetrate free air space to kill pests.

"Food" means a material, usually of plant or animal origin, containing or consisting of essential body nutrients, as carbohydrates, fats, proteins, vitamins, or minerals, that is taken in and assimilated by an organism to maintain life and growth.

"Food additive" shall have the same meaning for purposes of this chapter as within the Federal Food, Drug and Cosmetic Act.

"Forage" means feed for livestock, often consisting of coarsely chopped leaves and stalks of grasses and legumes.

"Fumigation" means application of a gas, such as methyl bromide, to a sealed space to permeate areas and products to kill all pests, including eggs and larvae.

"Fungicide" means any substance that kills or inhibits the growth of fungi or molds.

"Genetically engineered/modified organisms (GEO/GMO)" means all organisms, and products thereof, produced through techniques in which the DNA has been altered in ways that do not occur under natural conditions or processes. Techniques of genetic engineering/modification include, but are not limited to: recombinant DNA, cell fusion, microinjection and macro injection, encapsulation, gene deletion, introduction of a foreign gene and changing the position of genes. Genetically engineered organisms do not include organisms resulting from techniques such as breeding, conjugation, fermentation, hybridization, in-vitro fertilization and tissue culture.

"Handle" means to sell, process, package or store agricultural products.

"Hazard" means a probability that a given pesticide will have an adverse effect on people or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

"Herbicide" means a substance used to kill or destroy plants, especially weeds.

"Horticultural crops" means crops intended for human consumption, including vegetables, fruits, and herbs.

"Ingredient" means any substance, including a food additive, used in the manufacture or preparation of a food and present in the final product, although possibly in a modified form.

"Insecticide" means a substance used to kill insects.

"Inspection" means the on-site examination of production, handling and management systems to assess if performance of the operation is in compliance with prescribed organic standards.

"Inspector" means a person who performs inspections on behalf of a certification agency.

"Ionizing radiation (irradiation)" means radionuclides (such as cobalt-60 or cesium-137) capable of altering a food's molecular structure for the purpose of controlling microbial contaminants, pathogens, parasites and pests in food; preserving a food; or inhibiting physiological processes such as sprouting or ripening.

"Labeling" means any commercial message, written, printed or graphic, that is present on the label of a product, accompanies the product, or is displayed near the product, for the purpose of promoting its sale or disposal.

"Manure - green" means a crop that is incorporated into the soil for the purpose of soil improvement.

"Manure - raw" means animal excreta, possibly including bedding materials, which has not been composted or otherwise decomposed.

"Manure re-feeding" means the practice of feeding to livestock animal waste that has been processed for such use. This practice is prohibited in organic livestock production.

"Marketing" means holding for sale or displaying for sale, offering for sale, selling, delivering or placing on the market.

"National List" means a list of approved and prohibited substances that shall be included in the standards for organic production and handling as established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) in order for such products to be sold or labeled as organically produced under this title.

"Natural" means present in or produced by nature; nonsynthetic.

"Organic agriculture" means a holistic production management system which promotes and enhances agroecosystem health, including biodiversity, biological cycles and soil biological activity; emphasizes the use of manage-

ment practices over the use of off-farm inputs; and utilizes cultural, biological and mechanical methods as opposed to synthetic materials.

"Organically produced" means an agricultural product that is produced and handled in accordance with Iowa Code chapter 190C and this chapter.

"Organic good manufacturing practices" means practices which are followed by processors and handlers of organic food products.

"Organic integrity" means the inherent qualities of an organic product which are obtained through adherence to organic standards at the production level, and which must be maintained from production to the point of final sale in accordance with organic standards, in order for the final product to be labeled or marketed as organic.

"Organic plan" means a written plan for management of an organic crop, livestock, wild harvest, processing or handling operation that has been agreed to by the operator and the certification agency which specifies the steps necessary for the operation to be in compliance with organic standards.

"Packaging" means materials used to wrap, cover or contain an agricultural product.

"Packer" means an operation which receives raw agricultural products and packs the products for shipping.

"Parallel production" means the simultaneous production, processing or handling of organic and nonorganic (including transitional) crops, livestock and other agricultural products of the same or similar (indistinguishable) varieties.

"Parasiticide" means a substance or compound used to kill parasites, either internal or external.

"Perennial crop" means any crop that can be harvested from the same planting for more than one crop year, or that requires at least one year after planting before harvest.

"Person" means an individual, group of individuals, corporation, association, organization, cooperative or other entity.

"Pest" means an injurious or unwanted plant or animal.

"Pesticide" means any substance which alone, in chemical combination, or in any formulation with one or more substances, is defined as a pesticide in the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.).

"Planting stock" means any plant or plant tissue, including rhizomes, shoots, leaf or stem cuttings, roots or tubers used in plant production or propagation.

"Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, dehydrating, freezing, or otherwise manufacturing and includes the packaging, canning, jarring or otherwise enclosing of food in a container.

"Processing/on-farm" means the processing of organic agricultural products at the same location where they were produced.

"Processor" means a company which cooks, bakes, heats, dries, mixes, grinds, churns, separates, extracts, cuts, ferments, eviscerates, preserves, dehydrates, freezes, otherwise manufactures, packages, cans, jars, or otherwise encloses food in a container.

"Producer" means a person who engages in the business of growing or producing food or feed.

"Production" means all operations undertaken to grow or raise agricultural products on the farm, including initial packaging and labeling of the product.

"Prohibited" means a substance or practice which is not allowed to be used in any aspect of organic production, processing or handling.

"Records" means any information in written, visual or electronic form that documents the activities undertaken by producers, processors, and handlers demonstrating compliance with organic standard requirements.

"Repacker" means a company which receives products from growers or other sources, removes the products from the original container, may or may not sort the product, and repacks the product for resale either in the original container or in a different container.

"Residue testing" means a test used to verify the presence of a specified level of a substance.

"Restricted (regulated)" means substances or practices which may be used by organic farm and handling operations only by following prescribed variances, such as prior approval by the certification agency.

"Row crops" means crops planted and grown in rows for intensive summer production including, but not limited to, corn, soybeans, sorghum, or sugar beets, primarily destined for livestock or processing for human consumption.

"Sanitize" means to adequately treat food-contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or integrity of the organic food.

"Seedling - organic" means an annual seedling grown using organic methods and transplanted to raise an organic agricultural product.

"Slaughter stock" means any animal that is intended to be slaughtered for human consumption.

"Sludge (biosolids)" means semisolid residuals produced by municipal wastewater treatment processes.

"Soil amendment" means a substance applied to the soil to improve physical qualities or biological activity; complement or increase soil organic matter content; or complement or adjust a soil nutrient level.

"Split operation" means an operation that produces or handles nonorganic agricultural products in addition to agricultural products produced organically.

"Suspension of certification" means an action taken by a certification agency that results in the loss of ability of a farm, wild crop harvesting, processing or handling operation to market its products as organic.

"Synthetic" means a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

"Treated" means the application of an active synthetic substance to seeds, planting stock or other inputs used in farming.

"Trucker" means a handling operation which transports products between farms, processing plants, other handling operations, or other facilities. A trucker does not open product containers or mix, combine, or otherwise handle the product while it is in the trucker's custody.

"Untreated" means seeds, planting stock or other inputs to which no active synthetic materials have been applied.

"Vaccine" means a diluted suspension of killed or live microorganisms, such as viruses or bacteria, incapable of inducing severe infection but capable when inoculated of counteracting the disease-causing organism.

"Wild harvested" means plants or portions of plants that are collected or harvested from defined areas of land which are maintained in a natural state and are not cultivated or otherwise managed.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

STATE CERTIFICATION PROGRAM

21—47.3(190C) State certification agent. The department shall serve as certification agent on behalf of and as authorized by the secretary of agriculture pursuant to the authority of Iowa Code section 190C.4(2).

47.3(1) Certificate. The department shall issue a certificate verifying compliance with Iowa Code chapter 190C and this chapter to applicants of the state organic certification program that have been approved for certification, according to Iowa Code chapter 190C and this chapter, by the organic standards board and have paid required fees.

47.3(2) Expiration of certification. Certification will expire one year from date of issuance pursuant to Iowa Code section 190C.13(1)"a." A temporary extension of certification may be granted as deemed necessary by the department for a period not to exceed 90 days.

47.3(3) General certification requirements. In order to receive and maintain state organic certification from the department, producers, processors and handlers of organic agricultural products must apply for organic certification with the department and submit all required materials, comply with Iowa Code chapter 190C and this chapter, permit the department to access the operation and all applicable records as deemed necessary, comply with all local, state and federal regulations applicable to the conduct of such business, submit all applicable fees to the department pursuant to Iowa Code section 190C.5(1) and this chapter, and receive approval for certification by the organic standards board.

47.3(4) Application for state organic certification.

a. Application for state certification shall be completed and submitted with required application materials and fees to the department on forms furnished by the department. Applications must be received by the deadline date as published by the department in the application packet. Applications submitted to the department after published deadline date may be charged a late fee, and processing of such applications may be subject to delays or the applications may not be processed at all.

b. The department pursuant to Iowa Code section 190C.13 shall review all applications including applicant's organic plan and inspection report. The department shall forward completed application materials to the organic standards board review committee.

47.3(5) Organic plan. Producers, processors or handlers seeking organic certification from the department shall submit an organic plan to the department.

a. The organic plan must:

(1) Be agreed to by the operator and the department pursuant to Iowa Code section 190C.12(2)"c";

(2) Address and meet the requirements of Iowa Code chapter 190C and this chapter;

(3) Include methods used and those intended for use to ensure that the agricultural products are produced, handled, and processed according to requirements established by the department pursuant to Iowa Code chapter 190C and this chapter; and

(4) Be implemented and updated annually.

b. The department shall be informed of changes to the organic plan which may affect the conformity of the operation to the certification standards at any time during the certification process and after such certification is granted.

47.3(6) Inspections. The department, pursuant to Iowa Code section 190C.4(1)"a" and this chapter, shall provide annual inspections of operations seeking state organic certification as the secretary's authorized agent pursuant to the authority of Iowa Code section 190C.4(2). The inspector shall write and submit to the department a report of findings.

47.3(7) Records. Records shall be maintained according to subrule 47.5(1).

47.3(8) Certification review committee.

a. The certification review committee shall be composed of five board members, with the remaining members serving as alternates. Positions shall be representative of the total make-up of the board.

b. The certification review committee members shall not have a personal or professional interest in the result of the applicant's request for certification. A member having an interest shall not participate in any action of the certification review committee relating to the application. The certification review committee's procedures shall be reviewed as deemed necessary by the department.

c. The certification review committee members shall serve two-year staggered terms.

d. If deemed necessary, a second certification review committee shall be established under these same guidelines.

47.3(9) Certificate of compliance.

a. The department shall provide to the successful applicant an official certificate recognizing compliance with Iowa Code chapter 190C and this chapter.

b. The state-certified party shall use certification only to indicate that products are certified as being produced, processed and handled in conformity with the standards promulgated in Iowa Code chapter 190C and this chapter.

c. The state-certified party shall not use its state organic certification status in such a way as to bring the department into disrepute and shall not make any statement regarding such certification in a way that the department may consider misleading or unauthorized.

d. The state-certified party shall inform the department of any changes in the organic plan, such as production changes, or intended modification to the product(s) or manufacturing process which may affect the conformity of the operation to the certification standards. If such is the case, the certified party may not be allowed to release such products as certified organic bearing the state seal until the department has given approval to do so.

47.3(10) Use of state seal. For the promotion or sale of organic products, only those producers, handlers and processors certified as organic by the department are entitled to utilize the state seal attesting to state of Iowa organic certification. In addition, the statement "Produced (processed if processor) in accordance with the State of Iowa Organic Agricultural Products Act of 1998" may only be used on the label by state-certified operations. The seal and statement may be used together on the same label or either one may be used by itself. The seal and statement shall not be changed except to increase or decrease size as necessary. Where a party maintains organic certification with a private certification agency and additionally with the department, the private certification agency's certification seal may appear on the same label with the state of Iowa certification seal.

47.3(11) Transfer of organic product. A certified operator, selling a quantity of organic agricultural product, shall document, according to department policy as approved by the board, that the product being sold originated from the certified operation. The document shall be maintained as part of required record keeping.

47.3(12) Testing. Residue testing may be conducted by the department in the case of complaint, suspected contamination, or suspected fraud. The party in control of the site being tested shall pay the department for the cost incurred

from testing only if residue is confirmed. Cost of negative test results shall be paid by the department.

47.3(13) Fees. Fees are established for application, inspection, and certification to support costs associated with activities necessary to administer this program pursuant to Iowa Code sections 190C.5(1) to 190C.5(3). The applicant shall submit all three fees to the department for the specific amount and at the appropriate time as specified in this rule.

a. Application fee. A fee of $50 shall accompany the application for certification. An additional late fee of $25 shall accompany renewal applications submitted after the published deadline date.

b. Inspection fee.

(1) The inspection fee shall be submitted before the inspection but only after the application has been reviewed and found to qualify for an inspection. This fee covers the cost of providing the inspection. If the actual cost of the inspection exceeds the amount, the applicant shall be required to pay the balance.

(2) Schedule of inspection fees.

1. On-farm producer inspection fee of $175 shall be paid by all production operations or combination of production operations.

2. On-farm-processing inspection fee of $100 shall be paid by production operations seeking certification of product-related processing operation. Simple washing, drying and packaging shall not constitute processing for purposes of fee assessment.

3. An inspection fee of $300 shall be paid by processor, handler and broker operations.

c. Certification fees.

(1) Certification fees may be adjusted annually pursuant to Iowa Code section 190C.5(2). The certification fee provides the operation with one year of state organic certification. Crops certified but not sold during the year of certification may be sold as certified as long as storage and handling of such crops are maintained according to Iowa Code chapter 190C and this chapter. The certification year shall begin the date that certification is granted.

(2) Certification fees shall be paid in addition to the application fee and inspection fee. Certification fees are due and payable after certification is granted to the applicant. Fees may be paid quarterly, biennially or annually. No transaction certificate will be issued if payments are delinquent.

(3) Schedule of certification fees.

1. Vegetables, herbs and spice crops—field production. Vegetables, herbs and spice crops are assessed a fee of $25 per acre with a minimum of a ½-acre plot size. Production area shall include actual production acres.

2. Vegetables, herbs and spice crops—greenhouse production.

Less than 1,000 square feet	$20
1,001 to 3,000 square feet	$40
3,001 to 5,000 square feet	$60
Each additional 2,000 square feet	$20

3. Tree crops. Fees are assessed on a per acre basis.

Fruit and nut crops	$15

4. Farm crops. Fees are assessed on a per acre basis for each harvested crop. Green manure crops are not assessed.

All corn varieties	$2.50
Soybeans	$4.00
Small grains	$1.00
Forage	$ .50
Other crops	$1.20

5. Dairy, livestock and poultry. Livestock requiring assessment shall include all breeding stock and produced stock for the year unless otherwise stated. If all progeny are not born at the time of inspection, an estimate shall be used. Purchased stock, whether breeding or feeder stock, shall be assessed when the transaction certificate is issued. Fees are assessed on a per head basis for larger species and a per hundred head basis for smaller species.

Livestock - Dairy (fees are assessed only on animals in production)

Cattle	$10.00
Goats	$ 1.00
Sheep	$ 1.00
Livestock	
Beef, buffalo, ratites and dairy heifers	$ 1.00
Swine	$ .25
Sheep and goats	$ .25
Poultry (per 100)	
Slaughter chickens	$ 1.00
Slaughter turkeys	$ 5.00
Layers	$10.00

6. Apiculture. Fees are assessed on a per colony basis.

Each colony	$.50

7. Aquaculture.

Brood stock	$.50 per head
Eggs through stockers	$.25 per thousand head
Food size and above	$.05 per 100 pounds

8. On-farm processing. This fee schedule shall apply to those operations processing products within the farm unit. Fees are based on gross organic sales from previous year or the projected estimated gross organic sales if first year of organic sales.

Estimated sales	
$0 - $100,000	$100
$100,001 - $250,000	$250
$250,001 - $500,000	$500
$500,001+	Refer to processor fee schedule

9. Processor. Fees are based on gross organic sales from previous year or the projected estimated gross organic sales if first year of organic sales.

Estimated sales	
$0 - $250,000	$ 250
$250,001 - $500,000	$ 500
$500,001 - $1 million	$1,000
$1,000,001 - $2 million	$2,000
$2,000,001 - $3 million	$3,000
Each additional million	$1,000

21—47.4(190C) Regional organic associations (ROAs). With approval by the board, the department may register and authorize a regional organic association to assist the organic standards board by providing application assistance to its members requesting application assistance.

47.4(1) Registration and authorization. Regional organic associations must be registered and authorized by the department in order to assist the organic standards board pursuant to Iowa Code section 190C.6.

a. Registration. To register with the department, the regional organic association must:

(1) Maintain a minimum of 25 members;

(2) Sign and submit to the department a regional organic association declaration as provided by the department;

(3) Submit, to the department, bylaws and ongoing changes to the bylaws;

(4) Submit verification of regional organic association liability insurance; and

(5) Successfully register annually with the department.

b. Authorization. For authorization to be granted, the following requirements must be met:

(1) The regional association shall sign a memorandum of understanding with the department specifying functions to be performed by the association related to application assistance; and

(2) The regional association shall receive from the department a letter of authorization to provide application assistance upon approval by the organic standards board.

47.4(2) Functions.

a. ROAs, reviewing member application materials for submission to the department, may:

(1) Provide to the department and the board a summary of the member's application;

(2) Identify any unresolved shortcomings in the application; and

(3) Indicate if the application appears to meet the Iowa organic standards promulgated in Iowa Code chapter 190C and this chapter.

b. Requirements.

(1) Application assistance provided by ROAs shall be conducted by association staff or association board members; and

(2) Application materials received by the ROA for submission to the department shall be forwarded along with the summary to the department. The application fee for state organic certification shall be paid with a check made payable to the department by the individual member applying for state certification. The check shall be submitted with the application.

47.4(3) Prohibited.

a. ROA staff or ROA board members providing application assistance for their members shall have no personal or commercial interest in the outcome of a member's application for state certification.

b. ROAs shall not amend member documents prior to submitting them to the department.

CERTIFICATION REQUIREMENTS IN IOWA

21—47.5(190C) Organic certification. Producers of agricultural products that are labeled, sold, or advertised as organic in the state of Iowa, and handlers who take legal title and process agricultural products that are labeled, sold, or advertised as organic in the state of Iowa must be certified, unless otherwise stated in this chapter, by the department or an accredited private certification agency as defined in rule 47.2(190C) and must comply with Iowa Code chapter 190C and this chapter.

Parties certified by a private certification agency are not required to certify additionally with the department. However, individuals seeking certification only from a private certification agency are not relieved from the responsibility to understand and comply with Iowa Code chapter 190C and this chapter. In any instance, where a particular organic standard held by a private certification agency differs from a standard held by the state, the operator must comply with the state standard if it is more stringent.

47.5(1) Records.

a. Records shall include, but not be limited to, documentation of inputs, practices and procedures utilized in the production, processing and handling of organic agricultural products as well as yield, storage and sales information. Additional records may be required as deemed necessary by the department to determine compliance with Iowa Code chapter 190C and this chapter.

b. Records and inventory control procedures must be detailed enough to trace all raw materials from the supplier, through the entire plant process, and on through the distribution system to the retailer, using lot numbers, date codes or a similar product tracking system.

c. Records must be maintained for five years and be made available to the department upon request.

d. The certified party shall keep a record of all complaints made known to that party relating to a product's compliance with requirements to the relevant standard and to make these records available to the department upon request. The certified party shall take appropriate action with respect to such complaints and any deficiencies found in products or services that affect compliance with the requirements for certification, and all such actions shall be documented and available upon request by the department.

e. Records of inputs applied to nonorganic fields or livestock in split or parallel operations must be maintained and made available during inspections. This applies to all fields in the operation whether leased or owned.

47.5(2) Private certification agencies. Accredited private certification agencies as defined in rule 47.2(190C) are recognized by the department as providers of organic certification in the state.

a. Certification standards utilized by such agencies to certify Iowa producers, processors and handlers shall not be in violation of Iowa Code chapter 190C and this chapter.

b. A memorandum-of-understanding document, available from the department, shall be signed by the private certification agency intending to provide organic certification services in the state and submitted to the department.

47.5(3) Document review. Parties who have attained organic certification from a private certification agency may at a later date during that same year request the department to provide a document review. The document review shall be limited to a specific quantity of product for the purpose of attaining the state organic seal for that sale only. All application records and the inspector's report must be submitted to the department from the private certification agency at the request of the certified party. The department and organic standards board shall review this request only after a copy of the party's organic certificate has been received by the department from the private certification agency under which organic certification has been attained. The department may inspect the organic products in question and any facet of the operation in addition to collecting various samples for analysis if deemed necessary. Document review approval shall result in the issuance of a state certification seal from the department only for the specific quantity for which the review was sought. A fee shall be charged to the party requesting the review and the fee shall be paid to the department prior to the issuance of the state certification seal.

47.5(4) Source of certified inputs.

a. In-state source. Inputs that are certified by a private certification agency holding a memorandum of understanding with the department may be used in the production of crops, livestock and processed products without prior approval from the department.

b. Out-of-state source. Inputs that are obtained from out-of-state sources but within the United States shall be certified organic by certification agencies holding a memorandum of understanding with the department or be accredited by the USDA, pursuant to the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.), upon implementation of the National Organic Program. Until the National Organic Program is implemented, the approval of out-of-state certified organic inputs shall be reviewed prior to use by the department and the board on a case-by-case basis.

c. Source outside the United States. Inputs obtained from sources residing outside the United States must at mini-

mum meet the requirements of the Organic Foods Production Act of 1990, shall be certified by a certification agency and shall be reviewed for approval on a case-by-case basis.

d. Records of the source and use of such inputs shall be maintained.

47.5(5) Inspections.

a. Scheduled. Producers, processors and handlers applying for organic certification must be verified annually through an on-site inspection and comprehensive review of the operation by an accredited certification agency. Individuals seeking certification shall make all necessary accommodations for the conduct of the evaluation, including provision for examining records and access to all areas, and personnel for the purposes of evaluation and resolution of complaints. The evaluation may include, but is not limited to, testing, inspection, assessment, surveillance, and reassessment.

b. Unscheduled. All parties making an organic claim may be subject to an unscheduled on-site inspection, review of records and sampling if deemed necessary by the department pursuant to Iowa Code sections 190C.4(2), 190C.22(2) and 190C.22(3) to verify compliance.

47.5(6) Organic label. All organic products produced, processed and labeled in Iowa must meet applicable state and federal labeling regulations and organic standards as promulgated in Iowa Code chapter 190C and this chapter.

47.5(7) Enforcement and investigations. The department and the attorney general shall enforce Iowa Code chapter 190C and this chapter pursuant to Iowa Code section 190C.21.

47.5(8) Complaints. Any person may submit a written complaint to the department regarding a suspected violation of Iowa Code chapter 190C and this chapter pursuant to Iowa Code section 190C.22(2). Such signed complaints shall be submitted on the required form provided by the department upon request.

47.5(9) Disciplinary action. Intentional fraud or inadvertent violation of Iowa Code chapter 190C and this chapter may result in suspension of certification or decertification. If inadvertent violations are not corrected as required by the certification agency or in the case of suspected fraud, and the fraudulent activities are substantiated, the operation may be decertified. Upon suspension, the certified party must discontinue the use of all labels or advertising materials that contain any reference to organic certification. In addition, in the case of decertification, the decertified party shall return the organic certificate to the certification agency.

47.5(10) Appeals. Appeal procedures are established pursuant to Iowa Code section 190C.3(6) under 21—Chapter 2. The organic standards board shall have final agency action, subject to the parameters of Iowa Code chapter 17A. The appeals committee shall be comprised of board members who did not serve on the certification review committee for the particular case in question and shall have no conflict of interest in the matter. Procedures and restrictions concerning the hearing of appeals shall apply.

a. Written appeal. Except as specifically provided in the Iowa Code or elsewhere in the Iowa Administrative Code, a person who wishes to appeal an action or proposed action of the department which adversely affects the person shall file a written appeal with the department within 30 calendar days of the action or notice of the intended action. A written notice of appeal shall be considered filed on the date of the postmark if the notice is mailed. The failure to file timely shall be deemed a waiver of the right to appeal. Appeal will first go to the certification review committee. The certification review committee will determine if the party's claim has sufficient merit to overturn the earlier denial in a timely manner. If this is not the case, however, the appeal will be forwarded from the certification review committee to the appeals committee.

b. Records. Records of all appeals, complaints and disputes, and remedial actions relative to certification shall be maintained by the department for a minimum of ten years. Records shall include documentation of appropriate subsequent action taken and its effectiveness.

47.5(11) Parties exempted from organic certification.

a. Exempted parties.

(1) A person who receives $5000 or less in annual gross income from the sale of agricultural products shall be exempt from fees and mandatory organic certification.

(2) Final retailers of agricultural products who do not process agricultural products are exempted from organic certification in the state of Iowa. Handlers who do not process agricultural products are exempt from certification.

b. The exempted producer or handler selling agricultural products as organic shall demonstrate compliance with Iowa Code chapter 190C and this chapter by implementation and documentation of the following measures:

(1) Submit to the department a signed Exempt Party Declaration form, as provided by the department, attesting to knowledge of and compliance with Iowa Code chapter 190C and this chapter;

(2) Submit a $10 processing fee with the declaration to the department;

(3) Maintain records adequate to verify compliance and trace an organic product from production site to sale for consumption. Records must be kept for five years.

ORGANIC STANDARDS

21—47.6(190C) Crops.

47.6(1) Crop production requirements. Prohibited materials, including prohibited fertilizers and pesticides, may not be used in the production of organic crops pursuant to Iowa Code chapter 190C and this chapter.

47.6(2) Inputs.

a. All natural materials used in the production of organic agricultural products are permitted except those listed as prohibited on the National List or otherwise prohibited or regulated by Iowa Code sections 200.5 and 206.12 and this chapter.

b. Synthetic materials are prohibited except if listed as allowed on the National List.

c. Genetically modified crops are prohibited in organic crop production.

47.6(3) Split operations. Split operations shall be allowed but segregation plans and applicable logs must be followed and documented for organic and nonorganic crops. The operation must maintain, but not be limited to, the following documents and logs addressing the following procedures: cleaning, spraying, purging, separate storage and separate transportation. Appropriate physical facilities, machinery and management practices shall be established to prevent commingling of nonorganic and organic products or contamination by prohibited substances.

47.6(4) Buffer zone.

a. Requirements.

(1) Buffer zones, a minimum of 30 feet, must be maintained between certified organic crops and areas treated with prohibited substances. A vegetative solid-stand windbreak a minimum of 15 feet tall may be substituted for a 30-foot buffer zone.

(2) If crops are grown in this buffer zone, such crops shall not be labeled, sold or in any way represented as organic.

(3) Crops harvested from buffer zones shall be kept separate from organic crops, and appropriate designated storage areas shall be clearly identified and records maintained to sufficiently identify the disposition of nonorganic product.

b. Recommendations.

(1) Planting of windbreaks and hedgerows is encouraged to help reduce spray drift from neighboring farms and wind damage to crops.

(2) The producer should notify neighbors, county roadside management officials, railroads, utility companies and other potential sources of contaminants. The producer should provide such individuals with maps of organic production areas, request individuals not to spray adjacent areas, and request to be informed if prohibited materials are applied to land adjacent to organic production areas.

47.6(5) Testing. Residue testing shall be conducted by the certification agency or its representative in the case of probable contamination.

47.6(6) Drift.

a. The department's organic agriculture bureau shall be notified by the party in control of the site of suspected pesticide drift incidences onto certified organic land or land which is under consideration for organic certification. The department may require residue testing to make a determination regarding certification.

b. In the case of drift, the affected party may file a complaint under Iowa Code section 206.14 with the department's pesticide bureau.

47.6(7) Runoff and flooding. Records must be kept regarding land that is subject to runoff or flooding. The department may require testing to make a determination regarding certification.

47.6(8) Conversion to organic. There shall be no use of prohibited materials for three years prior to the harvest of the first organic crop pursuant to Iowa Code section 190C.12(2)"b" and this chapter.

47.6(9) Organic farm plan.

a. Requirements.

(1) Producers of organic agricultural products, including wild crops and specialty crops, shall complete and submit an organic farm plan to the certification agency.

(2) The organic farm plan must be approved by the certification agency and updated annually.

(3) The certification agent shall be notified of all changes to the organic farm plan.

(4) The organic farm plan must address the key elements of organic crop production: soil and crop management, resource management, crop protection, and maintaining organic integrity through growing, harvesting, and postharvest operations.

(5) The plan must list total acreage of the operation and the types of crops grown, a history of crop practices and inputs, and current and intended practices.

(6) The plan shall include a description of practices that provide physical barriers, diversion of runoff, buffer areas, notification of neighbors, posting of borders or other means to prevent the application of prohibited substances to the land on which organically produced crops are grown.

(7) The producer shall submit the organic farm plan questionnaire provided by the certification agent and include adequate maps of all parcels farmed under the producer's control, with five-year histories of all parcels. The maps shall identify plots or fields by identification number and acreage size.

(8) The questionnaire shall be used to report methods and materials planned for use in the production of organic products.

(9) The applicant shall specify conversion plans for nonorganic fields in transition to organic including a rotation or land use plan for the upcoming three years.

(10) Adjoining land shall be identified and nonorganic or organic practices of the adjoining party noted.

b. Recommendations.

(1) A commitment to long-term soil improvement and fertility and protection from soil loss should be reflected in the plan; for example, winter cover crops are recommended.

(2) Postharvest procedures, and handling and storage equipment should be addressed.

47.6(10) Biological diversity. Biological diversity should be established, maintained and enhanced through the use of practices that are appropriate to the site and type of operation. Where possible and practical, preservation of nonagricultural areas, such as hedgerows, native prairies, wetlands and woodlands, is encouraged.

47.6(11) Rotations. For the production of annual crops, rotations are required for soil improvement, and disruption of weeds, insects, diseases and nematodes. A crop rotation including, but not limited to, sod, legumes, or other nitrogen fixing plants, and green manure crops shall be established. An approved crop rotation must be used from the start of transition to certified organic.

a. Annuals.

(1) Agronomic row crops. The same annual crop shall not be planted on the same field for more than four years out of a six-year period.

EXEMPTION: A four-year out of five-year rotation is permitted if a viable legume green manure has been incorporated during the five-year rotation.

(2) Horticultural crops. The same annual crop shall not be planted on the same field for more than four years out of a five-year period.

b. Perennials. Perennial systems shall include a plan for biodiversity in the system, including the use of cover crops, mulches, or grass cover. At the end of a perennial crop life cycle that exceeds four years, an annual cover crop must be planted, prior to planting another perennial crop. Replacement of individual stock is permitted without following replaced individual stock with a cover crop. For a perennial crop with a life cycle of less than four years, a cover crop must be planted at least once every five years. Permanent pastures are exempt from rotation standards.

c. Exemption. Rotation of crops may be affected by weather and other unforeseen circumstances. In the case where such circumstances cause a rotation to be out of compliance with this rule, the new rotation plan shall be approved by the certification agency prior to the implementation of the proposed changes.

47.6(12) Tillage and cultivation. Tillage and cultivation implements and practices shall be selected and used in a manner that does not result in long-term degradation of soil physical quality or result in excessive erosion.

47.6(13) Soil fertility and crop nutrient management. Plant or animal materials may be used to replenish soil organic matter content, provide essential crop nutrients and enhance soil biological activity. Plant or animal materials shall be used in a manner that does not significantly contribute to water contamination or soil contamination or degradation. It is recommended that plant and animal materials be attained from an organic source if possible. If unavailable, such materials may be attained from a nonorganic source. Nonor-

ganic animal materials should be composted, if possible; otherwise, treated as raw manure.

a. Compost. The use of compost is permitted. Manure which has been composted shall not be subject to the raw manure restrictions stated in this rule. This may be achieved by composting for a minimum of six weeks, during which compost piles are managed so that they reach 140 degrees F for a minimum of three days.

b. Raw manure. To avoid runoff, raw manure should not be applied when the soil is saturated, frozen or covered with snow. Raw manure must be applied at least 120 days prior to harvest for crops grown for direct human consumption except for tree crops and crops of which the edible portion is covered by a husk, pod or shell, in which case raw manure could be applied up to 90 days prior to harvest.

c. Amendments. All natural substances are permitted except those listed as prohibited on the National List. Synthetic substances are prohibited except if listed as allowed on the National List.

d. Mulch. The use of plant materials as mulch is permitted. Plastic or synthetic mulch is permitted only if the mulch is completely removed from the field and properly stored or disposed in proper facilities at the end of each growing or harvest season. Plastic mulch that photo-degrades is prohibited.

47.6(14) Seeds, seedlings and plant stock.

a. Annuals. Organically produced seeds and planting stock, including annual seedlings, transplants, bulbs, and tubers, shall be used, except that:

(1) Nonorganically produced seeds, bulbs, and tubers may be used to produce an organic crop when an equivalent organically produced variety is commercially unavailable, with the exception of seeds used for sprouts, which must be organic.

(2) Treated seeds, bulbs, and tubers are allowed only when untreated seeds of the same variety are documented as commercially unavailable, required by phytosanitary regulations, or unanticipated or emergency circumstances make it unfeasible to obtain untreated seeds or other annual planting stock. Pelletized seed is allowed unless it contains prohibited substances.

(3) Nonorganically produced annual seedlings and transplants are allowed only in cases where organic seedlings or planting stock has been destroyed by a natural disaster or other unanticipated circumstances. Such an emergency shall be documented.

b. Perennials. Nonorganic produced planting stock may be used as planting stock to produce a perennial crop which may be sold, labeled, or represented as organically produced only after the planting stock has been maintained under a system of organic management on a certified organic farm for a period of no less than one year.

c. Prohibited.

(1) All genetically engineered seeds, seedlings, and planting stock are prohibited.

(2) Plastic polymer pelletization of seed is prohibited.

47.6(15) Pest management. The prevention or control of pests, weeds and diseases in crops may include, but not be limited to, crop rotation, soil fertility management practices, sanitation methods, cultural practices, seed and plant selection, mulch, beneficial insects, mechanical or physical controls, traps, lures, mating disruption and repellants. All materials used for pest management shall meet the following conditions:

1. Natural substances are permitted except those listed as prohibited on the National List; and

2. Synthetic substances are prohibited except if listed as allowed on the National List.

The anticipated practices to prevent or control pests, weeds and diseases shall be described in the organic farm plan. A follow-up plan shall be maintained to document actual practices used.

47.6(16) Water.

a. Irrigation. Prohibited materials shall not be added to irrigation water. Crops grown using water that is suspected of containing prohibited materials resulting from unavoidable residual environmental contamination shall be tested, and test results will be used in making a determination regarding certification. Prohibited substances cannot be used to clean irrigation systems.

b. Postharvest handling. Water used to wash crops must meet criteria of the Safe Drinking Water Act. Chlorine use shall not exceed maximum residual disinfectant limit so established at 4 mg/L.

47.6(17) Specialty crops.

a. Greenhouse production. Greenhouses operated as in-ground or permanent soil systems or bench systems are permitted and shall comply with Iowa Code chapter 190C and this chapter including the use of materials for pest management, rooting hormones and plant production, which must be listed as allowed on the National List. Potting soils, soil receptacles, water and greenhouse structural materials shall not contain prohibited materials. Plants and soil shall not come into contact with soils treated with prohibited substances. Light sources for greenhouses may be natural or artificial.

b. Mushrooms. Organic mushrooms may be grown indoors or outdoors. Organic mushrooms shall be produced, harvested and handled according to Iowa Code chapter 190C and this chapter. All sources of spawn and substrate shall be documented. Noncomposted substrate shall be organically produced. Spawn may be cultured on nonorganic grain, but prohibited materials shall not be applied during spawn production.

c. Sprouts. Sprouts may be grown in soil or without soil. Seeds grown and sold as sprouts must be from an organic seed source. Water used for organic sprout production must meet criteria of the Safe Drinking Water Act. Chlorine use shall not exceed maximum residual disinfectant limit so established at 4 mg/L. Seed used for sprouts may be treated with the following materials and methods to prevent foodborne pathogens: heat, hydrogen peroxide and if required by applicable government agency, soaking in water solution of chlorine not to exceed 2000 mg/L, to be followed by a five-minute rinse in potable water.

21—47.7(190C) Livestock.

47.7(1) Organic livestock production requirements. Prohibited materials may not be used in the production of livestock and livestock products pursuant to Iowa Code chapter 190C and this chapter. All substances used in the production of livestock and livestock products must be certified organic and used in accordance with this chapter. Natural substances may be used unless listed as prohibited on the National List. Synthetic substances are prohibited except if listed as allowed on the National List.

47.7(2) Prohibited.

a. Genetically engineered organisms are prohibited in the breeding or production of organic livestock.

b. Livestock shall not be transferred between organic and nonorganic management for the purpose of circumventing any provision of Iowa Code chapter 190C and this chapter.

47.7(3) Split operations. Split operations shall be allowed, but segregation plans and applicable records must be followed and documented. All animals in both the nonorganic and organic herds shall be uniquely identified, and detailed records on the origin and production history of each animal must be kept. In poultry production, nonorganic and organic flocks must be kept in separate, clearly marked facilities. Each storage facility for feed, grain, or any other controlled input must be clearly marked "nonorganic" or "organic." Appropriate physical facilities, machinery and management practices shall be established to prevent commingling of nonorganic livestock and livestock products with organic livestock and livestock products or contamination by prohibited substances.

47.7(4) Pasture.

a. Requirement. Pastures must be managed to minimize risk of contamination by prohibited substances.

b. Recommendation. The establishment of livestock fence located an appropriate distance inward from the pasture border to prevent border grazing or a solid-stand windbreak along the pasture border is recommended.

c. Permissible.

(1) Livestock may graze cropland buffer zones only if an entire field is opened to grazing, as when livestock are allowed to glean a field after harvest.

(2) Livestock may graze up to a pasture border only if no more than 10 percent of the total pasture, accessible for grazing, is contiguous to areas treated with prohibited substances. The contiguous area is calculated as 30 feet multiplied by the length of the pasture perimeter that borders an area treated with prohibited substances.

d. Disqualification. Evidence that the pasture has been contaminated with a prohibited substance shall lead to disqualification of that pasture. The livestock or offspring may be disqualified if allowed to continue to graze pasture that has been disqualified.

47.7(5) Organic livestock plan. Producers of organic livestock and livestock products shall complete and submit an organic livestock plan to the certification agency.

a. The organic livestock plan must be approved by the certification agency and updated annually.

b. The plan shall list number and type of livestock.

c. The plan shall include a description of practices implemented in the production of livestock related to origin of livestock, feed, supplements, pasture, shelter, water, health care, living conditions, physical alterations and reproduction.

d. The producer shall submit the organic livestock plan questionnaire provided by the certification agent. The producer shall submit adequate maps of areas and buildings used for livestock. The certification agent shall be notified of all substantial changes to the organic livestock plan.

47.7(6) Origin of livestock.

a. Poultry. Poultry from which meat or eggs will be sold as organic must be raised according to Iowa Code chapter 190C and this chapter beginning no later than the second day of life and from that point on.

b. Slaughter stock and livestock used for the production of nonedible livestock products. Such livestock must be raised according to Iowa Code chapter 190C and this chapter and must be the progeny of female breeder stock that has been under organic production methods from the last one-third of gestation.

c. Dairy livestock: cows and other dairy livestock. Dairy replacement stock must be raised according to Iowa Code chapter 190C and this chapter from the time such stock are brought onto an organic farm and for not less than 12 months immediately prior to the sale of milk or milk products from such stock labeled as organic.

47.7(7) Feed requirements.

a. All certified organic livestock shall be fed certified organically produced and handled feeds according to the animal's stage of production. Any feed or forage purchased off farm must be certified as meeting the requirements of Iowa Code chapter 190C and this chapter. Pasturelands on which livestock are grazed or pastured shall be certified, and the organic plan shall contain management measures designed to enhance soil fertility and rangeland health as approved by the certification agency.

b. Access to managed pasture shall be provided for ruminant animals. Exceptions shall only be allowed for:

(1) Inclement weather;

(2) Conditions where the health, safety or well-being of the animal or a person could be jeopardized;

(3) The protection of plant, soil or water quality; or

(4) Animal's stage of production.

c. When pasture is not available to ruminant animals for any of the above reasons, certified organic forage must be made available.

47.7(8) Feed emergency.

a. To qualify for an emergency exemption from organic feed requirements, the operator must:

(1) Establish an emergency feed plan in the organic livestock plan;

(2) Document efforts made to obtain organic feed in advance of the depletion of feed reserves;

(3) Document that the feed emergency is regional in scope; and

(4) Receive approval from the certification agency.

b. In the case of a feed emergency, the operator must notify the certification agency of the emergency and shall obtain feed based on the following order of preference:

(1) Certified organic feed;

(2) Noncertified organic feed;

(3) Feed grown under organic management for two years;

(4) Feed grown under organic management for one year;

(5) Nonorganic feed.

c. Transitional or nonorganic feed should be fed first to animals furthest away in time from production of products intended to be sold as organic.

47.7(9) Prohibited. The following substances or methods are prohibited for the feeding of organic livestock:

a. Any synthetic substance that is not listed as allowed on the National List for organic livestock production. Any natural substance listed as prohibited on the National List.

b. The use of the following for the purpose of stimulating the growth or production of livestock is not allowed:

(1) Hormones or growth or production promoters whether implanted, injected, or administered orally;

(2) Antibiotics or other animal drugs; and

(3) Synthetic amino acid additives, vitamins or trace elements fed above levels needed for adequate nutrition.

c. Plastic pellets for roughage.

d. Manure re-feeding.

e. Feed formulas containing urea.

f. Any feed made from meal that has been extracted by the use of synthetic solvents, e.g., hexane.

g. Medicated feeds and medicated milk replacers.

h. Synthetic silage and forage preservatives.

i. Livestock slaughter by-products fed to mammals.

j. Genetically engineered organisms, including their derivatives, in feed, feed supplements or feed additives.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

47.7(10) Feed additives and supplements.

a. Feed additives fed to organic livestock shall meet the following requirements:

(1) Feed additives that are nonsynthetic shall be from any source, provided that the additive is not listed as prohibited on the National List;

(2) Synthetic feed additives must be listed as allowed for organic livestock on the National List;

(3) Any source of feed salt is allowed;

(4) Natural minerals, such as limestone, dolomite, marl, magnesium oxide, greensand and kelp are allowed; and

(5) Synthetic vitamins and trace elements, such as selenium, that are listed as approved for livestock on the National List may be fed to livestock under organic management only as necessary for the purpose of fulfilling the nutritional requirements of the livestock.

b. Feed supplements fed to organic livestock shall be certified organically produced.

47.7(11) Livestock health care. Producers must maintain a production environment that promotes livestock health and limits livestock stress.

a. Organic livestock producers shall be required to take all necessary steps to maintain the health of their animals. This may include, but is not limited to:

(1) Balanced, complete nutrition;

(2) Selection and breeding of animals for resistance and immunity to disease;

(3) Proper sanitation and hygiene;

(4) Exercise, freedom of movement, and reduction of stress;

(5) Pasture management;

(6) Quarantine of incoming stock;

(7) Vaccinations; and

(8) Administration of veterinary biologics, vitamins and minerals.

b. Livestock producers are required to manage livestock to reduce the risk of parasite infestation through cultural and biological practices, which may include, but are not limited to:

(1) Quarantine and fecal examination for all incoming stock;

(2) Pasture rotation and management;

(3) Periodic fecal examinations and culling seriously infested livestock;

(4) Vector and intermediate host control;

(5) Release of beneficial organisms; and

(6) Natural dusting wallows for poultry.

c. In the event of sickness or infestation with parasites, organic producers are permitted to use the following:

(1) Nonsynthetic substances that are not listed as prohibited on the National List; or

(2) Synthetic substances that are listed as allowed for organic livestock production on the National List.

d. Any appropriate medication must be used to restore an animal to health when methods acceptable to organic production fail. If a prohibited material is used on an animal, that animal cannot be used thereafter for organic production or be sold, labeled or represented as organic until such animal meets requirements of Iowa Code chapter 190C and this chapter.

e. The following livestock health care substances and methods are prohibited:

(1) Any synthetic substance that is not listed as allowed for organic livestock production on the National List;

(2) Any natural substance that is listed as prohibited on the National List;

(3) Antibiotics; and

(4) Administration of any medication, other than vaccinations, in the absence of illness, including hormones for breeding purposes.

f. The action of a producer to withhold treatment to maintain the organic status of an animal which results in the otherwise avoidable suffering or death of an animal shall be grounds for decertification.

47.7(12) Living conditions. Certified organic livestock operations shall be based on a system that maximizes animal health and allows for the natural behavior of animals.

a. Such a production environment must include the following:

(1) Access to shade, shelter, water, fresh air, the outdoors, and direct sunlight suitable to the species, the stage of production, the climate, and the environment;

(2) Adequate clean and dry bedding, appropriate to the husbandry system, provided that if the bedding is typically consumed by the animal species, it complies with the organic feed standard; and

(3) A housing design which provides for an animal's natural maintenance, comfort behaviors and the opportunity to exercise; temperature levels, ventilation and air circulation suitable to the species; the reduction of potential for livestock injury; and free access to a floor surface that is predominantly grass, shavings, dirt or other nonartificial bedding.

b. Proper livestock health management may include periods of time when livestock are housed indoors. Temporary indoor housing may be justified for:

(1) Inclement weather;

(2) Conditions where the health, safety or well-being of the animal or persons could be jeopardized;

(3) The protection of plant, soil or water quality; or

(4) Animal's stage of production.

c. The following living conditions are prohibited for organic production:

(1) Continuous confinement; and

(2) Cages for poultry.

47.7(13) Manure management. Manure management practices used to maintain any area in which livestock are housed, pastured or penned shall be implemented in a manner that:

a. Minimizes soil and water degradation;

b. Does not significantly contribute to contamination of water by nitrate and bacteria, including human pathogens;

c. Optimizes recycling of nutrients; and

d. Does not include burning or any practice inconsistent with organic standards.

47.7(14) Physical alterations. Physical alterations must be conducted for the animal's ultimate benefit or identification, and these practices shall be administered in ways that minimize pain and stress.

a. Restricted. Beak trimming of poultry may be done only if the following conditions are met:

(1) Beak trimming may be done no later than ten days after hatching;

(2) No more than one-third of the beak may be removed;

(3) Beak trimming may be done only for protection of the flock; and

(4) Beak trimming may be done only in conjunction with good organic management practices as defined by these standards.

b. Prohibited. The following physical alterations are not allowed:

(1) Tail cutting, with the exception of sheep;

(2) Wing burning; and

(3) Toe clipping of poultry.

47.7(15) Reproduction. Natural service is preferred. Artificial insemination is allowed. Embryo transfer and cloning are prohibited.

47.7(16) Records.

a. Records must be maintained which permit tracing the sources and numbers of all animals, and sources and amounts of all feeds, feed supplements, feed additives and medications.

b. Organic livestock must be traced from birth to slaughter.

c. Livestock health records which show all health problems and the practices and materials used for treatment must be maintained.

d. With the exception of poultry and other small animals, if animals are not individually identified by numbered tags, then each animal that is treated with a veterinary drug must be clearly identified with a tag that corresponds to a record of the material used and date of treatment.

e. Poultry or rabbits and other small animals that are not identified by individual tags are to be tracked by lots or other applicable units, wherein each animal has received the same inputs and treatment.

47.7(17) Slaughter.

a. Animal stress and accidental mortality must be minimized during loading, unloading, shipping, holding and slaughter.

b. Slaughter must occur under sanitary conditions and in accordance with all applicable federal and state laws and regulations.

c. Organic animals and animal products must be clearly identified and segregated to prevent commingling with nonorganic animals and animal products.

21—47.8(190C) Apiculture. Honey and other bee products may be labeled, promoted and sold as organic if the operation is certified organic according to Iowa Code chapter 190C and this chapter, particularly standards as promulgated in this rule. In addition, all practices shall be in compliance with Iowa Code chapter 160 and 21—Chapter 22.

47.8(1) Organic apiculture plan. Producers of organic bee products shall complete and submit an organic apiculture plan to the certification agency.

a. The organic apiculture plan must be approved by the certification agency and updated annually.

b. The plan shall list number and location of colonies.

c. The plan shall include a description of practices implemented in the production of beehive products related to origin of colony, feed, water availability and health care.

d. The producer shall submit the organic apiculture plan questionnaire provided by the certification agent and include adequate maps of areas and buildings used for beehives. The certification agent shall be notified of all substantial changes to the organic apiculture plan.

47.8(2) Feed requirements.

a. Colonies shall be given supplemental feeding when needed, but feeding is prohibited when honey supers are in place.

b. Feeding of colonies to build food reserves for the winter may be undertaken. Such feeding must be carried out between the last honey harvest and prior to the next surplus honey flow.

c. Supplemental feed should be derived from organic honey or organic sugar syrup.

d. Bees from which organic honey and other products are harvested shall have access to forage produced in accordance with Iowa Code chapter 190C and this chapter.

47.8(3) Prohibited.

a. All synthetic substances except if listed as allowed on the National List.

b. Natural substances listed as prohibited on the National List.

c. Antibiotics and sulfa products.

d. Fluvalinate (Apistan strips), coumaphos (Check-Mite+ strips) and other prohibited pesticides shall not be used in organic apiaries.

e. Bee repellants.

47.8(4) Source of colonies.

a. Bee colonies should be established on new frames and foundation to reduce risk of contamination by pesticides, antibiotics and comb-borne bee diseases which have a potential to be carried over in used equipment. Used deeps and supers, excluding used frames, may be used if sanitized appropriately before use.

b. The source of adult bees for establishing colonies shall be from package bees as defined by Iowa Code section 160.1A(4) or splits (nucs) made from the operator's own organic colonies, or from another organic beekeeping operation.

47.8(5) Apiary location.

a. Apiary shall be located on certified organic land.

b. Apiary shall not be located within two miles of:

(1) A sanitary landfill;

(2) An incinerator;

(3) A power plant;

(4) A golf course treated with prohibited substances;

(5) A town, city or village;

(6) A crop sprayed with prohibited substances during the bloom period; and

(7) Other sources of contamination.

c. If pollen is sold or labeled as organically produced, the apiary shall be located two miles from genetically modified crops.

d. Organic apiaries should be located as far as possible from nonorganic apiaries.

47.8(6) Split operation. Split operations shall be allowed but segregation plans and applicable records must be followed and documented. Organic colonies and nonorganic colonies shall be maintained in separate apiaries. All colonies in both the nonorganic and organic apiaries shall be uniquely identified, and detailed records must be kept on the origin and production history of each colony. Appropriate physical facilities, equipment and management practices shall be established to prevent commingling of nonorganic beehive products and organic products or contamination by prohibited substances.

47.8(7) Health care.

a. A high level of hygiene practices, when handling bee colonies and bee equipment in an organic operation, is required to minimize the need for antibiotic treatments, since the use of antibiotics is prohibited in the production of organic beehive products.

b. It is recommended that used supers and deeps, excluding frames, not be introduced into the organic apiary from a nonorganic beekeeping operation. Selling and exchanging of used beekeeping equipment may pose a great risk of transferring comb-borne bee diseases.

c. Efforts must be made to minimize stress to colonies by locating apiaries in sheltered areas, maintaining equipment in good condition and winterizing beehives. Empty beehive equipment shall be stored in a dry, pest-free place that does not contain prohibited materials.

d. The operator should implement the following practices:

(1) Use hardy breeds that adapt well to the local conditions;

(2) Replace queen bees regularly;

(3) Destroy contaminated materials;

(4) Renew beeswax regularly; and

(5) Maintain sufficient stores of pollen and honey in the hive.

e. American foulbrood. If a colony becomes infected with American foulbrood disease, the colony, along with all woodenware and comb, must be destroyed by burning.

f. Parasites. Colonies shall be treated for parasitic mites using the best available organic methods. Treatments may include, but are not limited to, the use of herbal and vegetable oils during nonhoney flow periods. Colonies so treated may remain in the organic apiary, and honey and other beehive products may be marketed as organic. All synthetic substances except if listed as allowed on the National List are prohibited. Natural substances are permitted unless otherwise listed as prohibited on the National List.

g. To aid in reducing Varroa mite populations, nonchemical cultural practices are encouraged, such as drone brood trapping and the use of a screen-modified bottom board in the beehives.

47.8(8) Product handling.

a. An operation which processes or handles organic beehive products must be in compliance with all applicable handling requirements of this rule.

b. If a facility processes both organic and nonorganic hive products, all equipment must be completely emptied and cleaned prior to processing organic hive products.

c. Equipment which comes in contact with organic honey must be made of stainless steel, glass, or other food grade materials.

21—47.9(190C) Aquaculture. Organic aquaculture operations shall be managed for optimum use of nutrients and minimizing waste. Diversified farms, including more than one species, and recycling freshwater effluent into cropping systems can help accomplish these goals. If effluent from tanks cannot be recycled, settling ponds may be required to avoid discharging effluent with an excessive nutrient loading.

47.9(1) Animal stock. Fish acquired for the purpose of selling as organic must be raised on the farm in accordance with organic standards promulgated in these rules.

a. New stock must be acquired from certified organic aquaculture operations.

b. Brood stock must be raised as organic during the entire period of gestation for juveniles to be sold as organic.

c. Off-farm fish not certified organic must be temporarily held in an isolation tank for a period of three weeks and fed only organic feed before introduction into certified organic tanks.

d. Fish must be raised as organic for a period of at least three-quarters of their life span (e.g., fish sold as three-month-olds must have been raised as organic for a minimum of 68 days) in order to be sold as organic.

47.9(2) Site selection. Aquaculture tanks should not be located in sites open to pesticide drift or other harmful contaminants. During operation, basic water quality sampling for pH, oxygen, nitrogenous wastes, and toxins should be conducted by the operator. Operations must be in compliance with all local, state and federal health agency water quality regulations.

47.9(3) Feed and supplements.

a. Fish must be fed 100 percent organic feed, including grains, sprouted grains, and other plant products that are certified organic.

b. Fishmeal and fish oil must be sourced from certified organic fish farms, not wild-caught fish.

c. No more than 20 percent fishmeal by weight is allowed in feed mix.

d. Artificial colors, binders and synthetic astaxanthin are prohibited.

e. Supplements must come from natural sources.

f. Antibiotics are prohibited in certified organic production.

g. The final feed mix should be free from vermin and microbial contaminants, such as aflatoxins and plant diseases.

h. Feed to aquaculture animals should be reduced or eliminated for a period of 48 hours prior to harvest to improve water quality and enhance depuration of the animal's digestive tract for improved food quality.

47.9(4) Harvesting and postharvest handling.

a. All certified organic aquaculture products must be rinsed with potable water immediately after harvest and safely stored and transported according to local, state and federal health agency rules.

b. Operators shall refer to the National List to determine which supplements, such as natural yeast, enzymes, vitamins, and minerals, are allowed in organic aquaculture.

21—47.10(190C) Handling and processing of organic agricultural products.

47.10(1) Handlers. Handlers of organic products shall be responsible for maintaining the organic integrity of the organic products they handle. Handlers who take legal title, and who process organic products including livestock feed, must be certified. This group may include retailers, distributors, food services, jobbers, packers and shippers.

47.10(2) Handlers not taking legal title. The activity of individuals or businesses that do not take legal title to organic products but act as agents, licensees, employees, contractors, or subcontractors, co-packers or co-processors and that process, package, or store organic agricultural products for a certified organic farming or handling operation must be covered by the certification of that organic farming or handling operation. Such activity must be described in the organic handling plan and shall be inspected and scrutinized with the same rigor and the same standards as certified entities as part of the certification requirement of the certified organic operation for which a handler acts as agent, licensee, employee, contractor, or subcontractor, co-packer or co-processor. Handlers that are not required to be certified include brokers, commission merchants, and truckers that do not take legal title to organic products.

47.10(3) Certification requirements for handling and processing operations.

a. Organic handling or processing plan. An organic handling or processing plan must be completed and submitted to the certification agency by the organic handler. The plan shall be reviewed by the certification agency that shall determine if the plan meets the requirements of the program. Operators must notify the certification agency of proposed changes to the organic handling plan. An organic handling plan shall contain provisions designed to ensure that agricultural products sold or labeled as organically produced are handled in a manner that maintains the integrity of the organic product according to Iowa Code chapter 190C and this chapter. The plan must address all elements of organic handling that are applicable to a particular handling operation,

including but not limited to the handling system description, schematic flow charts, procedures for ensuring organic integrity, material inputs, ingredients, ingredient and finished product storage, transportation, records and good manufacturing practices.

b. Good manufacturing practices. Organic handlers and processors must comply with the current good manufacturing practices specified in 21 Code of Federal Regulations 110 (April 1, 1998). In addition, organic handlers and processors must comply with all other federal, state, and local food handling regulations and the following:

(1) Cleanliness. Necessary precautions must be taken to protect against contamination of food, food-contact surfaces, or food-packaging materials by microorganisms or foreign substances including, but not limited to, perspiration, hair, cosmetics, tobacco, chemicals, medicines applied to the skin, synthetic substances, and natural substances listed as prohibited on the National List.

(2) Education and training. Food handlers and supervisors should receive appropriate training in proper food handling techniques, proper organic handling techniques, and food-protection principles and should be informed of the danger of poor personal hygiene and unsanitary practices.

(3) Plant construction and design. Plant construction and design must permit the taking of proper precautions to reduce the potential for contamination of food, food-contact surfaces, or food-packaging materials by pests, microorganisms, chemicals, filth, synthetic substances, and natural substances listed as prohibited on the National List.

(4) Pest management. Organic handling operations shall implement structural pest management programs which emphasize exclusion, sanitation, restriction of pest habitat, monitoring, and use of least toxic pest control substances and shall be reflected in a pest management plan. Pest control substances that are not included on the National List of approved synthetic substances or that are included on the list of prohibited natural substances shall not be used during the processing, packing, or holding of organically produced human food and animal feed. Should the use of prohibited pest control substances be required to control an infestation, all organic food and feed must be removed from the facility before and during the application of the prohibited pest control substance. Organic food and feed may be brought back into the facility when there is no danger of contamination of the organic food with the prohibited pest control substance. For pesticides applied by fogging, broad surface treatment, or spot treatment, 72 hours must elapse prior to the reintroduction of organic ingredients, products or packaging to the treated area. For areas treated by fumigation, 120 hours must elapse prior to the reintroduction of organic ingredients, products or packaging to the treated area. All food-contact surfaces exposed to pesticides must be cleaned before organic handling resumes.

(5) Sanitation of food-contact surfaces. Treatment of food-contact surfaces, including utensils and food-contact surfaces of equipment, with cleaning compounds and sanitizers must be done in such a way as to prevent the loss of organic integrity. Extra rinses, flushes, purges and testing may be required prior to the production of organic products.

(6) Boiler water additives. Residues of boiler water additives must be prevented from contacting organically produced food by the use of steam without entrained water, steam filtering, or other means.

(7) Waste management. Wastes shall be managed so as to prevent environmental degradation, including contamination of groundwater and surface water. Wastes shall be contained so as not to attract pests or present a contamination potential to organic products.

(8) Transportation. Organic products shall be transported in containers which are free of odors and residues of prohibited substances and products which could compromise the integrity of the organic products.

47.10(4) Prohibited.

a. Chemicals used in washing/peeling. Synthetic substances or natural substances listed as prohibited on the National List shall not be used to wash, peel, or otherwise prepare organically produced raw agricultural products or organic food, unless they are required by federal, state, or local food-handling regulations.

b. Water used in handling. Water that contacts nonorganically produced raw agricultural products during handling operations such as washing, floating, rinsing, or cooling must not be used for handling of organically produced raw agricultural products. If necessary, organic agricultural products shall be processed before nonorganic products to comply with this requirement.

c. Ionizing radiation. Ionizing radiation for the purpose of killing insects or microorganisms in the food or for preserving food shall not be used in the handling of organic food. Use of X-rays for inspection of organic food, as in metal detectors, is allowed.

d. Recombinant DNA technology. Organisms that are created through the use of recombinant DNA technology, or products of such organisms, shall not be used as ingredients or processing aids in the handling of organic products.

47.10(5) Prevention of commingling. Safeguards to prevent the commingling of organic products with nonorganic products or prohibited substances shall be established.

47.10(6) Records. Records and inventory control procedures must be adequate to trace all ingredients and products from the supplier through the entire production system, including packaging and storage, and on through distribution, sales and transport, using lot numbers, date codes, or a similar product tracking system. Organic handlers must retain valid proof of certification for all organic ingredients. Detailed written information on all ingredients, additives, and processing aids used in the production of products must be maintained. A description of the system of internal record keeping that documents the movement of each specific lot of organic food through each step of the handling operation shall be maintained.

21—47.11(190C) Composition and labeling for finished multi-ingredient products.

47.11(1) Labels.

a. All organic agricultural food products must be labeled in accordance with Title 21, Part 101 of the FDA Administration Code of Food Requirements and the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.). Labels of all organic food products must contain the certification agency name. Labels may contain agency seal or logo.

b. The following apply to manufactured products labeled as "organic" on the principal display panel:

(1) For a product to be labeled "organically produced," 95 percent of the multi-ingredient finished product either by weight or volume, whichever is more appropriate, must be comprised of certified organically produced ingredients.

(2) Ingredients that are nonsynthetic and not organically produced and are included on the National List of substances approved for processed food may be used, provided that they represent no more than 5 percent of the total weight of the finished product, excluding water and salt.

47.11(2) Prohibited.

a. Organic and nonorganic forms of the same agricultural ingredient shall not be combined in a product sold, labeled or represented as "organic" or "made with organic ingredients" if the ingredient is represented as organic in the ingredient statement.

b. The term "organic when available" shall not be used on such organic agricultural products.

c. Any nonsynthetic substance that is on the National List of prohibited nonsynthetic substances.

d. Any ingredient known to contain excessive levels of nitrates, heavy metals, or toxic residues.

e. Any sulfites, nitrates, and nitrites.

f. Any ingredient produced using synthetic volatile solvents or propylene glycol.

g. Any packaging materials, storage containers or bins that contain synthetic fungicides, preservatives, fumigants, or prohibited substances which may contaminate organic products.

h. Any packaging materials that had previously been in contact with any prohibited substance in such a manner as to compromise the integrity of an organic product.

i. Any water that does not meet the requirements of the Safe Drinking Water Act.

j. Ionizing radiation, including ingredients which have been subjected to ionizing radiation.

k. Genetically engineered organisms and their products.

21—47.12(190C) Packaging.

1. Packaging materials for organic food products must be food grade and must not contaminate the organic product.

2. Packaging must be free of prohibited substances such as fungicides, preservatives, and fumigants.

3. Aluminum, tin and solder shall not be used unless those substances are between pH 6.7 and 7.3.

21—47.13(190C) List of substances.

47.13(1) The department shall adopt the National List of substances, allowed or prohibited for organic production and handling of products sold or labeled as organically produced, pursuant to the Organic Foods Production Act of 1990 and promulgated by the National Organic Program upon its implementation.

47.13(2) The list established shall contain an itemization, by specific use or application, of each synthetic substance permitted, or each natural substance prohibited, according to the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).

47.13(3) Until such time that the National Organic Program is implemented, substances allowed or prohibited shall be determined by reference to the generic materials list published by the Organic Materials Review Institute (OMRI). Generic lists published by other organizations may be reviewed by the board for acceptability on a case-by-case basis. In any case, only those substances may be used which are in compliance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).

These rules are intended to implement Iowa Code chapter 190C.

[Filed 9/16/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9409A

ATTORNEY GENERAL[61]

Adopted and Filed

Pursuant to the authority of 1999 Iowa Acts, House File 476, section 3, the Attorney General hereby adopts Chapter 34, "Acquisition Negotiation Statement of Rights," Iowa Administrative Code.

Notice of Intended Action for these rules was published in the August 11, 1999, Iowa Administrative Bulletin as **ARC 9241A**.

One written comment was received during the comment period. Because it is believed the rules already adequately address the subject of the comment, no changes will be made to the rules.

1999 Iowa Acts, House File 476, section 3, mandates that an acquiring agency provide a statement of rights to owners of record who may have all or a part of their property acquired by condemnation. It also directs the Attorney General to adopt rules prescribing a statement of rights which an acquiring agency may use to meet its obligation. There is no provision for waiver since use of the statement is permissive under the statute.

These rules are identical to the ones published under Notice of Intended Action.

These rules are intended to implement 1999 Iowa Acts, House File 476, section 3.

These rules will become effective November 10, 1999.

The following **new** chapter is adopted.

CHAPTER 34
ACQUISITION NEGOTIATION
STATEMENT OF RIGHTS

61—34.1(78GA,HF476) Statement of property owner's rights. 1999 Iowa Acts, House File 476, section 3, mandates that an acquiring agency provide a statement of rights to owners of record who may have all or a part of their property acquired by condemnation. It also directs the attorney general to adopt rules prescribing a statement of rights which an acquiring agency may use to meet its obligation. Pursuant to that directive, the following statement of property owner's rights is adopted:

STATEMENT OF PROPERTY OWNER'S RIGHTS

Just as the law grants certain entities the right to acquire private property, you as the owner of the property have certain rights. You have the right to:

1. Receive just compensation for the taking of property. (Iowa Constitution, Article I, section 18)

2. An offer to purchase which may not be less than the lowest appraisal of the fair market value of the property. (Iowa Code section 6B.45 as amended by 1999 Iowa Acts, House File 476, section 18; Iowa Code section 6B.54 as amended by 1999 Iowa Acts, House File 476, section 20)

3. Receive a copy of the appraisal, if an appraisal is required, upon which the acquiring agency's determination of just compensation is based not less than ten days before being contacted by the acquiring agency's acquisition agent. (Iowa Code section 6B.45 as amended by 1999 Iowa Acts, House File 476, section 18)

4. An opportunity to accompany at least one appraiser of the acquiring agency who appraises your property when an appraisal is required. (Iowa Code section 6B.54)

5. Participate in good-faith negotiations with the acquiring agency before the acquiring agency begins condemna-

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tion proceedings. (1999 Iowa Acts, House File 476, section 3)

6. A determination of just compensation by an impartial compensation commission and the right to appeal its award to the district court if you cannot agree on a purchase price with the acquiring agency. (Iowa Code section 6B.4; Iowa Code section 6B.7 as amended by 1999 Iowa Acts, House File 476, section 8; Iowa Code section 6B.18)

7. A review by the compensation commission of the necessity for the condemnation if your property is agricultural land being condemned for industry. (1999 Iowa Acts, House File 476, section 7)

8. Payment of the agreed upon purchase price or, if condemned, a deposit of the compensation commission award before you are required to surrender possession of the property. (Iowa Code section 6B.25 Iowa Code; Iowa Code section 6B.26; Iowa Code section 6B.54(11))

9. Reimbursement for expenses incidental to transferring title to the acquiring agency. (Iowa Code section 6B.33 as amended by 1999 Iowa Acts, House File 476, section 15; Iowa Code section 6B.54(10))

10. Reimbursement of certain litigation expenses: (a) if the award of the compensation commissioners exceeds 110 percent of the acquiring agency's final offer before condemnation; and (b) if the award on appeal in court is more than the compensation commissioners' award. (Iowa Code section 6B.33)

11. At least 90 days' written notice to vacate occupied property. (Iowa Code section 6B.54(4))

12. Relocation services and payments, if you are eligible to receive them, and the right to appeal your eligibility for and amount of the payments. (Iowa Code section 316.9; Iowa Code section 6B.42 as amended by 1999 Iowa Acts, House File 476, section 17)

The rights set out in this statement are not claimed to be a full and complete list or explanation of an owner's rights under the law. They are derived from Iowa Code chapters 6A, 6B and 316. For a more thorough presentation of an owner's rights, you should refer directly to the Iowa Code or contact an attorney of your choice.

61—34.2(78GA,HF476) Alternate statement of rights. Rule 61—34.1(78GA,HF476) is not intended to prohibit acquiring agencies from providing a statement of rights in a different form, a more detailed statement of rights, or supplementary material expanding upon an owner's rights.

These rules are intended to implement 1999 Iowa Acts, House File 476, section 3.

[Filed 9/17/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9395A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 23, "Iowa Community Development Block Grant Program," Iowa Administrative Code.

The amendments outline the procedures and requirements that call for the establishment of the Contingency Fund within the CDBG program.

These amendments were previously Adopted and Filed Emergency and published in the August 11, 1999, Iowa Administrative Bulletin as **ARC 9246A**. Notice of Intended Action to solicit comments on that submission was published in the August 11, 1999, Iowa Administrative Bulletin as **ARC 9245A**.

The IDED Board adopted the amendments on September 16, 1999.

A public hearing was held on August 31, 1999. No comments concerning the proposed amendments were received from the public. The amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 15.108(1)"a."

These amendments will become effective on November 10, 1999, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule 23.4(5) as follows:

23.4(5) ~~Imminent threat contingency fund. Up to $500,000 shall be reserved to fund projects that address an imminent threat to public health, safety or welfare that necessitates immediate corrective action.~~ *Contingency funds. IDED reserves the right to allocate up to 5 percent of funds for projects dedicated to addressing threats to public health and safety and opportunities that would be foregone without immediate assistance.*

ITEM 2. Rescind rule 261—23.10(15) and adopt the following **new** rule in lieu thereof:

261—23.10(15) Requirements for the contingency fund. The contingency fund is reserved for communities experiencing a threat to public health, safety or welfare that necessitates immediate corrective action sooner than can be accomplished through normal community development block grant procedures, or communities responding to an immediate community development opportunity that necessitates action sooner than can be accomplished through normal funding procedures. Up to 5 percent of CDBG funds may be used for this purpose.

23.10(1) Application procedure. Those local governments applying for contingency funds shall submit a written request to IDED, Division of Community and Rural Development, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the situation, the project budget including the amount of the request from IDED, projected use of funds and an explanation of the reason that the situation cannot be remedied through normal CDBG funding procedures.

23.10(2) Application review. Upon receipt of a request for contingency funding, IDED shall determine whether the project is eligible for funding and notify the applicant of its determination. A project shall be considered eligible if it meets the following criteria:

a. Projects to address a threat to health and safety.

(1) An immediate threat to health, safety or community welfare must exist that requires immediate action.

(2) The threat must be the result of unforeseeable and unavoidable circumstances or events.

(3) No known alternative project or action would be more feasible than the proposed project.

(4) Sufficient other local, state or federal funds either are not available or cannot be obtained in the time frame required.

b. Projects to address an exceptional opportunity.

(1) A significant opportunity exists for the state that otherwise would be forgone if not addressed immediately.

(2) The opportunity is such that it was neither possible to apply to the CDBG program in a previous normal application time frame, nor is it possible to apply in a future normal CDBG application time frame.

(3) The project meets the funding standards established by the funding criteria set forth in this rule.

(4) Applicants can provide adequate information to IDED on total project design and cost as requested.

23.10(3) Additional information. IDED reserves the right to request additional information on forms prescribed by IDED prior to making a final funding decision. IDED reserves the right to negotiate final project award and design components.

23.10(4) Future allocations. IDED reserves the right to reserve future funds anticipated from federal CDBG allocations to the contingency fund to offset current need for commitment of funds which may be met by amounts deferred from current awards.

[Filed 9/16/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9394A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development rescinds Chapter 25, "Housing Fund," Iowa Administrative Code, and adopts a new Chapter 25 with the same title.

The new rules consolidate and clarify program requirements and set out new application procedures and review processes. The final rules do not include waiver provisions at this time. The Department intends to study the issue further before taking action.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 14, 1999 as **ARC 9181A**.

A public hearing to receive comments about the proposed new chapter was held on August 3, 1999. Written comments were received from a private developer in Sioux City and the Iowa Coalition for Housing and the Homeless from Des Moines. Comments included the following.

(1) Comments on the method of review and ranking of projects were made. Specifically, the opinion was expressed by the private developer that the Department's review criteria were too broad and that the Department should use a point system in its evaluation process. The Department chooses to adopt rules that are not so restrictive that good projects are excluded. The agency will continue to favor rules that are flexible enough to accommodate many situations yet still provide sufficient detail to inform applicants of what criteria will be used to review applications. The Housing Fund application award and review process has moved away from rigid point formulas and toward a more overall, comprehensive analysis of projects. A point system is not adopted in the final rules.

(2) A comment was received about the amount of funds dedicated to projects jointly funded with low-income housing tax credits (LIHTC) program. The Coalition believes that allocating 75 percent of HOME funds to be used in conjunction with the LIHTC program is too high and should be reduced. The appropriate percentage that should be set aside for such projects remains unresolved. A change, as outlined below, was made in the final rules in response to this comment.

(3) A concern about the Department's practices to meet the federal requirement that 15 percent of HOME funds be set aside for community housing development organizations (CHDOs) was expressed. HUD regulations require that at least 15 percent be set aside for CHDOs. The commenter objected to the Department's practice of meeting this federal requirement sooner, not later, in the contract period. The Department believes that it is reasonable to meet the federal requirement early in the contract period in order to avoid loss of federal HOME funds at a later date. No change was made in the final rule.

(4) A comment was received about the extent to which the new applications are influenced by past performance and compliance with federal regulations. The private developer commented that the review criteria should include, for applicants which had received previous HOME funds, evidence of timely completion of previously awarded projects. He also stated that if an applicant has any outstanding local, state or federal violations, the applicant should be barred from further consideration pending resolution of those violations. The Department believes that timeliness of completion of prior projects and violations of law are factors already considered under the "administrative criteria" section in paragraphs 25.7(1)"c," 25.7(2)"c," 25.7(3)"c" and 25.7(4)"c."

(5) A comment was submitted by the Sioux City developer that the IDED Board, not the Department, should make Housing Fund decisions. Unlike some IDED state-funded programs, the IDED Board is not required by statute to approve applications under the federally funded programs. That responsibility is handled directly by the Department. The Board does, however, set overall policy and guidelines for program operations. The Board approves, for example, all the Department's rules. Also, the Board receives monthly reports of pending applications (including Housing Fund) and is advised of final decisions on applications. If a Board member would like to bring up a particular project at a Board meeting, there is a process to do that. The final rules do not alter these procedures.

(6) Upon review of the proposed rules, an internal comment was made about the need to clarify the status of joint funding with a "participating jurisdiction." A "participating jurisdiction" is a HUD designation of a city or county as an entity eligible to receive Housing Fund funds independent of the state.

As a result of the comments received and further review by the agency, the following revisions were made to the proposed rules:

(1) Subparagraph 25.4(1)"a"(5) was not adopted because it duplicated subrule 25.8(9).

(2) Subrule 25.5(4) was revised to remove the requirement that awards be announced within 90 days of the application deadline. This time frame is not required by statute and, due to the unresolved procedural issues for projects re-

quiring both Housing Fund and LIHTC awards, the Department decided to remove this provision.

(3) The subrules referring to projects jointly funded from the Housing Fund Program and the LIHTC are withdrawn in the final rules so the Department can review the issue further. Specifically, subrules 25.5(5) and 25.8(3) were not adopted in the final rules and these subrules are reserved for future use. The Department is exploring options with the Iowa Finance Authority concerning how the agencies can coordinate their efforts when projects require both Housing Fund funds and tax credits. Subrule 25.5(6) was added to indicate that projects requesting both Housing Fund and LIHTC awards will be reviewed under a schedule to be determined under the reserved subrule, and applications submitted in advance will be held for review until the deadline established under the reserved subrule.

(4) Subrule 25.6(7) was added to clarify that individual communities that have participating jurisdiction designation from HUD must participate financially in a project when state funds are being sought.

(5) Paragraph 25.7(1)"b," dealing with homeownership assistance applications, was revised by adding subparagraphs (13) to (16) for consistency. These criteria appeared in proposed paragraph 25.7(3)"b" and should also have been included in subrule 25.7(1)"b."

(6) Subparagraphs 25.7(2)"b"(9) and (11) were not adopted because, upon further review, the Department believed these requirements to be too burdensome.

(7) Paragraph 25.7(4)"b," dealing with tenant-based applications, was revised by adding subparagraphs (16) to (19) for consistency. These criteria appeared in proposed paragraph 25.7(3)"b" and should also have been included in subrule 25.7(4)"b."

(8) Subrule 25.10(1) was revised to clarify that, if a project meets threshold requirements, the Department may request that a complete application be submitted.

(9) Subparagraph 25.10(2)"b"(3) was modified to clarify the intent that projects applying under the "exceptional opportunity" component of the contingency fund must have merit comparable to those funded in the most recent competition. Subparagraph 25.10(2)"b"(4) was not adopted. The purpose of subparagraph (4) was to permit the Department to request additional information. With the revision of subrule 25.10(1), subparagraph (4) became unnecessary.

The Board adopted these rules on September 16, 1999.

These rules will become effective on November 10, 1999.

These rules are intended to implement Iowa Code section 15.108(1)"a."

The following chapter is adopted.

Rescind 261—Chapter 25 and adopt in lieu thereof the following **new** chapter:

CHAPTER 25
HOUSING FUND

261—25.1(15) Purpose. The primary purpose of the housing fund, made up of federal CDBG and HOME funds, is to expand the supply of decent and affordable housing for low- and moderate-income Iowans.

261—25.2(15) Definitions. When used in this chapter, unless the context otherwise requires:

"Activity" means one or more specific housing activities, projects or programs assisted through the housing fund.

"Administrative plan" means a document that a housing fund recipient establishes that describes the operation of a funded activity in compliance with all state and federal requirements.

"AHTC" means affordable housing tax credits and federal tax incentives created through the Tax Reform Act of 1986 and allocated through the Iowa finance authority for affordable rental housing development.

"CDBG" means community development block grant nonentitlement program, the grant program authorized by Title I of the Housing and Community Development Act of 1974, as amended, for counties and cities, except those designated by HUD as entitlement areas.

"CHDO" means community housing development organization, a nonprofit organization registered with the Iowa secretary of state and certified as such by IDED, pursuant to 24 CFR 92.2 (April 1, 1997).

"Consolidated plan" means the state's housing and community development planning document and the annual action plan update approved by HUD.

"HART" means the housing application review team, a body of affordable housing funding agencies which meets to review housing proposals.

"HOME" means the HOME investment partnership program, authorized by the Cranston-Gonzalez National Affordable Housing Act of 1990.

"Housing fund" means the program implemented by this chapter and funded through the state's annual HOME allocation from HUD and 25 percent of the state's CDBG allocation from HUD.

"Housing needs assessment" means a comprehensive analysis in a format that conforms to IDED guidelines of housing needs for one or more units of local government.

"HUD" means the U.S. Department of Housing and Urban Development.

"IDED" means the Iowa department of economic development.

"IFA" means the Iowa finance authority.

"Local support" means involvement and financial investment by citizens and organizations in the community that promote the objectives of the housing activities assisted through the housing fund.

"Program income" means funds generated by a recipient or subrecipient from the use of CDBG or HOME funds.

"Recipient" means the entity under contract with IDED to receive housing funds and undertake the funded housing activity.

"Subrecipient" means an entity operating under an agreement or contract with a recipient to carry out a funded housing activity.

261—25.3(15) Eligible applicants. Eligible applicants for housing fund assistance include all incorporated cities and counties within the state of Iowa; nonprofit organizations; CHDOs; and for-profit corporations, partnerships and individuals.

1. Any eligible applicant may apply directly or on behalf of a subrecipient.

2. Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

261—25.4(15) Eligible activities and forms of assistance.

25.4(1) Eligible activities include transitional housing, tenant-based rental assistance, rental housing rehabilitation (including conversion), rental housing new construction, home ownership assistance, owner-occupied housing rehabilitation and other housing-related activities as may be deemed appropriate by IDED. Assisted housing may be

single-family housing or multifamily housing and may be designed for occupancy by homeowners or tenants.

a. Assisted units shall be affordable.

(1) For rental activities, all assisted units shall rent at the lesser of the area fair market rents or 30 percent of 65 percent of the area median family income and, for projects with five or more units, 20 percent of the units shall rent at the lesser of the fair market rent or 30 percent of 50 percent of the area median family income. Assisted units shall remain affordable for a specified period: 20 years for newly constructed units; 10 years for rehabilitated units receiving $15,000 to $24,999 in assistance; and 5 years for projects receiving less than $15,000 per unit.

(2) For tenant-based rental assistance, gross rents shall not exceed the jurisdiction's applicable rent standard and shall be reasonable, based on rents charged for comparable, unassisted rental units.

(3) For home ownership assistance, the initial purchase price for newly constructed units and the after rehabilitation appraised value for rehabilitated units shall not exceed 95 percent of the median purchase price for the same type of single-family housing in the area. Assisted units shall remain affordable through resale or recapture provisions for a specified period: 5 years for projects receiving up to $15,000 in assistance per unit, and 10 years for projects receiving $15,000 to $24,999 in assistance.

(4) For owner-occupied housing rehabilitation, the after rehabilitation value of rehabilitated units shall not exceed 95 percent of the median purchase price for the same type of single-family housing in the area.

b. Assisted households shall meet income limits established by federal program requirements.

(1) For rental activities, all assisted units shall be rented to households with incomes at or below 80 percent of the area's median family income; 90 percent of the units shall be rented to households with incomes at or below 60 percent of the area's median family income and, for projects with five or more units, 20 percent of the units shall be rented to households with incomes at or below 50 percent of the area's median family income.

(2) For tenant-based rental assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted; additionally, 90 percent of the households served shall have incomes at or below 60 percent of the area's median family income.

(3) For home ownership assistance and owner-occupied housing rehabilitation, only households with incomes at or below 80 percent of the area median family income shall be assisted.

c. IDED reserves the right to establish rehabilitation standards for projects. All rehabilitation must be done in compliance with all state and local codes, rehabilitation standards and ordinances and shall, at a minimum, meet HUD Section 8 Housing Quality Standards, 24 CFR 882 (April 1, 1997). New units must be constructed pursuant to standards specified at 24 CFR 92.251(a)(1) (April 1, 1997).

25.4(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, interest subsidies, deferred payment loans, forgivable loans or other forms of assistance as may be approved by IDED.

261—25.5(15) Application procedure. All potential housing fund applicants shall complete and submit a HART form describing the proposed housing activity. If, after HART review, the proposal is determined appropriate for housing fund assistance, IDED shall inform the applicant of the appropriate application procedure by mail. The HART process must be completed as early as possible in the application procedure and within a minimum of 30 days prior to the application deadline.

25.5(1) HART forms shall be available upon request from IDED, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4825.

25.5(2) HART forms are accepted year-round.

25.5(3) Applicants may request technical assistance from staff contacts in the preparation of housing fund applications.

a. If an applicant does not submit an application by the next application deadline, IDED will determine the proposal inactive and remove it from the HART files.

b. Upon the submission of a housing fund application, no additional staff assistance shall be provided during the review period.

25.5(4) Housing fund applications shall be reviewed through an annual competition. Once funds have been allocated, IDED will not accept applications seeking funding for review until the next established deadline.

25.5(5) Reserved.

25.5(6) Proposals which require both housing fund and LIHTC awards will be reviewed under a schedule and procedures to be determined under reserved subrule 25.5(5). Joint housing fund and LIHTC proposals received in advance of the deadline established by the department for such proposals will be held for review until the deadline.

261—25.6(15) Minimum application requirements. To be considered for housing fund assistance, an application shall meet the following threshold criteria:

25.6(1) The application shall propose a housing activity consistent with the housing fund purpose and eligibility requirements, the state consolidated plan and any local housing plans.

25.6(2) The application shall document the applicant's capacity to administer the proposed activity. Such documentation may include evidence of the successful administration of prior activities or a statement that the applicant intends to contract with another entity for administrative services. IDED reserves the right to deny funding to an applicant that has failed to comply with federal and state requirements in the administration of a previous project funded by IDED.

25.6(3) The application shall provide evidence of the need for the proposed activity, the potential impact of the proposed activity and the feasibility of the proposed activity.

25.6(4) The application shall demonstrate local support for the proposed activity.

25.6(5) The application shall show that a need for housing fund assistance exists after all other financial resources have been identified for the proposed activity.

25.6(6) The application shall include a certification that the applicant will comply with all applicable state and federal laws and regulations.

25.6(7) An application for a project located in a locally designated participating jurisdiction (PJ) must show evidence of a financial commitment from the local PJ equal to 25 percent of the total HOME funds requested.

261—25.7(15) Application review criteria. IDED shall evaluate applications and make funding decisions based on general project criteria, need, impact, feasibility, and project administration based upon the specific type of project. The project criteria shall be a part of the application. A workshop will be held at least 60 days prior to the application deadline to provide information, materials, and technical assistance to potential applicants.

25.7(1) As applicable, the review criteria for homeownership assistance applications shall include the following:

a. General criteria.

1. Project objectives.
2. Total number of units and number of assisted units.
3. Project activities and cost estimates.
4. If new construction, availability of necessary infrastructure and utilities.
5. Form(s) of assistance (grants, loans, amounts).
6. Type(s) of assistance (e.g., mortgage buy-down, down payment, closing costs, and rehabilitation).
7. Median purchase price for single-family housing in the community.
8. Initial purchase price or after rehabilitation value per assisted unit.
9. Mortgage lender participation documentation and underwriting standards.
10. Methodology to determine maximum amount of conventional financing affordable to buyer.
11. Selection criteria for participants.
12. Methodology to ensure that the property will be the buyer's principal residence.
13. Rehabilitation standards to be used.
14. Project time line.

b. Need, impact and feasibility criteria.

1. Number and percentage of low- and moderate-income persons in the applicant community.
2. Evidence and documentation of need for the project.
3. Percentage of need to be met through the project.
4. Reasons mortgage applications have been denied by local lenders.
5. Housing costs, housing supply, condition of available housing, and vacancy rates.
6. If acquisition for new construction, documentation of need for new units.
7. Recent or current housing improvement activities.
8. Description of current and ongoing comprehensive community development efforts.
9. Publicity promoting the proposed project.
10. Number of potential participants and the method by which they were identified.
11. New businesses or industrial growth in the past five years.
12. Local involvement and financial support.
13. Property values compared to 1990 in project location (percent change).
14. Number of households compared to 1990 in project location (percent change).
15. Population compared to 1990 in project location (percent change).
16. Overall vacancy rate of owner-occupied units in the community (percent change).

c. Administrative criteria.

1. Plan for project administration.
2. Previous project management experience.
3. Budget for administration.
4. Resale and recapture provisions, terms, and enforcement procedures.
5. Prior funding received and performance targets completed.

25.7(2) As applicable, the review criteria for owner-occupied housing rehabilitation applications shall include the following:

a. General criteria.

1. Project objectives.
2. Area of benefit and reason for applicant selection.
3. Condition of infrastructure in the project area.
4. Form of assistance to homeowners (grants, loans, amounts).
5. Homeowner contribution methodology.
6. Selection criteria for participants.
7. Method to determine that the property is the homeowner's principal residence.
8. Proposed standards for rehabilitation.
9. Plan for properties infeasible to rehabilitate.
10. If relocation is included, estimate of available suitable replacement housing.
11. Documentation of local lender participation and underwriting criteria.
12. Method to determine after rehabilitation value.
13. Terms of affordability.
14. Use of program income.
15. Project time line.

b. Need, impact and feasibility criteria.

1. Evidence of need for the project.
2. Percentage of need to be met through the project.
3. Number and percentage of low- and moderate-income persons in the community.
4. Housing costs, housing supply, condition of available housing, vacancy rate in project area.
5. Other recent or current housing improvement activities in the project area.
6. Ongoing comprehensive community development efforts in the project area.
7. New businesses or industries in the past five years in the city of the project location.
8. Local support documentation.
9. Financial contribution to the project from other sources (with underwriting criteria).
10. Property values compared to 1990 in project location (percent change).
11. Number of households compared to 1990 in project location (percent change).
12. Population compared to 1990 in project location (percent change).
13. Overall vacancy rate of owner-occupied units in the community (percent change).

c. Administrative criteria.

1. Plan for project administration.
2. Previous project management experience.
3. Budget for administration.
4. List of prior CDBG and HOME funding.
5. If application is for a continuation of a prior project, list of performance targets completed.

25.7(3) As applicable, the review criteria for rental housing assistance applications shall include the following:

a. General criteria.

1. Project objectives.
2. Total number of units and number of assisted units.
3. Project activities and cost estimates.
4. Eligibility criteria for renters of assisted units (income, age, disability, other).
5. Rationale for project location.
6. Availability and condition of infrastructure; availability of utilities.
7. Zoning compliance.
8. Environmental issues.
9. Potential tenant displacement including estimated Uniform Relocation Act (URA) costs.
10. Accessibility.
11. Rehabilitation standards or construction codes to be used.

12. Project time line.
b. Need, impact and feasibility criteria.
1. Evidence of need for the project.
2. Percentage of need to be met through this project.
3. Number and percentage of low- and moderate-income persons in the community.
4. Housing costs, housing supply, condition of available housing, vacancy rate in project area.
5. If new construction, documentation of need for new construction.
6. Other recent or current housing improvement activities in the project area.
7. Ongoing comprehensive community development efforts in the project area.
8. New businesses or industries in the past five years in the city of the project location.
9. Local support.
10. Opposition to the project and plans to alleviate concerns.
11. Financial contribution to the project from other sources (including all underwriting criteria).
12. Reason for "gap" in the project financing; justification for housing fund request amount.
13. Property values compared to 1990 in project location (percent change).
14. Number of households compared to 1990 in project location (percent change).
15. Population compared to 1990 in project location (percent change).
16. Overall vacancy rate of owner-occupied units in the community (percent change).
c. Administrative criteria.
1. Plan for project administration.
2. Previous administrative experience.
3. Plan to ensure long-term affordability.
4. Plan for annual certification of tenant eligibility and compliance with Section 8 Housing Quality Standards.
5. Previous CDBG- and HOME-funded housing projects and current status.
6. Applicant's other rental housing projects and addresses.

25.7(4) As applicable, the review criteria for tenant-based rental assistance applications shall include the following:
a. General criteria.
1. Project objectives.
2. Rationale for amount of assistance per recipient.
3. Selection criteria for participants.
4. Form of assistance (grants, loans).
5. Use of assistance (rental and security deposits, rent assistance).
6. Length of time of assistance.
7. Portability of rental assistance.
8. Rent calculation.
b. Need, impact and feasibility criteria.
1. Number and percentage of low- and moderate-income persons in the applicant community.
2. Percentage of income potential recipients are currently paying for rent.
3. Area housing costs.
4. Availability of affordable housing.
5. Public housing authority waiting list.
6. Documentation of other indicators of need for Tenant-based Rental Assistance (TBRA).
7. Percentage of need to be met through this project.
8. Alternatives to the proposed project that were considered.
9. Coordination of this project with other housing assistance.
10. Other providers of TBRA in the community.
11. Description of efforts to obtain additional funding from other sources for TBRA.
12. Evidence of community support.
13. Opposition to project and method to address it.
14. Economic indicators in community (unemployment rate, increase/decrease opportunity).
15. Project time line.
16. Property values compared to 1990 in project location (percent change).
17. Number of households compared to 1990 in project location (percent change).
18. Population compared to 1990 in project location (percent change).
19. Overall vacancy rate of rental units in the community (percent change).
c. Administrative criteria.
1. Plans for administering the project.
2. Description of previous administrative experience.
3. Budget for administration.
4. Plan for annual certification of tenant eligibility and compliance with Section 8 HQS.
5. Prior CDBG and HOME housing grants.
6. Prior projects funded with performance targets completed.

25.7(5) IDED staff may conduct site evaluations of proposed activities.

261—25.8(15) Allocation of funds.

25.8(1) IDED may retain a portion of the amount provided for at rule 261—23.4(15) of the state's annual CDBG allocation from HUD and up to 10 percent of the state's annual HOME allocation from HUD for administrative costs associated with program implementation and operation.

25.8(2) Not less than 15 percent of the state's annual HOME allocation shall be reserved for eligible housing activities proposed by CHDOs.

25.8(3) Reserved.

25.8(4) IDED reserves the right to allocate up to 5 percent of CDBG funds allocated to the housing fund for the emergency repair of homeless shelters. Recipients funded for this purpose shall not be required to follow the application procedure set forth in rule 261—25.5(15).

25.8(5) IDED reserves the right to allocate up to 5 percent of the HOME funds allocated to the housing fund for a contingency fund dedicated to addressing threats to public health and safety and exceptional opportunities that would otherwise be foregone without immediate assistance.

25.8(6) IDED will determine the appropriate source of funding, either CDBG or HOME, for each housing fund award based on the availability of funds, the nature of the housing activity and the recipient type.

25.8(7) IDED reserves the right to limit the amount of funds that shall be awarded for any single activity type.

25.8(8) Awards shall be limited to no more than $700,000.

25.8(9) The maximum per unit housing fund subsidy for all project types is $24,999.

25.8(10) Recipients shall justify administrative costs in the housing fund application. IDED reserves the right to negotiate the amount of funds provided for administration, but in no case shall the amount exceed 15 percent of a total housing fund award.

25.8(11) IDED reserves the right to negotiate the amount and terms of a housing fund award.

25.8(12) IDED reserves the right to make award decisions such that the state maintains the required level of local match to HOME funds.

25.8(13) IDED reserves the right to allocate a portion of funds to comprehensive areawide housing programs. Potential recipients shall be identified through a request for qualifications of entities interested in and capable of operating an areawide program. Areawide program proposals shall be evaluated on and awards negotiated on the targeted number of beneficiaries to be assisted across income levels, household types and unmet housing needs, rather than on specific activities.

25.8(14) A preaudit survey will be required of all for-profit and nonprofit direct recipients.

261—25.9(15) Administration of awards. Applications selected to receive housing fund awards shall be notified by letter from the IDED director.

25.9(1) Source of funds. If the source of funding for a housing fund award is HOME, the recipient shall administer the activity and manage funds in compliance with the regulations set forth in the HOME final rule, 24 CFR Part 92 (April 1, 1997). If the source of funding for a housing fund award is CDBG, the recipient shall administer the activity and manage funds in compliance with federal regulations set forth in 24 CFR Part 570 (April 1, 1997).

25.9(2) A contract shall be executed between the recipient and IDED. These rules, the housing fund application, the housing management guide and all applicable federal and state laws and regulations shall be part of the contract.

a. The recipient shall execute and return the contract to IDED within 45 days of transmittal of the final contract from IDED. Failure to do so may be cause for IDED to terminate the award.

b. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

c. Awards shall be conditioned upon commitment of other sources of funds necessary to complete the housing activity.

d. Awards shall be conditioned upon IDED receipt and approval of an administrative plan for the funded activity.

25.9(3) Requests for funds. Recipients shall submit requests for funds in the manner and on forms prescribed by IDED. Individual requests for funds shall be made in whole dollar amounts equal to or greater than $500 per request, except for the final draw of funds.

25.9(4) Record keeping and retention. The recipient shall retain all financial records, supporting documents and all other records pertinent to the housing fund activity for five years after contract expiration. Representatives of IDED, HUD, the Inspector General, the General Accounting Office and the state auditor's office shall have access to all records belonging to or in use by recipients and subrecipients pertaining to a housing fund award.

25.9(5) Performance reports and reviews. Recipients shall submit performance reports to IDED in the manner and on forms prescribed by IDED. Reports shall assess the use of funds and progress of activities. IDED may perform reviews or field inspections necessary to ensure recipient performance.

25.9(6) Amendments to contracts. Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alterations of the funded activities affecting the scope, location, objectives or scale of the approved activity. Amendments shall be requested in writing by the recipient and are not considered valid until approved in writing by IDED following the procedure specified in the contract between the recipient and IDED.

25.9(7) Contract closeout. Upon the contract expiration date or work completion date, as applicable, IDED shall initiate contract closeout procedures. Recipients shall comply with applicable audit requirements described in the housing fund application and management guide.

25.9(8) Compliance with federal, state and local laws and regulations. Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable federal, state and local regulations.

25.9(9) Remedies for noncompliance. At any time, IDED may, for cause, find that a recipient is not in compliance with the requirements of this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Reasons for a finding of noncompliance include the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved activities in a timely manner.

25.9(10) Appeals process for findings of noncompliance. Appeals will be entertained in instances where it is alleged that IDED staff participated in a decision which was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals should be addressed to the division administrator of the division of community and rural development. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director will make the final decision on all appeals.

261—25.10(15) Requirements for the contingency fund. The contingency fund is reserved for (1) communities experiencing a threat to public health, safety, or welfare that necessitates immediate corrective action sooner than could be accomplished though normal housing fund procedures; or (2) communities and other entities responding to an immediate development opportunity that necessitates action sooner than can be accomplished through normal housing fund procedures. Up to 5 percent of the HOME funds may be used for this purpose.

25.10(1) Application procedure. Those applying for contingency funds shall submit a written request to IDED, Division of Community and Rural Development, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the situation, the project budget including the amount requested from IDED, projected use of funds and an explanation of the reasons that the situation cannot be remedied though normal housing fund procedures. If the project meets threshold criteria, a full application may be requested by the department.

25.10(2) Application review. Upon receipt of a request for contingency funding, IDED shall make a determination of whether the project is eligible for funding and notify the applicant of its determination. A project shall be considered eligible if it meets the following criteria:

a. Projects to address a threat to health and safety.

(1) An immediate threat to health, safety or community welfare that requires immediate action must exist.

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(2) The threat must be the result of unforeseeable and unavoidable circumstances or events.

(3) No known alternative project or action would be more feasible than the proposed project.

(4) Sufficient other local, state or federal funds either are not available or cannot be obtained in the time frame required.

b. Projects to address an exceptional opportunity.

(1) A significant opportunity exists for the state that otherwise would be forgone if not addressed immediately.

(2) The opportunity is such that it is not possible to apply to the housing fund in a normal application time frame.

(3) The project would have merit, with respect to review criteria, comparable to funded projects in the most recent competition.

25.10(3) IDED reserves the right to request additional information on forms prescribed by IDED prior to making a final funding decision. IDED reserves the right to negotiate final project award and design components.

These rules are intended to implement Iowa Code section 15.108(1)"a."

[Filed 9/16/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9396A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby rescinds Chapter 42, "Governmental Enterprise Fund," Chapter 46, "Rural Enterprise Fund," Chapter 47, "Rural Leadership Development Program," Chapter 48, "Rural Action Development Program," and Chapter 49, "Rural Innovation Grants," and adopts Chapter 41, "Rural/Community Planning and Development Fund," Iowa Administrative Code.

The amendments consolidate a number of existing programs into one broad funding source and bring the rules into conformity with other programs operated by the Division of Community and Rural Development. The purpose is threefold: (1) to combine all programs under one set of administrative rules that will be flexible and responsive to local needs; (2) to enhance provision of services and resources to communities; and (3) to reduce administrative costs and reduce confusion in the delivery of five separate programs.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9247A** on August 11, 1999. The IDED Board adopted the amendments on September 16, 1999.

A public hearing was held on August 31, 1999. No comments concerning the proposed amendments were received from the public. One change was made from the Notice of Intended Action to add the word "rural" to the title of Chapter 41.

These amendments are intended to implement Iowa Code section 15.108(3) and 1999 Iowa Acts, House File 745, section 1(3)"c."

These amendments will become effective on November 10, 1999.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind Chs 42 and 46 to 49; adopt Ch 41] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 9247A**, IAB 8/11/99.

[Filed 9/16/99, effective 11/10/99]
[Published 10/6/99]

[For replacement pages for IAC, see IAC Supplement 10/6/99.]

ARC 9407A

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby adopts Chapter 21, "Behind-the-Wheel Driving Instructor Authorization," Iowa Administrative Code.

This chapter creates an authorization for an instructor of behind-the-wheel driving to implement Iowa Code section 321.178 as amended by 1999 Iowa Acts, Senate File 203, section 11.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 30, 1999, as **ARC 9162A**. A public hearing on the proposed amendments was held on July 27, 1999. No one attended this hearing, and no comments were received.

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

These rules will become effective November 10, 1999.

These rules are intended to implement Iowa Code chapter 272 and Iowa Code section 321.178 as amended by 1999 Iowa Acts, Senate File 203, section 11.

The following **new** chapter is adopted:

CHAPTER 21
BEHIND-THE-WHEEL DRIVING
INSTRUCTOR AUTHORIZATION

282—21.1(78GA,SF203) Requirements. Applicants for the behind-the-wheel driving instructor authorization shall meet the following requirements:

21.1(1) Hold a current Iowa teacher or administrator license which authorizes service at the elementary or secondary level.

21.1(2) Successfully complete a behind-the-wheel driving instructor course approved by the department of transportation. At a minimum, classroom instruction shall include at least 12 clock hours of observed behind-the-wheel instruction and 24 clock hours of classroom instruction to include psychology of the young driver, behind-the-wheel teaching techniques, ethical teaching practices, and route selection.

282—21.2(78GA,SF203) Validity. The behind-the-wheel driving instructor authorization shall be valid for one calendar year, and it shall expire one year after issue date. The fee

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for the issuance of the behind-the-wheel driving instructor authorization shall be $10.

282—21.3(78GA,SF203) Approval of courses. Each institution of higher education, private college, or university, community college or area education agency wishing to offer the behind-the-wheel driving instructor authorization must submit course descriptions to the department of transportation for approval. After initial approval, any changes by agencies or institutions in course offerings shall be filed with the department of transportation and the board of educational examiners.

282—21.4(78GA,SF203) Application process. Any person interested in the behind-the-wheel driving instructor authorization shall submit records of completion of a department of transportation-approved program to the board of educational examiners for an evaluation of completion of coursework, validity of teacher or administrator license, and all other requirements.

Application materials are available from the board of educational examiners, the department of transportation or from institutions or agencies offering department of transportation-approved courses.

282—21.5(78GA,SF203) Renewal. The behind-the-wheel driving instructor authorization may be renewed upon application, $10 renewal fee and verification of successful completion of:

21.5(1) Providing behind-the-wheel instruction for a minimum of 12 clock hours during the previous school year; and

21.5(2) Successful participation in at least one department of transportation-sponsored or department of transportation-approved behind-the-wheel instructor refresher course.

282—21.6(78GA,SF203) Revocation and suspension. Criteria of professional practice and rules of the board of educational examiners shall be applicable to the holders of the behind-the-wheel driving instructor authorization.

These rules are intended to implement Iowa Code chapter 272 and Iowa Code section 321.178 as amended by 1999 Iowa Acts, Senate File 203, section 11.

[Filed 9/17/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9385A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 150, "Purchase of Service," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments September 14, 1999. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on July 28, 1999, as **ARC 9214A**.

These amendments update form numbers and organizational references in the purchase of service chapter of the Department's rules.

These amendments do not provide for waivers in specified situations because no waiver is appropriate in any situations that can be specified since these amendments are merely updating form numbers and organizational references in the purchase of service chapter of the Department's rules.

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

These amendments are intended to implement Iowa Code section 234.6.

These amendments shall become effective December 1, 1999.

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 [150.1 to 150.3, 150.5, 150.7, 150.8, Division II, Preamble, 150.21, 150.22] is being omitted. These rules are identical to those published under Notice as **ARC 9214A**, IAB 7/28/99.

[Filed 9/13/99, effective 12/1/99]
[Published 10/6/99]

[For replacement pages for IAC, see IAC Supplement 10/6/99.]

ARC 9402A

PERSONNEL DEPARTMENT[581]

Adopted and Filed

Pursuant to the authority of Iowa Code section 97B.15, the Personnel Department hereby amends Chapter 21, "Iowa Public Employees' Retirement System," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 30, 1999, as **ARC 9169A**. A public hearing on the proposed amendments was held on July 20, 1999. No oral or written public comments were received on the proposed amendments. Some of the proposed amendments were simultaneously Adopted and Filed Emergency as **ARC 9168A**. The Adopted and Filed Emergency amendments were identical to the proposed amendments.

One change has been made to the amendments published under Notice of Intended Action. Paragraph 21.4(1)"f" has been revised in response to comments by Department staff to add clarity. No substantive change is intended. Paragraph 21.4(1)"f" now reads as follows:

"f. Special lump sum payments. Wages do not include special lump sum payments made during or at the end of service as a payoff of unused accrued sick leave or of unused accrued vacation. Wages do not include special lump sum payments made during or at the end of service as an incentive to retire early or as payments made upon dismissal, severance, or a special bonus payment intended as an early retirement incentive. The foregoing items are excluded whether paid in a lump sum or in a series of installment payments. Wages do not include catastrophic leave paid in a lump sum."

The amendments include the following:

1. Paragraph 21.4(1)"f" is amended to clarify that payments of unused sick leave, unused vacation pay, and payments intended as early retirement incentives are excluded,

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even if the employer permits the employee to receive the payments in installments. These special payments are already excluded by statute to avoid wage manipulation when paid as lump sums. The rule is intended to prohibit evasions of the statutory requirements and shall not be waived.

2. Subrule 21.4(2) is amended to provide that wages will be allocated to the quarters the wages would have been received, if the employer permits employees to manipulate wages solely for the purpose of increasing the three-year average covered wage. This subrule is also amended to clarify that an employer cannot report wages to IPERS that have not yet been paid to employees, such as checks that are written but held pending issuance during pay periods later than the pay period that the wages are reported to IPERS as being received by individuals.

3. Paragraph 21.5(1)"a"(1) is amended to implement 1998 Iowa Acts, chapter 1183, section 25. The amendment clarifies that legislators and certain other elected officials are covered under IPERS unless they make a timely election to elect out of coverage.

4. Paragraph 21.5(1)"a"(36) is amended by striking a provision of the rule that required coverage for senior citizen enrollees under the job training program funded under Title V of the Older Americans Act. As a result of the change, coverage will be provided to such senior citizens if both the employer and the enrollee agree to IPERS coverage within 60 days.

5. New paragraph 21.5(1)"a"(49) excludes referees from IPERS coverage. These individuals operate with little or no direction and control from the covered employers receiving their services, and are treated as independent contractors.

6. Subrule 21.6(9), paragraphs "b," "c," and "e," are amended to provide new lower contribution rates for individuals who are in protection occupations and sheriffs/deputy sheriffs/airport firefighters. These contribution rates are based on the recommendations of IPERS' actuary, as required under Iowa Code sections 97B.49B(3) and 97B.49C(3). In addition to being required by statute, these contribution rates cannot be waived because such a waiver could have a detrimental effect on the funded status of the system.

7. Rule 581—21.8(97B) is rescinded and a new rule is adopted. The new rule implements the refund requirements adopted in 1998 Iowa Acts, chapter 1183, section 57, granting a share of the accumulated employer contributions for refunds after July 1, 1999. In addition to implementing the new refund requirements, the amendment clarifies how IPERS determines if an employee has terminated within six months of employment. Those amendments relating to the calculation of refund amounts cannot be waived because such waivers would be deemed arbitrary and capricious unless applied to all members, which could have a detrimental effect on the funded status of the system. If a change in IPERS' method of calculating refund amounts is warranted, the system will amend the rule.

8. Subrule 21.10(9) is amended to clarify that the executor or administrator of a member's estate may expressly waive the estate's claim for death benefits, and relieves the system from liability for accepting the waiver.

9. Subrule 21.11(2) is amended to provide that IPERS may rely on its internal records with respect to date of birth, if it is required to begin making payments to a member or beneficiary who has reached the required beginning date specified by the Internal Revenue Code and the member will not cooperate with requests for such information.

10. Subrule 21.16(6) is amended to clarify service purchase costs for leaves of absence that are purchased before July 1, 1999, and those that are purchased on and after July 1, 1999. The subrule also is amended to provide more details about the actuarial assumptions and method being used to calculate service purchase costs. The amendments relating to the calculation of service purchase costs cannot be waived because such waivers would be arbitrary and capricious unless applied to all members, which could have a detrimental effect on the funded status of the system. If a change in IPERS' method of calculating service purchase costs is warranted, the system will amend the rule.

11. Paragraph 21.19(4)"e" is amended to provide more detail about the calculation of a retired reemployed member's death benefit under Option 1, if the member chooses an increased monthly allowance. IPERS' various benefits options are required to be actuarially equivalent. This rule is intended to more closely implement that requirement and shall not be waived.

12. Paragraph 21.19(4)"g" is amended to implement IPERS policy that retired reemployed members who terminate employment and choose to receive a distribution of accumulated employee and employer contributions for the period of reemployment cannot repurchase the related period of service. It is IPERS' position that the distribution of such accumulated employee and employer contributions is a retirement benefit, and that the distribution uses up the related service credit in the same manner as a regular retirement. Accordingly, IPERS shall not waive this rule.

13. Paragraph 21.24(2)"b" is amended to provide that IPERS shall use the employee and employer contribution rates in effect at the time of a service purchase. Contribution rates for protection occupation members and sheriff/deputy sheriff/airport firefighter members are set each July 1, so the calendar year method of the current subrule lags behind actual rates being imposed on current members.

14. Various subrules under rule 581—21.24(97B) are amended to permit members who normally have less than four calendar quarters of service credit in a calendar year to purchase refunds, other system buy-ins, veteran's buy-ins, legislative buy-ins, leaves of absence, and optional coverage buy-ins. Various subrules under the rule are also amended to provide more details about the actuarial assumptions and method being used to calculate service purchase costs for the various service purchases addressed in the rule. The rule is also amended to provide that members who are vested solely by reason of age must have at least one quarter of wages on file before making a buy-back. The amendments relating to the calculation of service purchase costs cannot be waived because such waivers would be arbitrary and capricious unless applied to all members, which could have a detrimental effect on the funded status of the system. If a change in IPERS' method of calculating service purchase costs is warranted, the system will amend the rule.

15. Subrule 21.30(1) is amended to revise the percentages that will be allocated to the FED reserve and to limit the initial allocation favorable experience to the FED reserve to 50 percent. After examination and testing of the current schedule, the system and its actuary determined that the schedule allocated an unduly large portion of favorable experience to the FED reserve, preventing implementation of the supplemental account for active members in the near future. The provisions of this subrule were developed to implement Iowa Code section 97B.49F(2) in close consultation with IPERS' actuary. The amendments cannot be waived because such waivers would be arbitrary and capricious unless ap-

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plied to all members, which could have a detrimental effect on the funded status of the system. If a change in IPERS' method of calculating FED allocations and distributions is warranted, the system will amend the rule.

16. New subrule 21.30(4) is adopted to clarify that favorable experience dividends will be paid to deceased members and beneficiaries who would have been entitled to a favorable experience dividend if they had been living in the January subsequent to date of death. Payments will be calculated based on the number of months of benefits actually received and the most recently declared favorable experience dividend percentage as of the date of death. The subrule also provides that the system can suspend payments under this subrule, if the system determines in the January preceding the next FED that there is a reasonable likelihood that a FED may not be declared for the year in which the death occurred. The provisions of this subrule were developed to implement Iowa Code section 97B.49F(2) in close consultation with IPERS' actuary. The amendments cannot be waived because such waivers would be arbitrary and capricious unless applied to all members, which could have a detrimental effect on the funded status of the system. If a change in IPERS' method of calculating distribution under this subrule is warranted, the system will amend the rule.

These amendments were adopted by the Personnel Department on September 15, 1999.

These amendments shall become effective November 10, 1999, at which time the Adopted and Filed Emergency amendments published as **ARC 9168A** are rescinded.

These amendments are intended to implement Iowa Code chapter 97B.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [21.4(1)"f," 21.4(2), 21.5(1)"a," 21.6(9), 21.8, 21.10(9), 21.11(2), 21.16(6), 21.19(4), 21.24(2), 21.24(3), 21.24(5), 21.24(6)"d," 21.24(12), 21.30(1), 21.30(4)] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 9169A**, IAB 6/30/99.

[Filed 9/17/99, effective 11/10/99]
[Published 10/6/99]

[For replacement pages for IAC, see IAC Supplement 10/6/99.]

ARC 9373A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.36 and 147.76, the Board of Pharmacy Examiners hereby amends Chapter 2, "Licensure," Iowa Administrative Code.

The amendments add the requirement for a surcharge to be included with all pharmacist license fees to fund the Impaired Pharmacy Professional and Technician Recovery Program pursuant to Iowa Code section 155A.39 and clarify language regarding requirements for examinations and transfer of examination scores and related fees. The amendments also clarify requirements for licensure of foreign pharmacy graduates.

Notice of Intended Action was published in the June 2, 1999, Iowa Administrative Bulletin as **ARC 9043A**. One change was made to the Notice. A reference to Iowa Code section 155A.39 was added to the implementation clause following rule 657—2.2(147).

The amendments were approved during the July 15, 1999, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on November 10, 1999.

These amendments are intended to implement Iowa Code sections 147.29, 147.94, 155A.8, 155A.9, and 155A.39.

The following amendments are adopted.

ITEM 1. Amend rule 657—2.2(147) as follows:

657—2.2(147) Examination fee. The fee for examination shall consist of *the biennial license fee established by 657—3.1(147,155A) including surcharge,* an administration fee, and an examination registration fee. The administration fee shall be ~~$140~~ *$40,* ~~which includes $100 for a biennial license,~~ and, *combined with the license fee and surcharge,* shall be payable to the Iowa Board of Pharmacy Examiners. No refunds of the $40 administration fee shall be made for cancellations. The examination registration fee shall be an amount determined by the National Association of Boards of Pharmacy (NABP). The examination registration fee shall be payable to NABP in the form of a certified check, bank draft or money order. The *biennial license fee including surcharge, the* administration fee, and the examination registration fee must accompany the applications.

This rule is intended to implement Iowa Code ~~section~~ *sections* 147.94 *and 155A.39.*

ITEM 2. Amend rule 657—2.9(155A) as follows:

657—2.9(155A) Application for examination—requirements. *Application for examination or reexamination shall be on forms provided by the board, and all requested information shall be provided on or with such application.* ~~On each application for examination, the~~ *The* applicant ~~must~~ *shall* provide the following *with the initial application for examination*: name; address; telephone number; mother's maiden name; date of birth; social security number; name and location of college of pharmacy and date of graduation; ~~two~~ *one* current ~~identical photos~~ *photograph of a quality at least similar to a passport photograph*; and internship experience. In addition each applicant must declare the following: history of prior licensure examinations and record of offenses including but not limited to charges, convictions, and fines which may affect the licensee's ability to practice pharmacy.

ITEM 3. Rescind subrule 2.11(2) and adopt the following **new** subrule in lieu thereof:

2.11(2) Fees to the board of pharmacy examiners for licensure pursuant to the NABP score transfer program shall consist of the fees identified in 657—2.2(147) excluding the NAPLEX examination registration fee.

ITEM 4. Amend rule 657—2.12(155A) as follows:

657—2.12(155A) Foreign pharmacy graduates.

2.12(1) Any applicant who is a graduate of a school or college of pharmacy located outside the United States which has not been recognized and approved by the board, but who is otherwise qualified to apply for a license to practice pharmacy in Iowa, shall be deemed to have satisfied the requirements of Iowa Code section 155A.8, subsection 1, by verification to the board of the applicant's academic record and graduation. Each applicant shall have successfully passed

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the Foreign Pharmacy Graduate Equivalency Examination (FPGEE) given by the Foreign Pharmacy Graduate Examination Commission established by the National Association of Boards of Pharmacy which examination is hereby recognized and approved by the board. Each applicant shall also demonstrate proficiency in English by passing the Test of English as a Foreign Language (TOEFL) *and the Test of Spoken English (TSE)* given by the educational testing service which ~~examination is~~ *examinations are* hereby recognized and approved by the board. ~~Both the~~ *The* FPGEE, *TSE,* and TOEFL ~~exams~~ *examinations* are prerequisites to taking the licensure examination required in Iowa Code section 155A.8, subsection 3.

2.12(2) Foreign pharmacy graduate applicants shall also be required to obtain 1500 hours of internship experience in a community or hospital pharmacy licensed by the board *as provided in 657—4.7(155A).* Internship requirements shall, in all other aspects, meet the requirements established under ~~Chapter 4 of board rules~~ *657—Chapter 4.*

This rule is intended to implement Iowa Code sections 155A.8 and 155A.9.

[Filed 9/8/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9372A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76, 155A.13, and 155A.39, the Board of Pharmacy Examiners hereby amends Chapter 3, "License Fees, Renewal Dates, Fees for Duplicate Licenses and Certification of Examination Scores," Iowa Administrative Code.

The amendments provide that a surcharge be added to all pharmacist license fees to support the Impaired Pharmacy Professional and Technician Recovery Program pursuant to Iowa Code section 155A.39. The amendments modify pharmacy license application requirements to include information regarding pharmacist-interns and pharmacy technicians working at the pharmacy and to remove the requirement that all staff pharmacists and pharmacy technicians sign the pharmacy license application. The amendments further define areas where pharmacy licensure is required and provide for exemption or waiver from Board rules for nonresident pharmacies by recognizing a nonresident pharmacy license with exemption.

Notice of Intended Action was published in the June 2, 1999, Iowa Administrative Bulletin as **ARC 9044A**. The adopted amendments differ from those published under Notice as follows:

(1) Reference to Iowa Code section 155A.39 is added to the implementation clause following rule 657—3.1(147, 155A);

(2) Provision is made in rule 657—3.4(155A) for exemption or waiver of Board rules for nonresident pharmacy licenses to permit nonresident pharmacies the same rights of waiver as provided for Iowa-resident pharmacies; and

(3) The identification in rule 657—3.4(155A) of areas requiring pharmacy licensure is clarified by adding the phrase "by a pharmacist" in response to concerns expressed by Iowa nurses that the originally proposed amendment appeared to require pharmacy licensure for, among others, drug information services provided by other licensed professionals.

The amendments were approved during the July 15, 1999, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on November 10, 1999.

These amendments are intended to implement Iowa Code sections 147.94, 155A.13, 155A.13A, 155A.14, and 155A.39.

The following amendments are adopted.

ITEM 1. Amend rule 657—3.1(147,155A) as follows:

657—3.1(147,155A) Renewal date and fee—late application. A license to practice pharmacy shall expire on the second thirtieth day of June following the date of issuance of the license. The license renewal form shall be issued upon payment of a $100 fee *plus applicable surcharge pursuant to 657—30.8(155A).*

Failure to renew the license before July 1 following expiration shall require a renewal fee of $200 *plus applicable surcharge pursuant to 657—30.8(155A).* Failure to renew the license before August 1 following expiration shall require a renewal fee of $300 *plus applicable surcharge pursuant to 657—30.8(155A).* Failure to renew the license before September 1 following expiration shall require a renewal fee of $400 *plus applicable surcharge pursuant to 657—30.8(155A).* Failure to renew the license before October 1 following expiration shall require an appearance before the board and a renewal fee of $500 *plus applicable surcharge pursuant to 657—30.8(155A).* In no event shall the fee for late renewal of the license exceed $500 *plus applicable surcharge pursuant to 657—30.8(155A).* The provisions of Iowa Code section 147.11 shall apply to a license which is not renewed within five months of the expiration date.

This rule is intended to implement Iowa Code sections 147.10, 147.80, 147.94, ~~and~~ 155A.11, *and 155A.39.*

ITEM 2. Amend rule 657—3.4(155A), introductory paragraph, as follows:

657—3.4(155A) Pharmacy license—general provisions. General pharmacy licenses, hospital pharmacy licenses, special or limited use pharmacy licenses, and nonresident pharmacy licenses shall be renewed on January 1 of each year. All areas where prescription drugs are dispensed *or nonproduct pharmacy services are provided by a pharmacist* will require a general pharmacy license, a hospital pharmacy license, or a nonresident pharmacy license. Nonresident pharmacy license applicants shall comply with board rules regarding nonresident pharmacy license *except where specific exemptions have been granted.* Applicants for general or hospital pharmacy license shall comply with board rules regarding general or hospital pharmacy license except where specific exemptions have been granted. Applicants who are granted exemptions shall be issued a "general pharmacy license with exemption," a "hospital pharmacy license with exemption," *a "nonresident pharmacy license with exemption,"* or a "limited use pharmacy license with exemption" and shall comply with the provisions set forth by that exemption. A written request for exemption from certain licensure requirements, *submitted pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C),* will be determined on a case-by-case basis. Limited use pharmacy license may be issued for nuclear pharmacy practice, correctional facility pharmacy practice, and veterinary pharmacy practice. Applications for limited use pharmacy license for these and

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other limited use practice settings shall be determined on a case-by-case basis.

ITEM 3. Amend subrule 3.4(1) as follows:

3.4(1) Application form. *Application shall be on forms provided by the board.* The application form for a pharmacy license ~~furnished by the board~~ shall indicate whether a pharmacy is a sole proprietorship (100 percent ownership) and give the name and address of the owner; or if a partnership, the names and addresses of all partners; or if a limited partnership, the names and addresses of the partners; or if a corporation, the names and addresses of the officers and directors. In addition, the form shall require the name, *signature,* and license number of the pharmacist in charge, ~~and~~ the names and license numbers of all pharmacists engaged in practice in the pharmacy, *the names and registration numbers of all pharmacy technicians working in the pharmacy, and the average number of hours worked by each pharmacist and pharmacy technician.*

[Filed 9/8/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9371A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

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

The amendments clarify the definition and requirements for a pharmacist preceptor; provide for determination of a student's eligibility for internship, the term of registration, and for extension of the registration period; provide for nontraditional internship; modify the eligibility requirements for foreign pharmacy graduates; and provide for a surcharge to be added to all intern registration fees to support the Impaired Pharmacy Professional and Technician Recovery Program pursuant to Iowa Code section 155A.39.

Notice of Intended Action was published in the June 2, 1999, Iowa Administrative Bulletin as ARC **9045A**. The adopted amendments differ from those published under Notice as follows:

(1) The definition of "Pharmacist preceptor" is changed by deleting the words "board or" because a licensing board would be encompassed by a licensing authority;

(2) Catchwords are added to each of the subrules under rule 657—4.6(155A);

(3) Paragraph "c" of subrule 4.6(2) has been reworded to clarify the requirements for affidavits of internship experience; and

(4) "Nontraditional internship" is defined in subrule 4.6(4), and the requirements for nontraditional internship are further clarified by specifying that application for nontraditional internship be written on forms provided by the Board to ensure that applications are consistent and include all necessary information for timely and prompt consideration by the Board of such requests.

The amendments were approved during the July 15, 1999, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on November 10, 1999.

These amendments are intended to implement Iowa Code sections 155A.6 and 155A.9.

The following amendments are adopted.

ITEM 1. Amend rule **657—4.1(155A)**, definition of "Pharmacist preceptor," as follows:

"Pharmacist preceptor" or "preceptor" means a pharmacist licensed to practice pharmacy ~~in Iowa~~ *whose license is current and in good standing.* Preceptors shall meet the conditions and requirements of rule 4.9(155A). No pharmacist shall serve as a preceptor if the pharmacist's license to practice pharmacy has been the subject of an order of the ~~board~~ *licensing authority having jurisdiction over the pharmacist's license* imposing any ~~penalty set out in 657—Chapter 36~~ *disciplinary sanctions* during the time the pharmacist is serving as preceptor or within the three-year period immediately preceding ~~application for approval~~ *the time the pharmacist begins serving* as a preceptor. Provided, however, a pharmacist who has been the subject of such ~~an order~~ *disciplinary order* may petition the board in writing for approval to act as preceptor.

ITEM 2. Amend rule 657—4.6(155A) as follows:

657—4.6(155A) Registration and reporting.

4.6(1) *Registration requirements and term of registration.* Every person shall register before beginning the person's internship experience, whether or not for the purpose of fulfilling the requirements of rule 4.3(155A). *Colleges of pharmacy located in Iowa shall certify to the board the names of students who have successfully completed one semester in the college of pharmacy.* Registration shall remain in effect ~~during successive training periods if records, forms, affidavits, and other materials required by the board are maintained and executed promptly at the beginning and ending of such training periods, and if~~ *as long as* the board is satisfied that the intern is pursuing a degree in pharmacy in good faith and with reasonable diligence. *A pharmacist-intern may request the intern's registration be extended beyond the automatic termination of such registration pursuant to the procedures and requirements of 657—1.3(17A, 124,126,147,155A,205,272C). Registration shall automatically terminate upon the earliest of any of the following:*

a. Licensure to practice pharmacy in any state;

b. Lapse, exceeding one year, in the pursuit of a degree in pharmacy; or

c. One year following graduation from the college of pharmacy.

4.6(2) *Identification, reports, and notifications.* Credit for internship time will not be granted unless registration and other required records and affidavits are completed.

a. The pharmacist-intern shall be so designated in all relationships with the public and health professionals. The intern shall wear a badge or name tag with the intern's name and designation, pharmacist-intern or pharmacy student, clearly and visibly imprinted thereon.

b. Registered interns shall notify the board office within ten days of a change of name, employment or residence.

c. Notarized affidavits of experience in non-college-sponsored programs ~~must~~ *shall* be filed with the board office within 90 days after the ~~last day of the~~ *successful completion of* internship ~~period~~. These affidavits ~~must~~ *shall include certification of competencies and shall* certify only the number

of hours and dates of training which are nonconcurrent with college of pharmacy enrollment *as provided in rule 4.3(155A).*

4.6(3) *No credit prior to registration.* Credit will not be given for internship experience obtained prior to registration as a pharmacist-intern. *Credit for Iowa college-based clinical programs (1000 hours) will not be granted unless registration is completed before the student begins the program.*

4.6(4) Nontraditional internship. Credit shall not be given for internship experience obtained at a nontraditional site or program unless the board, prior to the intern's beginning the period of internship, approves the program. Internship training at any site which is not licensed as a general or hospital pharmacy is considered nontraditional internship. Written application for approval of a nontraditional internship program shall include site or program specific competencies, consistent with the goal and objectives of internship in 657—4.2(155A), to be attained during that internship. Application shall be on forms provided by the board. A preceptor supervising a nontraditional internship program shall be a pharmacist, and the requirements of 657—4.9(155A) shall apply to all preceptors.

ITEM 3. Amend rule 657—4.7(155A) as follows:

657—4.7(155A) Foreign pharmacy graduates. Foreign pharmacy graduates who are candidates for licensure in Iowa will be required to obtain a minimum of 1500 hours of internship in a licensed pharmacy or other board-approved location. These candidates must register with the board as per rule 4.6(155A). Internship credit will not be granted until the candidate has been issued an intern registration ~~card~~. Applications for registration must be accompanied by documentation that the foreign pharmacy graduate has passed the Foreign Pharmacy Graduate Equivalency Examination (FPGEE), *the Test of Spoken English (TSE),* and the Test of English as a Foreign Language (TOEFL). The board may waive any or all of the 1500 hours if they determine that the candidate's experience as a practicing pharmacist in the foreign country meets the goals and objectives established in rule 4.2(155A).

ITEM 4. Amend rule 657—4.8(155A) as follows:

657—4.8(155A) Fees. The fee for registration as ~~an intern~~ *a pharmacist-intern* is $10, *plus applicable surcharge pursuant to 657—30.8(155A), which fee shall be* payable with the application.

ITEM 5. Amend rule 657—4.9(155A) as follows:

657—4.9(155A) Preceptor requirements.

4.9(1) A preceptor shall be a licensed pharmacist in good standing ~~with the board~~ *pursuant to the definition of pharmacist preceptor in 657—4.1(155A).*

4.9(2) ~~Preceptors are required to be approved by the board.~~ *A preceptor shall be responsible for initialing and dating those competencies the intern attained under the supervision of the preceptor and for completing the affidavit certifying the number of hours and the dates of each internship training period under the supervision of the preceptor.*

4.9(3) A preceptor may supervise no more than two pharmacist-interns concurrently.

4.9(4) A preceptor shall be responsible for ~~the accuracy of~~ all functions performed by a pharmacist-intern.

[Filed 9/8/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9370A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.53, 147.76, and 155A.39, the Board of Pharmacy Examiners hereby amends Chapter 5, "Licensure by Reciprocity," Iowa Administrative Code.

The amendments clarify application and credential requirements for pharmacist licensure by reciprocity, change the mailing address for the Board due to the pending relocation of the office, and provide for a surcharge to be added to the license fee to support the Impaired Pharmacy Professional and Technician Recovery Program pursuant to Iowa Code section 155A.39.

Notice of Intended Action was published in the June 2, 1999, Iowa Administrative Bulletin as **ARC 9046A**. The adopted amendments differ from those published under Notice only in that the mailing address for the Board included in rule 657—5.2(147) has been changed to reflect the Board's new office location effective October 11, 1999.

The amendments were approved during the July 15, 1999, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on November 10, 1999.

These amendments are intended to implement Iowa Code sections 147.94 and 155A.39.

The following amendments are adopted.

ITEM 1. Amend rule 657—5.1(147) as follows:

657—5.1(147) Reciprocity fee. The fee for reciprocal licensure ~~is $150~~ *shall consist of the biennial license fee established by 657—3.1(147,155A) including surcharge and an administration fee of $50,* which must accompany the application. *No refunds of the $50 administration fee shall be made for cancellations. Applicants shall also be required to submit the application registration fee, as determined by NABP, for the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition.* ~~The fee is returned if the application is denied.~~

ITEM 2. Amend rule 657—5.2(147) as follows:

657—5.2(147) Necessary credentials. *Application shall consist of the final application for license transfer prepared by NABP pursuant to the NABP license transfer program and the application for registration for the MPJE, Iowa Edition.* ~~The application~~ *Applications,* together with other necessary credentials *and fees,* ~~must~~ *shall* be filed with the executive secretary of the Iowa Board of Pharmacy Examiners, ~~1209~~

PHARMACY EXAMINERS BOARD[657](cont'd)

~~East Court Avenue, Executive Hills West~~ *400 S.W. Eighth Street, Suite E*, Des Moines, Iowa ~~50319~~ *50309-4688*.

[Filed 9/8/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9369A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby amends Chapter 6, "General Pharmacy Licenses," Chapter 7, "Hospital Pharmacy Licenses," Chapter 15, "Correctional Facility Pharmacy Licenses," and Chapter 16, "Nuclear Pharmacy," Iowa Administrative Code.

The amendments direct applicants desiring exemption to provisions of specific rules to the procedures for filing application for waiver or exemption from Board rules.

Notice of Intended Action was published in the June 2, 1999, Iowa Administrative Bulletin as **ARC 9047A**. Rule 657—15.2(124,126,155A) has been modified to specifically limit the application for waiver or exemption to requirements regarding the pharmacy's sink. This change was adopted to make it clear that pharmacy applicants could not request exemption or waiver from the drug storage and sanitation requirements also addressed by this rule.

The amendments were approved during the July 15, 1999, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on November 10, 1999.

These amendments are intended to implement Iowa Code section 17A.3 as amended by 1998 Iowa Acts, chapter 1202.

The following amendments are adopted.

ITEM 1. Amend rule 657—6.3(155A), introductory paragraph, as follows:

657—6.3(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one reference from each of the following: *categories. A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147, 155A,205,272C).*

ITEM 2. Amend rule 657—6.4(155A) as follows:

657—6.4(155A) Prescription department equipment. The prescription department shall have, as a minimum, the following:

1. Measuring devices such as syringes or graduates capable of measuring 1 ml to 250 ml;
2. Suitable refrigeration unit. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration;
3. Other equipment as necessary for the particular practice of pharmacy.

A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).

ITEM 3. Amend subrule 6.5(3) as follows:

6.5(3) Sink. A pharmacy shall have a sink with hot and cold running water within the prescription department, available to all pharmacy personnel, and maintained in a sanitary condition. *A pharmacy may request waiver or variance from a provision of this subrule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).*

ITEM 4. Amend rule 657—7.3(155A), introductory paragraph, as follows:

657—7.3(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one reference from each of the following: *categories. A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A, 124,126,147,155A,205,272C).*

ITEM 5. Amend rule 657—7.4(155A) as follows:

657—7.4(155A) Space and equipment requirements. There shall be adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy.

1. The pharmacy shall be located in an area or areas that facilitate the provision of services to patients and shall be integrated with the facility's communication and transportation systems.
2. Space and equipment in an amount and type to provide secure, environmentally controlled storage of drugs shall be available. Equipment shall include a refrigeration unit. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.
3. There shall be appropriate space and equipment suitable for the preparation of sterile products and other drug compounding and packaging operations. An appropriate IV preparation hood or room, certified annually pursuant to 657—8.30(126,155A), shall be accessible to personnel preparing IV solutions and other sterile products.
4. The pharmacist in charge shall ensure the availability of any other equipment necessary for the particular practice of pharmacy. *A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205, 272C).*

ITEM 6. Amend rule 657—15.2(124,126,155A) as follows:

657—15.2(124,126,155A) Sanitation. Drugs shall be stored in a manner to protect their identity and integrity. A sink with hot and cold running water shall be available within the pharmacy and shall be maintained in a sanitary condition at all times. *A pharmacy may request waiver or variance from the provisions of this rule regarding a sink pursuant to the procedures and requirements of 657—1.3(17A,124,126,147, 155A,205,272C).*

ITEM 7. Amend rule 657—15.3(124,126,155A), introductory paragraph, as follows:

657—15.3(124,126,155A) Reference library. References may be printed or computer-accessed. Each correctional facility pharmacy shall have on site, as a minimum, one reference from each of the following: *categories. A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).*

PHARMACY EXAMINERS BOARD[657](cont'd)

ITEM 8. Amend rule 657—15.4(124,126,155A) as follows:

657—15.4(124,126,155A) Prescription department equipment. Each correctional facility pharmacy shall have on site, as a minimum, the following equipment:

1. Refrigeration unit capable of maintaining temperatures within a range compatible with the proper storage of drugs requiring refrigeration;
2. Graduates capable of measuring 1 ml to 250 ml;
3. Other equipment as necessary for the particular practice of pharmacy.
4. Access to a Class A prescription balance sensitive to 10 mg, with weights, shall be available within the network of correctional facility pharmacies where compounding takes place.

A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).

ITEM 9. Amend rule 657—16.5(155A) as follows:

657—16.5(155A) Library. Each nuclear pharmacy shall have access to the following reference books. All books must be current editions or revisions. *A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).*

1. United States Pharmacopoeia/National Formulary, with supplements;
2. State laws and regulations relating to pharmacy;
3. State rules or federal regulations governing the use of applicable radioactive materials.

ITEM 10. Amend rule 657—16.6(155A) as follows:

657—16.6(155A) Minimum equipment requirements. *A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).*

1. Laminar flow hood;
2. Dose calibrator;
3. Refrigerator;
4. Single channel scintillation counter;
5. Microscope;
6. Autoclave, or access to one;
7. Incubator;
8. Radiation survey meter;
9. Other equipment necessary for radiopharmaceutical services provided as required by the board of pharmacy examiners.

[Filed 9/8/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9368A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 124.301, 147.76, and 155A.13, the Board of Pharmacy Examiners hereby amends Chapter 11, "Drugs in Emergency Medical Service Programs," Iowa Administrative Code.

The amendment modifies certain definitions to comply with definitions of the same terms in rules of the Department of Public Health, Division of Emergency Medical Services. The primary purpose for this amendment is to avoid confusion caused by conflicting definitions of EMS terms included in this chapter for the convenience of pharmacists and pharmacies servicing EMS.

Notice of Intended Action was published in the June 2, 1999, Iowa Administrative Bulletin as **ARC 9050A**. The adopted amendment is identical to that published under Notice.

The amendment was approved during the July 15, 1999, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on November 10, 1999.

This amendment is intended to implement Iowa Code section 155A.13.

The following amendment is adopted.

Amend rule **657—11.1(124,147A,155A)**, definitions of "Ambulance service," "Medical director," "Physician designee," "Service," and "Supervising physician," as follows:

"Ambulance service" means any privately or publicly owned service program which utilizes ambulances in order to provide patient transportation and emergency medical care at the scene of an emergency or while en route to a hospital *or during transfer from one medical care facility to another or to a private home.* An ambulance service may use first response or nontransport rescue vehicles to supplement ambulance vehicles.

"Medical director" means any physician licensed under Iowa Code chapter 148, 150, or 150A who shall be responsible for overall medical direction of the service program and who ~~holds a current course completion card in advanced cardiac life support (ACLS)~~ *has completed a medical director workshop, sponsored by the department, within one year of assuming duties.*

"Physician designee" means any registered nurse licensed under Iowa Code chapter 152, *or any physician assistant licensed under Iowa Code chapter 148C and approved by the board of physician assistant examiners,* who holds a current course completion card in advanced cardiac life support (ACLS). The physician designee may act as an intermediary for a supervising physician in directing the actions of advanced emergency medical care personnel in accordance with written policies and protocols.

"Service" or "service program" means any 24-hour ~~advanced~~ emergency medical care ambulance service, rescue, or first response service that has received authorization by the department.

"Supervising physician" means any physician licensed under Iowa Code chapter 148, 150, or 150A ~~who holds a current course completion card in advanced cardiac life support (ACLS)~~. The supervising physician is responsible for medical direction of ~~advanced~~ emergency medical care personnel when such personnel are providing ~~advanced~~ emergency medical care.

[Filed 9/8/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9367A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 124.301, 147.76, and 155A.13, the Board of Pharmacy Examiners hereby amends Chapter 19, "Nonresident Pharmacy Licenses," Iowa Administrative Code.

The amendments define "pharmacy service," a previously undefined term used in the definition of "nonresident pharmacy," and identify events which require a new license application and fee for a nonresident pharmacy license. The amendments also clarify certain requirements for initial and renewal application procedures and information; identify references to be maintained by Iowa-licensed nonresident pharmacies; and refer to requirements for certain patient and drug records, for patient counseling, for drug and device security, storage, and shipment, and for electronic and confidential patient records and data.

Notice of Intended Action was published in the June 2, 1999, Iowa Administrative Bulletin as **ARC 9051A**. The adopted amendments differ from those published under Notice. Rule 657—19.2(155A) is amended to clarify the requirement for licensure prior to providing pharmacy services to patients in Iowa which includes delivering, dispensing, and distributing prescription drugs. New rule 657—19.8(124,155A) is amended to require retention of delivery records for two years rather than four years from date of delivery. Retaining these records for four years was deemed to be excessive and Iowa-resident pharmacies are required to retain such records for two years.

The amendments were approved during the July 15, 1999, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on November 10, 1999.

These amendments are intended to implement Iowa Code sections 124.306, 155A.13, 155A.13A, 155A.31, and 155A.35.

The following amendments are adopted.

ITEM 1. Amend rule **657—19.1(155A)** by adopting the following **new** definition in alphabetical order:

"Pharmacy service" includes, but is not limited to, product and nonproduct services such as delivering, dispensing, or distributing prescription drugs or devices, providing patient counseling and drug information, assessing health risks, and participating in pharmaceutical care planning.

ITEM 2. Amend rule 657—19.2(155A) as follows:

657—19.2(155A) Application and license requirements. A nonresident pharmacy shall apply for and obtain a nonresident pharmacy license from the board prior to ~~delivering, dispensing, or distributing prescription drugs~~ *providing pharmacy services* to an ultimate user in this state. *Change of pharmacy name, ownership, location, or pharmacist in charge shall require a new completed application and license fee pursuant to 657—subrules 3.4(3) to 3.4(6).*

19.2(1) A nonresident pharmacy license shall expire on December 31 of each year. The fee for a new or renewal license shall be $100. A nonresident pharmacy license form shall be issued upon receipt of the license application information required in subrule 19.2(2) and payment of the license fee.

Failure to renew the license before January 1 following expiration shall require a renewal fee of $200. Failure to renew the license before February 1 following expiration shall require a renewal fee of $300. Failure to renew the license before March 1 following expiration shall require a renewal fee of $400. Failure to renew the license before April 1 following expiration shall require an appearance before the board and a renewal fee of $500. In no event shall the fee for late renewal of the license exceed $500.

19.2(2) A nonresident pharmacy shall submit all of the following in order to obtain or renew a nonresident pharmacy license:

a. A completed application form, available from the board, and an application fee ~~of $100~~ *as provided in subrule 19.2(1).*

b. Evidence of possession of a valid license, permit, or registration as a pharmacy in compliance with the laws of the home state. Such evidence shall consist of one of the following:

(1) Copy of the current license, permit, or registration certificate issued by the regulatory or licensing agency of the home state; *or*

(2) Letter from the regulatory or licensing agency of the home state certifying the pharmacy's compliance with the pharmacy laws of that state.

c. A copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the home state.

d. Evidence of correction of any noncompliance noted on inspection reports of the regulatory or licensing agency of the home state and all other regulatory agencies.

e. A list of the names, titles, and home addresses of all principal owners, partners, ~~or~~ *and* officers of the nonresident pharmacy.

f. A list of the names and license numbers of all pharmacists and, if available, the names and license or registration numbers of all supportive personnel employed by the nonresident pharmacy who deliver, dispense, or distribute, by any method, prescription drugs to an ultimate user in this state, and *the name, license number, and signature* of the pharmacist in charge of the nonresident pharmacy.

g. A copy of the nonresident pharmacy's policies and procedures regarding the records of controlled substances delivered, dispensed, or distributed to ultimate users in this state to be maintained and detailing the format and location of those records. *If policies and procedures are unchanged since previously submitted to the board, the applicant shall so indicate and need not include a copy with the application for license renewal or change.*

h. A copy of the nonresident pharmacy's policies and procedures evidencing that the pharmacy provides, during its regular hours of operation for at least 6 days and for at least 40 hours per week, toll-free telephone service to facilitate communication between ultimate users in this state and a pharmacist who has access to the ultimate user's records in the nonresident pharmacy, and that the toll-free number is printed on the label affixed to each container of prescription drugs delivered, dispensed, or distributed in this state. A copy of a prescription label including the toll-free number shall be included. *If policies and procedures are unchanged since previously submitted to the board, the applicant shall so indicate and need not include a copy with the application for license renewal or change.*

19.2(3) A nonresident pharmacy shall update lists required by subrule 19.2(2), paragraphs "e" and "f," within 30 days of any addition, deletion, or other change to a list.

PHARMACY EXAMINERS BOARD[657](cont'd)

ITEM 3. Adopt the following new rules:

657—19.6(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one reference from each of the following categories. A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C).

1. Current Iowa pharmacy laws, rules, and regulations.
2. A patient information reference, updated at least annually, such as:
- United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient);
- Facts and Comparisons Patient Drug Facts; or
- Leaflets which provide patient information in compliance with rule 657—8.20(155A).
3. A current reference on drug interactions, such as:
- Phillip D. Hansten's Drug Interactions; or
- Facts and Comparisons Drug Interactions.
4. A general information reference, updated at least annually, such as:
- Facts and Comparisons with current supplements;
- United States Pharmacopeia Dispensing Information, Volume I (Drug Information for the Healthcare Provider); or
- American Hospital Formulary Service with current supplements.
5. A current drug equivalency reference, including supplements, such as:
- Approved Drug Products With Therapeutic Equivalence Evaluations (FDA Orange Book);
- ABC - Approved Bioequivalency Codes; or
- USP DI, Volume III.
6. Basic antidote information or the telephone number of a poison control center.
7. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

657—19.7(155A) Confidential and electronic data. The pharmacist in charge shall be responsible for developing, implementing, and enforcing policies and procedures to ensure patient confidentiality and to protect patient identity and patient-specific information from inappropriate or nonessential access, use, or distribution pursuant to the requirements of 657—Chapter 21.

657—19.8(124,155A) Storage and shipment of drugs and devices. The pharmacist in charge shall be responsible for developing, implementing, and enforcing policies and procedures to ensure compliance with 657—6.7(155A) and USP standards for the storage and shipment of medications and devices. Policies and procedures shall provide for the shipment of controlled substances via a secure and traceable method and all records of such shipment and delivery to Iowa patients shall be maintained for a minimum of two years from date of delivery.

657—19.9(155A) Patient records, prospective drug review, and patient counseling.

19.9(1) Patient records. A patient record system shall be maintained pursuant to 657—8.18(155A) for Iowa patients for whom prescription drug orders are dispensed.

19.9(2) Prospective drug review. A pharmacist shall, pursuant to the requirements of 657—8.19(155A), review the patient record and each prescription drug order presented for initial dispensing or refilling.

19.9(3) Patient counseling. The pharmacist in charge shall be responsible for developing, implementing, and enforcing policies and procedures to ensure that Iowa patients receive appropriate counseling pursuant to the requirements of 657—8.20(155A).

ITEM 4. Amend the implementation clause at the end of **657—Chapter 19** as follows:

These rules are intended to implement Iowa Code ~~section~~ *sections 124.306, 155A.13,* 155A.13A, *155A.31, and 155A.35.*

[Filed 9/8/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9366A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 155A.39, the Board of Pharmacy Examiners hereby amends Chapter 22, "Pharmacy Technicians," Iowa Administrative Code.

The amendment provides that a surcharge be added to all technician registration fees to support the Impaired Pharmacy Professional and Technician Recovery Program pursuant to Iowa Code section 155A.39 and rescinds the subrule regarding technician registration program implementation since it is no longer needed.

Notice of Intended Action was published in the June 2, 1999, Iowa Administrative Bulletin as **ARC 9053A**. The adopted amendment is identical to that published under Notice.

The amendment was approved during the July 15, 1999, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on November 10, 1999.

This amendment is intended to implement Iowa Code section 155A.39.

The following amendment is adopted.

Amend rule 657—22.7(155A) as follows:

657—22.7(155A) Registration fee.

22.7(1) Initial fee. The fee for obtaining an initial registration shall be $30 *plus applicable surcharge pursuant to 657—30.8(155A).*

22.7(2) Renewal fee. The renewal fee for obtaining a biennial registration shall be $30 *plus applicable surcharge pursuant to 657—30.8(155A).*

22.7(3) Timeliness. Fees shall be paid at the time when the new application or the renewal application is submitted for filing.

22.7(4) Form of payment. Fee payment shall be in the form of a personal check, certified or cashier's check, or money order payable to Iowa Board of Pharmacy Examiners.

PHARMACY EXAMINERS BOARD[657](cont'd)

~~**22.7(5) Initial fees—program implementation. The fee for obtaining an initial registration issued effective January 1, 1998, shall be prorated, based on the $30 biennial registration fee, to provide for implementation of a biennial renewal cycle requiring approximately one-half of the total registrations to annually renew.**~~

[Filed 9/8/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9412A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135I.4, the Department of Public Health hereby amends Chapter 15, "Swimming Pools and Spas," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 16, 1999, as **ARC 9111A**. A public hearing on the amendment was held on July 6, 1999. No one was in attendance and no written comments on the amendment were received. The word "provided" in the amendment published under Notice was changed to "available" in the adopted amendment in response to a suggestion from the Administrative Rules Review Committee.

This amendment requires that a swimming pool facility with a bathhouse have soap available at the indoor showers and lavatories of the bathhouse. Hand washing and showering with soap has been shown to reduce fecal-oral transmission of disease.

This amendment is subject to waiver pursuant to the Department's variance provisions contained at 641—15.7(135I).

This amendment was approved during the September 8, 1999, regular meeting of the Board of Health.

The amendment will become effective on November 10, 1999.

This amendment is intended to implement Iowa Code chapter 135I.

The following amendment is adopted.

Amend subrule **15.4(5)** by adopting **new** paragraph **"e"** as follows:

e. Soap shall be available at each lavatory and at each indoor shower fixture.

[Filed 9/17/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9414A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby amends Chapter 101, "Death Certification, Autopsy and Disinterment," Iowa Administrative Code.

The amendments change the requirement for transport of a dead human body or fetus only after enclosure in a "tightly sealed outer receptacle" to a "container for transfer that will control odor and prevent the leakage of body fluids." This change is in response to previous public comment on the definition of "tightly sealed outer receptacle" and makes the rule consistent with the Professional Licensure Division funeral director rules contained at 645—subrule 100.3(2). In addition, licensed funeral directors, emergency medical services, and medical examiners are exempted from the rule in accordance with Iowa Code section 144.32. In response to previous public comment, the amendment also eliminates a sentence that stated other rules of the department did not apply to cremated remains and clarifies that no burial-transit permits are required for cremated remains.

The rule is subject to waiver pursuant to the Department's variance and waiver provisions contained at 641—Chapter 178.

Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on June 16, 1999, as **ARC 9112A**. A public hearing was held on July 6, 1999. No one appeared at the public hearing, and there were no written comments received. The adopted amendments are identical to those published under Notice.

The State Board of Health adopted these amendments at their regular board meeting on September 8, 1999.

These amendments will become effective on November 10, 1999.

These amendments are intended to implement Iowa Code sections 135.11(9) and 144.32.

The following amendments are adopted.

ITEM 1. Amend subrule 101.6(1) as follows:

101.6(1) A dead human body or fetus shall be transported only after enclosure in a ~~tightly sealed outer receptacle~~ *container for transfer that will control odor and prevent the leakage of body fluids*, unless the body or fetus has been embalmed, *or is being transported by a licensed funeral director, emergency medical service, or medical examiner.* In addition, the transport of a dead human body or fetus shall be in a manner that, applying contemporary community standards with respect to what is suitable, is respectful of the dead, the feelings of relatives, and the sensibilities of the community.

ITEM 2. Amend subrule 101.6(3) as follows:

101.6(3) If the final disposition of a dead human body or fetus is cremation at a licensed cremation establishment, scattering of cremated remains shall be subject to the local ordinances of the political subdivision, and any and all regulations of the cemetery, if applicable, in which the scattering site is located. However, such local ordinances and cemetery regulations shall not allow scattering of cremated remains upon state property or upon private property without the property owner's consent. In the absence of an applicable local ordinance or cemetery regulation, scattering of cremated

PUBLIC HEALTH DEPARTMENT[641](cont'd)

remains shall not be allowed upon any public property or upon private property without the property owner's consent. ~~All other rules and regulations of the department relating to dead human bodies or fetuses shall not apply to the cremated remains.~~ *Cremation shall be considered final disposition by the department and no further burial-transit permits shall be required.*

[Filed 9/17/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9410A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 144.3, the Department of Public Health hereby adopts Chapter 107, "Mutual Consent Voluntary Adoption Registry," Iowa Administrative Code.

The rules establish procedures for administering the new Mutual Consent Voluntary Adoption Registry whereby adoptees, adoptive parents, and siblings who are in search of each other may register to have their identities revealed to each other in accordance with 1999 Iowa Acts, House File 497, section 19. These rules define the persons who may place their names on the registry, the procedure to complete the application, the applicants' responsibilities, and how the Department will notify registrants of a match according to 1999 Iowa Acts, House File 497, section 19.

These rules are not subject to waiver or variance in any situation because the statute authorizing the registry contains no such provision.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 28, 1999, as **ARC 9222A**. A public hearing was held on August 17, 1999. Three people were in attendance. Public comment expressed support of the establishment of the registry and suggested the inclusion of a statement related to the unauthorized disclosure of information to preserve confidentiality and create a disincentive to disclose protected information. Based on this public comment, the following sentence was added to rule 107.2(78GA, HF497): "Any person who discloses such information in violation of Iowa law is subject to criminal penalties."

The State Board of Health adopted these rules at their regular board meeting on September 8, 1999.

These rules will become effective on November 10, 1999.

These rules are intended to implement 1999 Iowa Acts, House File 497, section 19.

The following **new** chapter is adopted.

CHAPTER 107
MUTUAL CONSENT VOLUNTARY ADOPTION REGISTRY

641—107.1(78GA,HF497) Definitions.

"Adult" means an individual who has reached the age of 18 years at the time of making application to the registry.

"Department" means the department of public health.

"Sibling" means one of two or more persons born of the same parents or, sometimes, having one parent in common; brother or sister.

641—107.2(78GA,HF497) Eligibility. The state registrar shall establish a mutual consent voluntary adoption registry through which adult adopted children, adult siblings and the biological parents of adult adoptees may register to obtain identifying information. All identifying information maintained in the registry is confidential. Any person who discloses such information in violation of Iowa law is subject to criminal penalties. All requests shall be completed on the form provided by the department.

107.2(1) The state registrar shall reveal the identity of the biological parent to the adult adopted child or the identity of the adult adopted child to the biological parent if the following conditions are met:

a. A biological parent has filed a completed request form and provided consent to the revelation of the biological parent's identity to the adult adopted child, upon request of the adult adopted child; and

b. An adult adopted child has filed a completed request form and provided consent to the revelation of the identity of the adult adopted child to a biological parent, upon request of the biological parent.

107.2(2) The state registrar shall reveal the identity of the adult adopted child to an adult sibling and shall notify the parties involved that the requests have been matched, and disclose the identifying information to those parties if all of the following conditions are met:

a. An adult adopted child has filed a completed request form and provided consent to the revelation of the adult adopted child's identity to an adult sibling;

b. The adult sibling has filed a completed request form and provided consent to the revelation of the identity of the adult sibling to the adult adopted child; and

c. The state registrar has been provided sufficient information to make the requested match.

641—107.3(78GA,HF497) Exception. If the adult adopted person has a sibling who is a minor and who has also been adopted, the state registrar shall not grant the request of either the adult adopted person or the biological parent to reveal the identities of the parties.

641—107.4(78GA,HF497) Application. Application forms shall be provided by the department and shall be the only application accepted for registration. The adult adoptee, adult sibling, and biological parent completing an application shall be responsible for updating the contact information required.

641—107.5(78GA,HF497) Notification. Notification of parties shall be initiated via telephone at which time address information shall be verified and written notice sent to the parties involved. Written notice shall be mailed via certified mail with return notification requested.

641—107.6(78GA,HF497) Withdrawal. A person who has filed a request or provided consent may withdraw the consent at any time prior to the release of any information by completing and filing a written withdrawal of consent statement on the form provided by the department.

641—107.7(78GA,HF497) Fees. The state registrar shall collect a fee of $25 for the filing of a completed application for the registry. A fee of $2 shall be charged for updating applicant information maintained in the registry.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These rules are intended to implement 1999 Iowa Acts, House File 497, section 19.

[Filed 9/17/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9411A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.27, the Department of Public Health hereby adopts new Chapter 138, "Trauma System Evaluation Quality Improvement Committee," Iowa Administrative Code.

The adopted rules establish guidelines for trauma care system evaluation, quality assessment, and quality improvement by the System Evaluation Quality Improvement Committee (SEQIC).

The Iowa Trauma Care System Development Act of 1995 established SEQIC. The trauma system is in the implementation phase and will be functional January 1, 2001. These rules establish guidelines for SEQIC pursuant to Iowa Code sections 147A.25 and 147A.27.

These rules do not provide for waivers in specified situations because the rules provide only general guidelines for the administration of SEQIC and establish confidentiality requirements that must be maintained pursuant to state law.

These rules were published in the Iowa Administrative Bulletin under Notice of Intended Action as **ARC 9176A** on June 30, 1999. A public hearing was held over the Iowa Communications Network (ICN) on Tuesday, August 3, 1999, from 1 to 2 p.m. Six sites participated in the ICN broadcast. No comments were received during the hearing. There is one change from the Notice. Rule 138.3(147A) regarding offenses and penalties was deleted in favor of addressing removal of SEQIC committee members in SEQIC bylaws.

The State Board of Health adopted these rules at their regular board meeting on September 8, 1999.

These rules will become effective November 10, 1999.

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

The following **new** chapter is adopted.

CHAPTER 138
TRAUMA SYSTEM EVALUATION QUALITY IMPROVEMENT COMMITTEE

641—138.1(147A) Definitions. For the purpose of these rules, the following definitions shall apply:

"Department" means the Iowa department of public health.

"EMS provider" means emergency medical care personnel, other health care practitioners or members of the general public involved in the provision of emergency medical care.

"SEQIC" means system evaluation quality improvement committee established by the department pursuant to Iowa Code section 147A.25 to develop, implement, and conduct trauma care system evaluation, quality assessment, and quality improvement.

"Trauma care system" means an organized approach to providing personnel, facilities, and equipment for effective and coordinated trauma care.

641—138.2(147A) System evaluation quality improvement committee (SEQIC). The system evaluation quality improvement committee shall develop, implement, and conduct trauma care system evaluation, quality assessment, and quality improvement in accordance with Iowa Code chapter 147A, Iowa Administrative Code 641—Chapter 191 and these rules.

138.2(1) Duties. The scope of the duties of SEQIC shall include, but not be limited to:

a. Analyzing trauma-related information and data provided by the department.

b. Evaluating the standards for trauma care in Iowa's trauma system.

c. Evaluating the effectiveness of Iowa's trauma care system.

d. Recommending quality improvement strategies related to trauma care.

e. Designing and recommending corrective action plans to the department for trauma care and trauma system improvement.

f. Monitoring, evaluating, and reevaluating trauma system-related corrective action plans implemented by the department.

g. Assisting with development of an annual SEQIC report.

138.2(2) Membership. The director, pursuant to Iowa Code section 147A.25, shall appoint members of SEQIC.

Pursuant to Iowa Administrative Code rule 641—191.6(135), SEQIC may establish a subcommittee of medical care consultants whose expertise is needed. Subcommittees are subject to the approval of the department.

138.2(3) Meetings/member attendance. SEQIC shall establish bylaws pursuant to Iowa Administrative Code rule 641—191.5(135).

138.2(4) Confidentiality.

a. The data collected by and furnished to the department pursuant to Iowa Code section 147A.26 shall not be a public record under Iowa Code chapter 22. The confidentiality of patients is to be protected, and the laws of this state shall apply with regard to patient confidentiality.

b. Proceedings, records, and reports reviewed or developed pursuant to Iowa Code section 147A.25 constitute peer review records under Iowa Code section 147.135 and are not subject to discovery by subpoena or admissible as evidence. All information and documents received from a hospital or emergency care facility under Iowa Code chapter 147A shall be confidential pursuant to Iowa Code section 272C.6, subsection 4.

c. SEQIC may enter into a closed session proceeding pursuant to Iowa Code section 21.5.

d. All committee and subcommittee members shall sign a confidentiality agreement not to divulge or discuss information obtained during a SEQIC closed session proceeding. Subcommittee members may be present only for that portion of the closed session proceeding pertaining to their expertise.

e. The signed confidentiality statements shall be kept on file at the department.

138.2(5) Documentation. The department, pursuant to Iowa Code section 21.3, shall keep minutes of open session proceedings. The department, pursuant to Iowa Code section 21.5, shall also maintain minutes and tape recordings of closed session proceedings.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

a. The department, at the close of each meeting, shall collect all confidential documents. No copies of confidential documents may be made or possessed by committee or subcommittee members.

b. The department shall approve all correspondence and communication generated by SEQIC prior to dissemination.

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

[Filed 9/17/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9413A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby amends Chapter 176, "Criteria for Awards or Grants," Iowa Administrative Code.

This chapter is being amended to allow extension of the project period of awards or grants for the Department from three to five years and to allow for public notice of available grants to be posted on the Department of Public Health's Web site rather than published in the Iowa Administrative Bulletin. This amendment will provide the Department with the discretion to extend contracts or grants an additional two years for contractors who are successfully fulfilling terms of the contract or award. In addition, publishing notice on the Department's Web site will increase public access to notices and expedite the announcement and publication of notices.

The amendments are subject to waiver pursuant to the Department's variance and waiver provisions contained in the Iowa Administrative Code at 641—Chapter 178.

Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on June 16, 1999, as **ARC 9110A**. A public hearing was held on July 6, 1999. No one appeared at the public hearing, and no written comments were received. The adopted amendments are identical to those published under Notice.

These amendments will become effective on November 10, 1999.

These amendments are intended to implement Iowa Code chapters 17A and 135.

The following amendments are adopted.

ITEM 1. Amend rule **641—176.2(135,17A)**, definition of "Project period," as follows:

"Project period" means the period of time which the department intends to support the project without requiring the recompetition for funds. The project period is specified within the grant application period and may extend to ~~three~~ *five* years.

ITEM 2. Amend rule 641—176.7(135,17A) as follows:

641—176.7(135,17A) Public notice of available grants. The program making funds available through a competitive grant application process shall, at least 60 days prior to the application due date, issue a public notice ~~in the Iowa Administrative Bulletin~~ *on the department of public health's Web site at http://www.idph.state.ia.us* that identifies the availability of funds and how to request the application packet. A written request for the packet shall serve as the letter of intent. Services, delivery areas and eligible applicants shall also be described in the public notice.

Exceptions to following the 60-day public notice prior to the application due date are:

1. The receipt of the official notice of award by the department precludes a full 60-day notice ~~in the Iowa Administrative Bulletin~~ *on the department of public health's Web site*. The program shall nonetheless issue the public notice ~~in the Iowa Administrative Bulletin~~ *on the department of public health's Web site* at the earliest ~~publication schedule~~ *date*.

2. In the event ~~the publication date~~ *that posting the notice on the Web site* would not allow at least 30 days for interested parties to request an application packet and apply for funds, the program shall then (at the earliest opportunity) directly notify current contractors and other interested parties of the availability of funds through press releases and other announcements.

[Filed 9/17/99, effective 11/10/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9388A

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 321.4, the Department of Public Safety hereby amends Chapter 7, "Devices and Methods to Test Body Fluids for Alcohol or Drug Content," Iowa Administrative Code.

Iowa Code sections 321J.11 and 321J.15 provide that devices approved by the Commissioner of Public Safety are required for collecting samples of breath of suspected drunk drivers. Standards for devices used to collect samples of breath for evidentiary testing are specified in 661—7.2(321J). Subrule 7.2(3) specifies certain devices which meet the standards and are in use in Iowa. The amendment updates that list by striking three devices no longer in use and adding a new device, the Datamaster cdm, a product of National Patents Analytical System, Inc. One device on the current list, the Intoxilyzer 4011A, made by CMI, Inc., also continues to be used for conducting evidentiary breath tests in Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 24, 1999, as **ARC 8796A**. The text of this amendment is identical to that published under Notice. A public hearing was held on April 19, 1999. No comments were received at the hearing or otherwise.

This amendment will become effective December 1, 1999.

This amendment is intended to implement Iowa Code chapter 321J.

The following amendment is adopted.

Amend subrule 7.2(3) as follows:

7.2(3) Although any breath testing device that meets the minimum performance requirements established by the National Highway Traffic Safety Administration, and cited in subrule 7.2(1), is authorized by the commissioner to be

PUBLIC SAFETY DEPARTMENT[661](cont'd)

employed or to be caused to be used to determine the alcohol concentration, the following devices are being used in Iowa and meet those standards:

a. Intoxilyzer Model 4011A-CMI, Inc., ~~Minturn, Colorado~~;

b. ~~Mark IV Gas Chromatograph-Intoximeters, Inc., St. Louis, Missouri;~~ *Datamaster cdm, National Patents Analytical Systems, Inc.*

~~c. Mark IVA Gas Chromatograph-Intoximeters, Inc., St. Louis, Missouri;~~

~~d. Mark II Gas Chromatograph-Intoximeters, Inc., St. Louis, Missouri;~~

~~e. Breathalyzer Model 1000 Smith & Wesson Electronics, Co., Eatontown, New Jersey.~~

[Filed 9/16/99, effective 12/1/99]
[Published 10/6/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/99.

ARC 9401A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue and Finance hereby adopts amendments to Chapter 6, "Organization, Public Inspection"; Chapter 11, "Administration"; Chapter 12, "Filing Returns, Payment of Tax, Penalty and Interest"; Chapter 38, "Administration"; Chapter 40, "Determination of Net Income"; Chapter 43, "Assessments and Refunds"; Chapter 51, "Administration"; Chapter 54, "Allocation and Apportionment"; Chapter 55, "Assessments, Refunds, Appeals"; Chapter 57, "Administration"; Chapter 59, "Determination of Net Income"; Chapter 63, "Administration"; Chapter 67, "Administration"; Chapter 68, "Motor Fuel and Undyed Special Fuel"; Chapter 81, "Administration"; Chapter 86, "Inheritance Tax"; Chapter 89, "Fiduciary Income Tax"; Chapter 103, "Hotel and Motel—Administration"; and Chapter 104, "Hotel and Motel—Filing Returns, Payment of Tax, Penalty, and Interest," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXII, Number 3, page 179, on August 11, 1999, as **ARC 9262A**. The only changes which have been made are in Item 3. They reflect the changes made to Iowa Code chapter 17A as a result of 1998 Iowa Acts, chapter 1202, regarding regulatory analysis statements.

These amendments reference rules in 701—Chapter 7, Division I, to the correct citation of such rules in 701—Chapter 7, Division II, which govern informal, formal, administrative, and judicial review procedures applicable to contested cases and other proceedings commenced on or after July 1, 1999.

The amendments will become effective November 10, 1999, after having been filed with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

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

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [6.2, 6.4, 6.5, 11.6, 12.9, 38.7, 38.11, 40.46(4), 43.2, 51.2(1), 51.8, 54.6(1), 54.9, 55.4, 57.2(1), 59.29, 63.2, 63.22, 67.2, 67.20, 67.23, 68.11, 81.6, 81.11(2), 81.12, 86.3(4), 89.11, 103.2, 103.6(2), 104.6] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 9262A**, IAB 8/11/99.

[Filed 9/17/99, effective 11/10/99]
[Published 10/6/99]

[For replacement pages for IAC, see IAC Supplement 10/6/99.]

AGENCY	RULE	DELAY
Human Services Department[441]	95.1, "Date of collection"; 95.3 [IAB 8/11/99, **ARC 9238A**]	Effective date of October 1, 1999, delayed 70 days by the Administrative Rules Review Committee at its meeting held September 15, 1999. [Pursuant to §17A.4(5)]
Dental Examiners Board[650]	10.3(1), 29.6(4) to 29.6(6) [IAB 8/11/99, **ARC 9274A**]	Effective date of September 15, 1999, delayed until the end of the 2000 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held September 15, 1999. [Pursuant to §17A.8(9)]

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER FIVE

WHEREAS, State legislation created the Department of Workforce Development, and established an Iowa Workforce Development Board on May 2, 1996; and

WHEREAS, Executive Order Number One, issued by this administration, deemed the Iowa Workforce Development Board to be the state Workforce Investment Board under the federal Workforce Investment Act of 1998; and

WHEREAS, the Regional Advisory Boards established under the Iowa Code meet the requirement of Title I of the federal Workforce Investment Act of 1998, as an alternative entity that is substantially similar to the local Workforce Investment Boards established under federal law; and

WHEREAS, the existing Regional Advisory Board structure and membership composition shall continue; and

WHEREAS, the Iowa Workforce Development Board recommended the following selected changes for improved service delivery: modifications to the existing service delivery regional boundaries for workforce development; modifications to the appointment process for regional oversight boards; and a modification in the date for implementation of the federal Workforce Investment Act of 1998.

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the Laws and Constitution of the State of Iowa, accept the Iowa Workforce Development Board's recommendations and do hereby order that:

I. The eight counties of Boone, Story, Dallas, Polk, Jasper, Madison, Warren & Marion shall be designated as modified Region 11. The six counties of Guthrie, Audubon, Carroll, Greene, Sac, and Crawford shall be designated as modified Region 8.

II. With the exception of the changes outlined above, no other changes shall be made to the existing boundaries for workforce development programs.

III. Iowa Workforce Development will establish criteria, as required under Section 1176 of the Workforce Investment Act, for the appointment of the local Workforce Investment Board in Region 8. The criteria established shall also allow for the combination of the Regional Advisory Board and local Workforce Investment Board into one board.

IV. The existing Regional Advisory Boards established in all other regions of Iowa pursuant to State law shall be deemed to be the Workforce Investment Boards under the federal Workforce Investment Act of 1998, and shall have the responsibility to perform the functions assigned under that federal act.

V. The Department of Workforce Development shall adopt administrative procedures to establish an appointment process, which includes the involvement of local elected officials, to fill existing and new vacancies on the Regional Advisory Board.

VI. The Department of Workforce Development shall develop a plan for implementation of the Workforce Investment Act no later than July 1, 2000.

VII. The Department of Workforce Development shall provide the necessary coordination and support needed to permit the Regional Workforce Investment Boards to fulfill their duties under state and federal law.

IN TESTIMONY WHEREOF, I have hereto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 25th day of March in the year of our Lord one thousand nine hundred and ninety-nine.

THOMAS J. VILSACK
GOVERNOR

ATTEST:

CHESTER J. CULVER
SECRETARY OF STATE

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER SIX

WHEREAS, on June 22, 1995, Governor Terry E. Branstad issued Executive Order Number Fifty-Five, appointing the resident-agent-in-charge of the Des Moines Office of the United States Drug Enforcement Administration to the Iowa Law Enforcement Academy Council, as an ex-officio non-voting member; and

WHEREAS, the appointment provided that the resident agent's term on the council would expire on April 30, 1999; and

WHEREAS, the Iowa Law Enforcement Academy Council continues to establish the training policies for law enforcement personnel throughout the state, under Chapter 80B of the Code of Iowa; and

WHEREAS, state law enforcement personnel are expected to possess skills necessary to combat illegal drug use and drug-related criminal activity in the execution of their duties; and

WHEREAS, drug abuse and drug-related criminal activity have created growing challenges to law enforcement personnel throughout this state; and

WHEREAS, the effect of illegal drug use represents a direct threat to the lives and well-being of every Iowan; and

WHEREAS, the United States Drug Enforcement Administration of the United States Department of Justice has provided helpful assistance to the Iowa Law Enforcement Academy Council in the creation of training policies for all aspects of law enforcement.

NOW, THEREFORE, I Thomas J. Vilsack, Governor of the State of Iowa, do hereby order that the appointed term of the resident-agent-in-charge of the Des Moines Office of the United

States Drug Enforcement Administration, as an ex-officio non-voting member of the Iowa Law Enforcement Academy Council, shall be extended indefinitely, effective with the date of this order.

IN TESTIMONY WHEREOF, I have hereto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 23rd day of April in the year Of our Lord one thousand nine hundred and Ninety-nine.

THOMAS J. VILSACK
GOVERNOR

ATTEST:

CHESTER J. CULVER
SECRETARY OF STATE

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER SEVEN

WHEREAS, this administration is committed to recruiting and maintaining a diverse state workforce that is representative of the community at large, and possesses a diverse set of traits and skills that will enhance the quality of services provided to Iowa residents; and

WHEREAS, it is the policy of this state to provide equal employment opportunities within state government to all persons, regardless of individual characteristics; and

WHEREAS, the State of Iowa is directed by state and federal law to formulate an affirmative action program that is designed to remedy the effects of past and present practices, policies, or other barriers to equal employment opportunity, wherever those remedies are appropriate; and

WHEREAS, Executive Order Number 46 was enacted on December 21, 1982, and reaffirmed under Executive Order Number 44 on April 30, 1992 to enhance the affirmative action efforts of state government, within the State of Iowa, by coordinating resources, assigning responsibilities, and requiring progress reviews; and

WHEREAS, Iowa Code section 19A.1(3) created the Iowa Department of Personnel, and designated an affirmative action task force to exist within the department, pursuant to executive order, or its successor; and

WHEREAS, the department of personnel is responsible, under Iowa Code section 19B.3, for the administration of equal opportunity and affirmative action efforts throughout state government in the recruitment, appointment, assignment and advancement of personnel by state agencies; and

WHEREAS, Iowa Code section 19B.4 requires each state agency, including the state board of regents and its institutions, to develop annual affirmative action plans with goals and timetables, and submit each plan to the department of personnel for review; and

WHEREAS, the Iowa Department of Management shall oversee the Iowa Department of Personnel in the implementation of the state's affirmative action program under Iowa law, and communicate the status of the implementation program with the Governor's Office; and

WHEREAS, this administration is committed to the implementation and monitoring of the state's affirmative action program at the highest levels of state government.

NOW, THEREFORE, I, THOMAS J. VILSACK, Governor of the State of Iowa, by the power vested in me by the laws and the constitution of the State of Iowa do hereby order that:

I. Executive Order Number 44, enacted on April 30, 1992, shall be rescinded.

II. I reaffirm the policy of the State of Iowa to provide equal opportunity in state employment to all employees. To that end, I proclaim that an individual shall not be denied access to state employment opportunities because of race, creed, color, religion, national origin, gender, gender identity, sexual orientation, age, marital status, or physical or mental disability.

III. I reaffirm the policy of administering an affirmative action program, within state government, that is designed to remedy past and present practices, policies and other barriers that limit the effective recruitment, employment, appointment, assignment and advancement of persons within ethnic and racial minority groups. Under this administration, state government shall dedicate itself to the task of creating and maintaining a pool of qualified candidates, from racial and ethnic minority groups, as well as groups of persons with disabilities, for recruitment, appointment, assignment and advancement to all positions within state government.

IV. The Task Force for Equal Opportunity in Employment shall be created pursuant to Iowa Code section 19A.1(3), and shall function as the successor to all preceding task forces. The task force will be established to: (a) advise the department of personnel as it identifies problems that may impede the state's progress toward the full utilization of state residents and the diversification of the state's workforce; (b) monitor the state's progress toward achieving its affirmative action goals; and (c) make recommendations to the governor on initiatives that are designed to help the state meet its equal opportunity and affirmative action goals.

V. Members on the Task Force for Equal Opportunity in Employment shall be appointed by the Governor.

VI. The Lieutenant Governor, or other Governor's designee, shall chair the Task Force for Equal Opportunity in Employment. The task force will be charged with the tasks listed below.

A. The task force shall design and implement a system to advise the department of personnel as it identifies problems that may limit the employment opportunities, within state government, for certain classes of people.

B. The task force shall design and implement a system to monitor the state's progress toward achieving its affirmative action goals.

C. The task force shall prepare a comprehensive report on the status of the state's equal opportunity and affirmative action policies, for review by the Governor, within one (1) year following the date that the task force first convenes. The report shall contain the recommendations of the task force for reassessing the state's equal opportunity and affirmative action policies in light of current legal and demographic trends. The report shall also define the suggested future role of the task force in the implementation of the state's equal opportunity and affirmative action policies. The comprehensive report shall assess the following items:

1. the employment rates and patterns for all classes of people within state government over past fifteen (15) years;

2. specific barriers that may limit employment and promotion opportunities, within state government, for certain classes of people;

3. the success of equal opportunity and affirmative action policies previously implemented by the state;

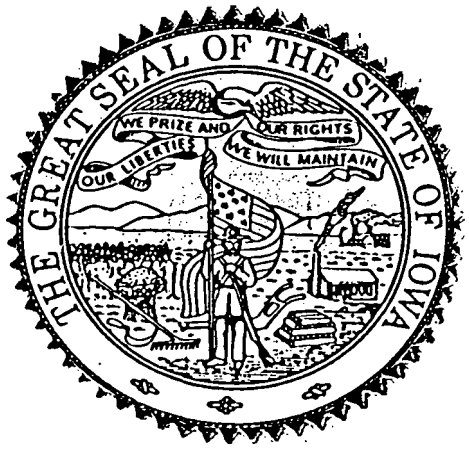
4. the status of state and federal laws;

5. the likelihood that the state's equal opportunity policy, alone, can assure the full utilization of all classes of people within state government.

The comprehensive report may include any additional information that the task force deems to be important and relevant.

VII. The task force shall hold regular meetings at a centralized location.

VIII. The Iowa Department of Personnel shall provide staff support to the task force, as needed, to enable the task force to fulfill its responsibilities.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines on this the 14th day of September in the year of our Lord one thousand nine hundred and ninety-nine.

Thomas J. Vilsack
Governor

ATTEST:

Chester J. Culver
Secretary of State

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER EIGHT

WHEREAS, administrative rules are adopted to implement laws that protect the public health, safety, welfare and environment, and to ensure the efficient administration of state government; and

WHEREAS, the Iowa Administrative Procedure Act was enacted on May 29, 1974 to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public; and

WHEREAS, since 1974, there has been a steady growth in the number and complexity of administrative rules and their impact on businesses and the general public without a systematic state government-wide review of their need, effectiveness, reasonableness, clarity, potential conflicting requirements, and consistency with legislative intent; and

WHEREAS, outdated, redundant, over-broad, unnecessary, or otherwise undesirable rules impose many costs on the public and state; and

WHEREAS, this administration launched a quality and efficiency in government initiative on February 8, 1999, wherein a task force was assembled to prepare and submit a series of recommendations to the Governor on the creation of a process for reviewing and streamlining existing state regulations and the rule-making process as a whole; and

WHEREAS, the task force has been charged with the task of preparing a series of recommendations for creating a system to improve the execution of state government, thereby benefiting the people of this state, and improving the state's economy; and

WHEREAS, the successful identification and elimination of outdated; redundant, over-broad, ineffective, unnecessary, or otherwise undesirable rules will save members of the public and state government a substantial sum of money, reduce inconvenience and confusion, increase public confidence in state government, and better equip this state to deal fairly with its residents and meet the challenges of the twenty-first century.

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, declare my commitment to better serve the people of the State of Iowa by conducting a comprehensive review of all state regulations on an open and systematic basis to ensure that they meet standards of need, reasonableness, effectiveness, clarity, fairness, stakeholder involvement, and consistency with legislative intent and statutory authority. To accomplish this purpose, I hereby order and direct that:

I. Regulatory Review

Upon the effective date of this executive order, each state agency, with the authority to adopt rules, as defined in Iowa Code section 17A.2(1), (10), shall begin a comprehensive review of all agency rules. Each state agency shall commence its review by developing a plan in consultation with major stakeholders and constituent groups. As part of its regulatory review, each agency shall also review existing policy and interpretive statements or similar documents to determine whether said documents must, by law, be adopted as rules.

II. Agency Plan for Regulatory Review

A. The Agency Plan for Regulatory Review shall provide a realistic, workable, and effective scheme for the review of agency rules and for the identification and elimination, within the specified time period, of all rules of the agency that are outdated, redundant, over-broad, ineffective, unnecessary, or otherwise undesirable. The plan shall:

1. contain a schedule that lists when the review of each rule, or rule group will occur; and

2. state the method by which the agency will determine whether the rule under review meets the criteria listed in this executive order; and

3. provide a means for public participation in the review process and specify how interested persons may participate in the review; and

4. identify instances where the agency may require an exception to these regulatory review requirements; and

5. provide a process for on-going review of rules after the initial period for review outlined below has expired.

Each agency shall provide a copy of its approved plan to any person who has requested notification of agency rule making.

III. Criteria for Regulatory Review

Each agency shall consider the following criteria when reviewing its rules.

A. Need. Is the rule necessary to comply with the statutes that authorize it? Is the rule obsolete, duplicative, or ambiguous to a degree that warrants repeal or revision? Have laws or other circumstances changed to the extent that the rule should be amended or repealed? Is the rule effective and necessary to protect or safeguard the health, welfare, or safety of the people of this state? Is the rule broader than necessary to accomplish its purpose or objective?

B. Clarity. Is the rule written and organized in a clear and concise manner so that it can be readily understood by those to whom it applies?

C. Intent and Statutory Authority. Is the rule consistent with the legislative intent of the statutes that authorize it? Is the rule based upon sufficient statutory authority? Is there a need to develop additional legislative authorization in order to protect the health, safety, and welfare of the people of this state?

D. Cost. Have the qualitative and quantitative benefits of the rule been considered in relation to its costs? Do all of the qualitative and quantitative benefits exceed the costs of the rule?

E. Fairness. Does the rule result in the equitable treatment of those required to comply with it, and those effected by the rules in other ways? Should it be

modified in any way to eliminate or minimize any disproportionate impacts on the regulated community? Should it be strengthened to provide additional protection to those effected by the rules?

IV. Schedule for Regulatory Review

A. Agency plan. Each agency shall prepare a plan that sets out the method of its review. Each plan shall provide a detailed description of the methodology and explanation of the methodology and standards that the designated agency reviewers will employ for the purpose of completing the regulatory review. All plans shall be submitted to the Governor's Office no later than March 1, 2000. Each plan will be reviewed for content by the Administrative Rules Coordinator.

B. Inventory. Each agency shall prepare a list that identifies, by topical area, the location (chapter, paragraph, etc.) in which the agency or agency rules are listed or mentioned (either directly or indirectly) in the Iowa Code and the Iowa Administrative Code. All inventory lists shall be submitted to the Governor's Office no later than November 1, 2000. Each inventory list will be reviewed for content by the Administrative Rules Coordinator.

C. Assessment. Each agency shall review the statutes and rules listed in its inventory and identify those items that should be changed based upon the criteria set out in this Order. The assessment shall include a report, for each functional group of rules reviewed, a statement containing the following information in concise form:

1. the rule grouping's objectives
2. the rule grouping's effectiveness in achieving its objectives
3. a description of the written criticisms, for each rule grouping, received by the agency during the previous five years, including a summary of petitions for waivers from the rule, to the extent that such records exist

Each assessment shall also include a written list of recommended modifications (rescind, rewrite, replace) which the agency believes will satisfy the criteria, and a written rationale for each recommendation. Active constituent group input at this step is critical and necessary. All assessments shall be submitted to the Governor's Office no later than November 1, 2001. Each Assessment will be reviewed for content by the Administrative Rules Coordinator.

D. Governor's Office Conference. The Administrative Rules Coordinator will meet with each agency to review the recommendations submitted and determine which recommendations to pursue. The Administrative Rules Coordinator shall approve the recommendations proposed by the agency including agency prioritization for implementing its approved recommendations. All approved recommendations shall be recorded and quantified by the Administrative Rules Coordinator. The Governor's Office conference will be scheduled by the Administrative Rules Coordinator, but shall be held with each agency no later than March 1, 2002.

E. Final Schedule Approval. Each agency shall prepare a schedule that identifies when the agency will complete the balance of its work for implementing its approved rule modifications. Each final schedule shall be approved by the

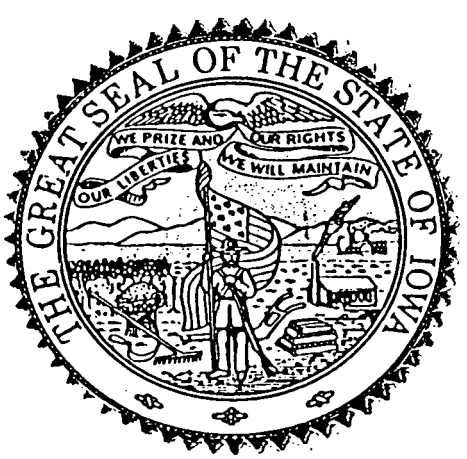
Administrative Rules Coordinator. Agencies must take all steps necessary to secure final approval no later than July 1, 2002.

F. Administrative Rules Review Committee Approval. Each agency is responsible for appearing before the Administrative Rules Review Committee on selected rule changes, within the deadlines set out in this Order.

G. Final Report. Each agency shall prepare a final report that summarizes the results of this effort, and documents the rule changes that have been made pursuant to the agency's regulatory review. Each report shall be submitted to the Governor's Office for review no later than December 31, 2002.

V. The adequacy of each agency's effort to complete a thorough regulatory review under this Order will be judged against the extent to which the agency appears to provide an efficacious and effective means with which to accomplish all of the objectives of this order within the time allotted.

VI. Any new rules or significant amendments for which a notice of intent to adopt is filed after the effective date of this executive order shall be consistent with the principles and objectives of this order.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 14th of September in the year of our Lord one thousand nine hundred and ninety-nine.

Thomas J. Vilsack
Governor

ATTEST:

Chester J. Culver
Secretary of State

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER NINE

WHEREAS, the wide array of regulatory programs administered by the State of Iowa creates the potential for duplication and inefficiency in agency rule-making, in the absence of a coordinated management mechanism; and

WHEREAS, effective agency planning is vital to the operation of a coordinated and well-managed rule-making process; and

WHEREAS, effective agency planning requires adherence to sound regulatory principles that guide agencies in the exercise of their discretion; and

WHEREAS, the creation of a well -coordinated and sound administrative policy also requires agencies to engage in a comprehensive and ongoing planning process that includes early and widespread communication with the public and other agencies or governmental bodies; and

WHEREAS, this administration launched a quality and efficiency in government initiative on February 8, 1999, wherein a task force was assembled to prepare and submit a series of recommendations to the Governor on the creation of a process for reviewing and streamlining existing state regulations and the rule-making process as a whole; and

WHEREAS, the task force has been charged with the task of preparing a series of recommendations for creating a system to improve the execution of state government, thereby benefiting the people of this state, and improving the state's economy; and

WHEREAS, the objective of this executive order is to enhance agency planning and coordination, with respect to new and existing regulations, and to restore the integrity and legitimacy of regulatory review and oversight.

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa do hereby order that upon the effective date of this executive order, each state agency, with the authority to adopt rules, as defined in Iowa Code section 17A.2(1), (10) shall adhere to the following principles and procedures when engaging in agency rule-making:

I. Regulatory Principles

A. To the extent permitted by statute, and wherever applicable, each agency shall only issue rules that are authorized by state law and that aid in interpreting the law or serve an important public need. In deciding whether and how to regulate, each agency shall assess all costs and benefits of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and

qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, each agency shall select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages) and that are most equitable in their result.

B. Each agency shall identify and assess the significance of the specific problem any contemplated regulation intends to address.

C. To the extent that it is reasonable and practicable, each agency shall examine whether existing rules (or laws) have created or contributed to the problem that a new rule is intended to correct, and whether those rules (or laws) should be modified to achieve the intended goal of regulation more effectively.

D. Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, or providing information upon which choices can be made by the public.

E. Each agency shall, in setting its regulatory priorities, consider the varying degrees and natures of the risks posed by the different substances or activities within its jurisdiction.

F. Each agency shall design its rules in the most cost-effective manner to achieve the desired regulatory objective. In doing so, each agency shall consider incentives, innovation, consistency, predictability, enforcement and compliance costs (to government, regulated entities, and the public), flexibility, and equity.

G. Each agency shall assess both the costs and the benefits of contemplated rules and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a rule only upon a reasoned determination that the benefits of the intended rule justify its costs and that the rule is the best available method of achieving the desired regulatory objective, consistent with the other principles contained in this section.

H. To the extent that it is reasonable and practicable, each agency shall base its decisions on scientific, technical, economic, and other information concerning the need for, and consequences of, the intended rule.

I. Each agency shall identify and assess alternative forms of regulation and shall, to the extent that it is reasonable and practicable, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

J. To the extent that it is reasonable and practicable, each agency shall seek the views of appropriate local officials or their representatives before imposing regulatory requirements that might specifically or uniquely affect those governmental entities. Each agency shall assess the effects of its contemplated rule on local governments, including the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize their rulemaking actions with related local regulatory and other governmental functions.

K. Each agency shall avoid rules that are inconsistent, incompatible, or duplicative with its own rules or those other state agencies.

L. Each agency shall narrowly-tailor its rules to impose the least possible burden on society, including, individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

M. Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

II. Agency Rules Administrator

Each agency shall designate an individual as its Agency Rules Administrator, and provide the name of that person to the Administrative Rules Coordinator. The agency shall publish the name, address, telephone number, and fax number of the Agency Rules Administrator on its web-site. The Agency Rules Administrator shall be the agency official responsible for the administration of the agency rule-making process.

III. Summary of Noticed and Adopted and Filed Rules

Each agency shall adopt and utilize the Uniform Summary Review Forms prepared and distributed by the Administrative Rules Coordinator when filing agency rules.

IV. Regulatory Plan

To the extent permitted by statute:

A. Each agency shall prepare a Regulatory Plan listing each "regulatory action" (each potential rule currently under active consideration or development within the agency excluding those rules that do not have a substantial impact on the legal rights, privileges, or duties of persons) that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved by the Agency Head, and shall contain at a minimum:

1. a statement of the agency's current regulatory objectives and priorities and how they relate to the obligations imposed on the agency by statute and the Governor's priorities; and

2. a description of each such contemplated regulatory action, including, to the extent reasonable and practicable, alternatives to be considered and a preliminary estimate of the anticipated costs and benefits of the action; and

3. a summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order; and

4. a statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency; and

5. the agency's contemplated schedule for action, including a statement of any applicable statutory or judicial deadlines; and

6. the name, address, and telephone number of a person knowledgeable about the contemplated action who the public may contact for additional information about that action.

B. Each agency shall forward a copy of its Plan to the Administrative Rules Coordinator by August 1st of each year and shall also publish its Plan on the agency's web-site by that date. During the year, each agency shall update its plan on the web-site as often as reasonable and practicable, or as requested by the Administrative Rules Coordinator.

C. At the time an agency submits its plan to the Administrative Rules Coordinator, the agency shall circulate copies of the plan to "affected agencies" that are listed on the Administrative Rules Coordinator's master list.

D. An Agency Rules Administrator who believes that the planned regulatory action of another agency may conflict with an agency policy, planning, or existing rules shall promptly notify the other agency and the Administrative Rules Coordinator.

E. If the Administrative Rules Coordinator believes that a planned regulatory action of an agency may be inconsistent with the policy, plans, or existing rules of another agency, or any of the principles set forth in this Order, the Administrative Rules Coordinator shall promptly notify that agency.

F. Any views by any person on any aspect of any agency Plan, including whether a planned regulatory action might conflict with other planned or existing rules, should be directed to the issuing agency, with a copy to the Administrative Rules Coordinator.

G. The Administrative Rules Coordinator should, at least annually, convene a meeting of local governments or their representatives to identify both existing and proposed rules that may uniquely or significantly affect those governmental entities. The Administrative Rules Coordinator shall also convene, at least annually, a meeting with representatives of businesses, non-governmental organizations, and the public to discuss regulatory issues of common concern.

H. Any views by any person on any aspect of any agency plan, should be directed to the issuing agency, with a copy to the Administrative Rules Coordinator.

I. The Administrative Rules Coordinator should, at least annually, convene a meeting of local governments or their representatives to identify both existing and proposed rules that may uniquely or significantly affect those governmental entities. The Administrative Rules Coordinator shall also convene, at least annually, a meeting with representatives of businesses, non-governmental organizations, and the public to discuss regulatory issues of common concern.

J. The Administrative Rules Coordinator should, semi-annually, convene a meeting with the designated Administrative Rules Administrators of each state agency to discuss pending rule-making issues.

V. Rule-making Docket

To the extent permitted by statute, each agency shall maintain a current, public rule-making docket listing each pending rule-making proceeding. The docket shall be posted on the agency web-site, and otherwise readily accessible to the public for review. A rule-making proceeding is pending for the time it is commenced, by publication of a notice of proposed rule adoption, to the time it is terminated, by publication of notice of termination, or the rule becomes effective.

For each rule-making proceeding, the docket shall provide the following information:

A. the subject matter of the proposed rule;

B. a citation to all published notices relating to the proceeding;

C. the location where written submissions on the proposed rule may be inspected;

D. the time period wherein written submissions may be made;

E. the names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;

F. a statement on whether a written request for the issuance of a regulatory analysis of the proposed rule has been filed, whether that analysis has been issued, and where the written request and analysis may be inspected;

G. the current status of the proposed rule and any agency determinations with respect thereto;

H. any known timetable for agency decisions or other action in the proceeding;

I. the date of the rule's adoption;

J. the date or dates in which the rule is to be or was to be considered by the Administrative Rules Review Committee and an indication of any action taken by that committee on the rule;

K. the date of the rule's filing, indexing, and publication;

L. the date in which the rule will become effective.

VI. Judicial Review

Nothing in this Order shall affect any otherwise available judicial review of agency action. This Order is intended only to improve the internal management of Iowa state government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the state, its agencies or instrumentalities, its officers or employees, or any other person.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 14th day of September in the year of our Lord one thousand nine hundred and ninety-nine.

Thomas J. Vilsack
Governor

ATTEST:

Chester J. Culver
Secretary of State

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER TEN

WHEREAS, The issuance of efficient, effective, and lawful agency rules that promote the public interest, and provide benefits which exceed their costs, requires relevant agency personnel to be familiar with all of the legal requirements applicable to the rule-making process, and to be proficient in the skills necessary to ensure that high quality administrative rules are drafted; and

WHEREAS, expertise in the issuance of efficient, and effective rules may vary from agency to agency; and

WHEREAS, this administration launched a quality and efficiency in government initiative on February 8, 1999, wherein a task force was assembled to prepare and submit a series of recommendations to the Governor on the creation of a process for reviewing and streamlining existing state regulations and the rule-making process as a whole; and

WHEREAS, the task force has been charged with the task of preparing a series of recommendations for creating a system to improve the execution of state government, thereby benefiting the people of this state, and improving the state's economy; and

WHEREAS, accessibility to an executive branch institution that conducts an educational program on agency rule-making, on an on-going basis, would assist agencies in crafting a high quality and successful rule-making product.

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the laws and the constitution of the State of Iowa do hereby order that:

I. The Quality in Rule-making Committee is hereby created.

II. Purpose.

The Quality in Rule-making Committee has been created for the purpose of designing and administering a program to familiarize agency personnel with, and equip them to satisfy, all of the legal requirements applicable to the rule-making process. This committee shall train agency personnel to formulate and draft high quality narrowly crafted rules that are as precise, clear, and easy to understand as possible. Finally, this

committee shall familiarize agencies with various technical tools that will enable each agency to assess the benefits and costs of agency rules and their effectiveness.

III. Organization

The Quality in Rule-making Committee shall be appointed by the Governor, and shall report to Director of the Department of Management on a quarterly basis to provide status updates.

IV. Funding

Ongoing funding for the Quality in Rule-making Committee shall be provided by each state agency on an equitable basis. The Department of Management shall prepare an equitable contribution schedule of agency resources and personnel to be used to produce various educational rule-making programs, based upon the benefit that each agency would confer or receive by participating in the programming.

III. Methods and Schedule

Specific methodology and coordination shall be determined by the Quality in Rulemaking Committee, with advice from the Governor. Since attendance by relevant agency personnel will enhance the overall management of state government, the decision on whether relevant agency personnel will attend various educational programs shall not solely rest with the discretion of the individual agency heads. The Director of the Office of Management shall make the final decision on agency participation in a particular program, pursuant to this executive order, in the event of agency opposition to committee initiatives.

Members on the Quality in Rulemaking Committee will be appointed by the Governor for a term to begin on January 1, 2000, and conclude on December 31, 2000. All subsequent terms shall run for a period of one (1) year. All members of the Quality in Rulemaking Committee shall serve at the pleasure of the Governor.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 14th day of September in the year of our Lord one thousand nine hundred and ninety-nine.

Thomas J. Vilsack
Governor

ATTEST:

Chester J. Culver
Secretary of State

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER ELEVEN

WHEREAS, agency regulatory activities have become increasingly pervasive in their impact on the lives of Iowans; and

WHEREAS, agency rules that work well in a generality of cases, as applied across the board, may sometimes produce harsh or unintended consequences when applied in particular cases, where a set of unanticipated circumstances exist; and

WHEREAS, special circumstances may sometimes exist that justify the exclusion of particular persons from the general application of a rule; and

WHEREAS, fairness and public interest demand that all agency actions shall be narrowly-tailored to achieve the agency's lawful objectives; and

WHEREAS, agencies should seek to eliminate or ameliorate, whenever possible, any unnecessary or unjustified over-breadth in their exercise of their regulatory authority as applied to individual cases; and

WHEREAS, this administration launched a quality and efficiency in government initiative on February 8, 1999, wherein a task force was assembled to prepare and submit a series of recommendations to the Governor on the creation of a process for reviewing and streamlining existing state regulations and the rule-making process as a whole; and

WHEREAS, the task force has been charged with the task of preparing a series of recommendations for creating a system to improve the execution of state government, thereby benefiting the people of this state, and improving the state's economy; and

WHEREAS, the objective of this executive order is to insert a mechanism into the rule-making process that will increase the flexibility of administrative rule enforcement as applied to compelling individual cases.

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the laws and the constitution of the State of Iowa do hereby order that:

I. Each agency, with the authority to adopt rules, as defined in Iowa Code, section 17A.2(1),(10), shall initiate rule-making proceedings to adopt the Uniform Waiver Rule that is outlined in this order by publication in the Administrative Bulletin no later February 1, 2000

II. Uniform Waiver Rule

A. Except to the extent prohibited by statute, each agency, as defined in Iowa Code, section 17A.2(1),(10), may issue an order, in response to a completed petition or on its own motion, granting a waiver of a rule adopted by said agency, in whole or in part, as applied to the circumstances of a specified person if the agency finds that:

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

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

3. the waiver of the rule in the specific case would not prejudice the substantial legal rights of any person.

The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the agency head, upon consideration of all relevant factors.

B. In response to the timely filing of a completed petition requesting a waiver, the agency shall, except to the extent prohibited by statute, grant a waiver of a rule, in whole or in part, as applied to the particular circumstances of a specified person, if the agency finds that the application of all or a portion thereof to the circumstances of that specified person would not, to any extent, advance or serve any of the purposes of the rule.

C. The petitioner shall assume the burden of persuasion when a petition is filed for a waiver of an agency rule.

D. The agency may create a provision identifying other generally applicable contexts, or other general standards, that it will utilize as a basis for granting discretionary or mandatory waivers of its rules for specified persons. All provisions that identify generally applicable contexts or standards must be submitted to the Governor for final approval before they are implemented by the agency.

E. This uniform waiver rule shall not preclude the agency from granting waivers in other contexts or on the basis of other standards if the statute or other agency rules authorize it to do so, and the agency deems it appropriate to do so.

III. Procedures for Granting Waivers

A. Any person may file a petition with the agency requesting a waiver, in whole or in part, of an agency rule on the ground that the application of the uniform waiver rule to the particular circumstances of that person would justify for a waiver under the agency's uniform waiver rule. Each agency shall designate an individual to receive written petitions.

B. A petition for a waiver shall include the following information where applicable and known to the requester:

1. The name, address, and case number or state identification number of the person or entity for whom a waiver is being requested

2. A description and citation of the specific rule to which a waiver is requested.

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

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

5. A history of the agency's action relative to the petitioner.

6. Any information regarding the agency's treatment of similar cases (if known).

7. The name, address, and telephone number of any person inside or outside of state government who would be adversely affected by the grant of the petition, or otherwise possesses knowledge of the matter with respect to the waiver request.

8. Signed releases of information authorizing persons with knowledge regarding the request to furnish the agency with information pertaining to the waiver.

Each agency may include, here, other provisions, consistent with this executive order, that govern the form, filing, timing, and contents of petitions for the waivers of rules, and the procedural rights of persons in relation to such petitions.

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

D. The provisions of Iowa Code section 17A.10-.18A apply to agency proceedings for a waiver of a rule only to the extent an agency so provides by rule or order or is required to do so by statute. Prior to issuing an order granting or denying a waiver petition, the agency may request additional information from the petitioner relative to the application and surrounding circumstances.

E. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which that action is based, and a description of the precise scope and operative period of the waiver if one is issued. The agency shall grant or deny a petition for the waiver of all or a portion of a rule as soon as practicable, but at any event, shall do so within 120 days of its receipt, unless petitioner agrees to a later date. However, if a waiver petition has been filed in a contested case proceeding, the agency shall grant or deny the petition no later than the time at which the final decision in that contested case is issued. Failure of the agency to grant or deny such a petition within the required time period shall be deemed a denial of that petition by the agency.

F. Within seven (7) days of its issuance, any order issued under the Uniform Waiver Rule shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

G. Subject to the provisions of Iowa Code section 17A.3(1)(e), each agency shall maintain a record of all orders granting and denying waivers under the uniform rule. The records shall be indexed by rule and available for public inspection.

H. This executive order shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the agency does not possess delegated authority to bind the courts to any extent with its definition and does not authorize an agency to waive any requirement created or duty imposed by statute.

I. After the agency issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 14th day of September in the year of our Lord one thousand nine hundred and ninety-nine.

Thomas J. Vilsack
Governor

ATTEST:

Chester J. Culver
Secretary of State

IOWA ADMINISTRATIVE BULLETIN
Iowa State Printing Division
Grimes State Office Building
Des Moines, Iowa 50319